

**Revised Statement of Unresolved Issues – Case No. TO-2009-0037
September 2, 2008**

<u>Issue No.</u>	<u>Issues</u>	<u>§</u>	<u>Charter's Language</u>	<u>Charter's Position</u>	<u>CenturyTel's Language</u>	<u>CenturyTel's Position</u>
ART. II, DEFINITIONS						
1.	<p>Should the parties' Agreement use the definition of Interconnected VoIP Service traffic as defined, and codified in federal regulations?</p> <p><u>Should the proposed Agreement cover all IP-enabled Traffic"?</u></p>	Art. II, § 2.80	<p><u>Interconnected VoIP Service Traffic</u></p> <p>Interconnected VoIP Service Traffic is traffic that is provisioned via a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.</p>	<p>The parties should utilize the FCC definition of the term "interconnected VoIP" service to define certain traffic that may be exchanged between the Parties. The FCC has formally adopted the term "interconnected VoIP" for purposes of establishing certain regulations, and has codified the term, and its definition, at 47 C.F.R. § 9.3. This Commission should utilize the FCC's definition because it accurately describes the nature and characteristics of traffic that is provisioned over the Charter network. Moreover, using a definition that is codified under federal law, and used by the federal expert agency, will ensure that the term that can be interpreted more clearly and consistently.</p>	<p><u>2.80 IP-Enabled Voice Traffic</u></p> <p><u>IP-Enabled Voice Traffic means any IP-enabled, real-time, multi-directional voice call, including, but not limited to, service that mimics traditional telephony. IP-Enabled Voice Traffic includes: voice traffic originating on Internet Protocol Connection (IPC), and which terminates on the Public Switched Telephone Network (PSTN); and voice traffic originated on the PSTN, and which terminates on IPC, and voice traffic originating on the PSTN, which is transported through an IPC, and which ultimately, terminates on the PSTN.</u></p>	<p>In addition to its inclusion in Article II, Sec. 2.80, this disputed definition appears in Article II, Sec. 2.89 (definition of "Local Traffic") and in Article V, Sections 4.2.1, 4.2.1.3 and 4.2.6.</p> <p>Charter's proposed definition for "IP-enabled traffic" is too narrow and only addresses one form of traffic that may be delivered for termination on the Public Switched Telephone Network ("PSTN"). As a result, Charter's proposed definition creates uncertainty as to the proper intercarrier compensation treatment of the undefined forms of IP-enabled traffic that may arise resulting in unnecessary disputes between the parties regarding the intercarrier treatment of these undefined forms of traffic. These issues are avoided by CenturyTel's proposed definition of "IP-Enabled Voice Traffic." Thus, the Commission should adopt CenturyTel's proposed definition of "IP-Enabled Voice Traffic."</p> <p>CenturyTel's definition is intentionally broader than Charter's proposed definition of "Interconnected VoIP Service Traffic." CenturyTel did so to ensure that the entirety of traffic that utilizes Internet Protocol ("IP") is</p>

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						<p>addressed in the Agreement. CenturyTel notes that "IP" is nothing more than a form of transport that is different from Time Division Multiplexed ("TDM") used today for the exchange of traffic over the PSTN.</p> <p>Charter's proposed definition is too limited in scope. It is derived from 47 C.F.R. § 9.3 of the Federal Communications Commission ("FCC") rules which was promulgated specifically for the purpose of identifying those Voice over Internet Protocol ("VoIP") service providers to whom the FCC's E911 service requirements apply. <i>See</i> 47 C.F.R. §§ 9.1 and 9.5(a). While the FCC has concluded that this requirement is appropriate for its intended purpose under the E911 regulations, it does not follow that the scope of the FCC's definition is appropriate for this Agreement. Rather, the scope of the FCC's definition actually serves to limit the definition in a way that renders it inappropriate for use in this Agreement. The FCC's E911 service definition of VoIP only includes VoIP traffic that requires a broadband connection from the user's location. This Agreement will cover other forms of IP-enabled traffic; therefore, the intercarrier treatment of these additional forms of IP-enabled traffic must be addressed.</p>

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2.	How should the Agreement define the term Network Interface Device or "NID"?	Art. II, § 2.103	<p>2.103 <u>Network Interface Device (NID)</u></p> <p>A means of interconnecting Inside Wiring to CenturyTel's distribution plant, such as a cross-connect device used for that purpose. The NID houses the protector.</p>	<p>The definition of Network Interface Device (NID) should be consistent with FCC rules, in that it should not: alter or modify the location of the demarcation point; imply that CenturyTel always owns and maintains control over inside wire; or imply that end users do not own inside wire on the customer side of the NID. CenturyTel's proposed definition contravenes FCC definitions in several ways, and attempts to establish new substantive rights and obligations for Century Tel under the Agreement that do not exist under federal law. The definitions should not be used as a means to impose new substantive rights and obligations, but instead should be used simply to define terms consistent with FCC rulings.</p>	<p>2.103 <u>Network Interface Device (NID)</u></p> <p>A means of interconnecting Inside Wiring to CenturyTel's distribution plant, such as a cross-connect device used for that purpose. The NID houses the protector, <u>the point from which the Point of Demarcation is determined between the loop (inclusive of the NID) and the End User Customer's Inside Wire pursuant to 47 CFR 68.105.</u></p>	<p>This definition is directly related to the proper resolution of the other unresolved, NID-related issue (Issue 24). Thus, Issue 2 and Issue 24 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel.</p> <p>Charter's suggestion that CenturyTel's definition "contravenes FCC definitions in several ways" is simply wrong. The Commission should adopt CenturyTel's proposed definition of Network Interface Device or "NID" because it is consistent with applicable law and FCC regulations.</p> <p>The terms NID, Inside Wire and Point of Demarcation are all related. The Parties have resolved the definitions of "Inside Wire" (Art. II, Sec. 2.71) and "Point of Demarcation" (Art. II, Sec. 2.114), but not the definition of the "NID." However, unlike Charter's proposed definition that simply states that "[t]he NID houses the protector," CenturyTel's proposed definition establishes the interplay between these three critical definitions in a manner consistent with applicable requirements. In contrast, Charter's definition creates ambiguity as it avoids describing the relationship between the NID, the Point of Demarcation and the customer's Inside Wire.</p>

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						<p>The relationship between these elements – NID, Inside Wiring and Point of Demarcation – is critical as they define where CenturyTel's local distribution network ends and the customer's Inside Wiring begins. The absence of a clear statement of that relationship will only lead to additional disputes between the Parties regarding Charter's access to CenturyTel's NID. Charter's unauthorized use of CenturyTel's NIDs has already led to litigation under Charter's existing interconnection agreements with CenturyTel in Wisconsin. In a recent AAA arbitration, Charter was found to be liable for CenturyTel's UNE charges for NID usage under the parties' "non-rural" agreement. AAA Case No. 51 494 Y 00524-07 (Aug. 24, 2007). The arbitrator's decision was confirmed by State of Wisconsin Circuit Court for Dane County in January 2008 (Case No. 07CV4085). Last month, CenturyTel brought suit against Charter in the State of Wisconsin Circuit Court for LaCrosse County (Case No. 08-CV-4085) for unjust enrichment and conversion in connection with Charter's unauthorized use of CenturyTel's NIDs in CenturyTel's rural exchanges in Wisconsin.</p> <p>It is essential that this Agreement not only clearly define, consistent with applicable law, what constitutes the</p>

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						Point of Demarcation between CenturyTel's facilities and the end user's Inside Wire, but also what the Network Interface is not. CenturyTel's proposed definition does so and explicitly cross-references the FCC's rule, 47 C.F.R § 68.105.
3.	There are two separate issues presented in Issue 3: (a) How should the Agreement define the term "Tariff"? (b) How should specific Tariffs be incorporated into the Agreement?	Art. II, § 2.140 and Art. 1, § 3	Art. II, Section 2.140: Any applicable filed and effective Federal or state tariff (and/or State Price List) of a Party, as amended from time-to-time, that the Parties have specifically and expressly identified in this Agreement for the purpose of incorporating specific rates or terms set forth in such document by mutual agreement. Article I, Section 3: Unless otherwise specifically determined by the Commission, in case of conflict between the Agreement and either Party's Tariffs relating to ILEC and CLEC's rights or obligations under this Agreement, then the rates, terms and conditions of this Agreement shall prevail. In no event shall a Tariff alter, curtail, or expand the rights or obligations of either Party under this	<u>Issue 3(a):</u> The definition of a tariff should establish that the Parties intend to incorporate only those provisions that are specifically and expressly identified in the Agreement. Without a specific, and express, statement by both Parties of their mutual intent to incorporate provisions from either parties' tariffs, the Agreement may not be construed as incorporating such provisions. Therefore, where the Parties intend to incorporate specific provisions from an external document, including a specific tariff, then the statement of incorporation should be clear and unequivocal. <u>Issue 3(b):</u> Furthermore, the Parties should incorporate only those specific tariff provisions that they intend to be	Art. II, Section 2.140: Any applicable filed and effective Federal or state tariff (and/or State Price List) of a Party, as amended from time-to-time. <u>Either Party's Tariffs shall not apply to the other Party except to the extent that this Agreement expressly incorporates such Tariffs by reference or to the extent that the other Party expressly orders services pursuant to such Tariffs.</u> Article I, Section 3: Unless otherwise specifically determined by the Commission, in case of conflict between the Agreement and either Party's Tariffs relating to ILEC and CLEC's rights or obligations under this Agreement, then the rates, terms and conditions of this Agreement shall prevail. In no	CenturyTel notes that Issue 3 and Issue 42 are related. <u>Issue 3(a):</u> The Parties have no material dispute regarding the actual definition of the term "Tariff" as evidenced by the agreed upon language in Art. II, Sec. 2.140: "Any applicable filed and effective Federal or state tariff (and/or State Price List) of a Party, as amended from time-to-time." However, Charter's proposed additional language goes well beyond a definition, and is inaccurate. CenturyTel has addressed this in issue 3(b) below. <u>Issue 3(b):</u> The real dispute between the Parties is how Tariffs should be referenced and incorporated into the Agreement. From a drafting standpoint, this is a substantive issue that does not belong in the definition of a term. Rather, how a particular Tariff is referenced and

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			<p>Agreement, except by mutual consent. Either Party's Tariffs and/or State Price Lists shall not apply to the other Party except to the extent that this Agreement expressly incorporates specific rates or terms set forth in such Tariffs by reference or to the extent that the other Party expressly orders services pursuant to such Tariffs and/or State Price Lists.</p>	<p>operative under this Agreement. The Commission should not approve an Agreement that simply purports to incorporate any "applicable" tariff. Doing so will inevitably lead to interpretive disputes as to which tariffs are in fact "applicable" in any given circumstance, and lead to potential conflicts that can be resolved only with burdensome litigation.</p> <p>Consistent with its position concerning the definition of a tariff (above), the Parties Agreement should include specific language to reflect their intent to incorporate only those tariff provisions that are specifically and expressly identified in the Agreement.</p>	<p>event shall a Tariff alter, curtail, or expand the rights or obligations of either Party under this Agreement, except by mutual consent. Either Party's Tariffs and/or State Price Lists shall not apply to the other Party except to the extent that this Agreement expressly incorporates such Tariffs by reference or to the extent that the other Party expressly orders services pursuant to such Tariffs and/or State Price Lists.</p>	<p>incorporated with respect to a particular service should be established as a part of the other terms and conditions regarding that service.</p> <p>As to the merits, CenturyTel's proposed language in Art. II, Sec. 1.40 is clear and direct. While Charter did not include this language as agreed-upon in its DPL, Charter did agree to this language during negotiations. The Commission should adopt it as it makes clear that a Tariff will apply to a Party only to the extent that (1) it is specifically incorporated by reference into the Agreement or (2) a Party expressly orders a service pursuant to such Tariff, as opposed to this Agreement.</p> <p>Charter's proposal that in all cases Tariffs apply only to the extent "that the Parties have specifically and expressly identified in this Agreement for the purpose of incorporating specific rates or terms set forth in such document by mutual agreement" is unworkable and inappropriate. The Parties have discussed various ways in which Tariffs may be referenced and incorporated with respect to specific services. In some cases, only the rates from a Tariff are intended to be incorporated with respect to a service to be provided under the Agreement, with the intent that the rates change when the Tariff</p>

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						<p>changes. In other cases, a Tariff is referenced for a specific purpose, such as the definition of Local Calling Area in Article II, Section 2.86.</p> <p>In other cases, a service is intended to be ordered and provided under a Tariff. In these latter cases, Charter has insisted that “specific rates and terms” be “specifically and expressly identified,” with the result apparently that any other applicable rates and terms of the Tariff would not apply. Charter’s approach is unlawful. When a service is ordered and provided from a Tariff, all of the terms, conditions and rates applicable to that service apply. The filed rate doctrine prohibits CenturyTel from providing a tariffed service under a different set of terms, conditions and rates. <i>See, AT&T Co. v. Cent. Office Tel., Inc.</i>, 524 U.S. 214 (1998).</p> <p>Moreover, Charter’s insistence on parsing Tariff terms and conditions creates unnecessary complexity and potential disputes with what should be a straightforward proposition. If, for example, Charter orders additional directory listings out of CenturyTel’s applicable directory listing Tariff, it should take those listings under all of the terms and conditions of the Tariff, not just the particular section or two that Charter would cite within the Agreement. Charter cannot pick and</p>

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						<p>choose only those sections of the Tariff with which it wants to comply. And, it would be a waste of CenturyTel's and the Commission's time to develop a new set of terms and conditions for a tariffed service when the Tariff already contains a complete set of filed and effective terms and conditions.</p> <p>Finally, if only specific terms and conditions of a Tariff service are incorporated into the Agreement, ambiguity is created if needed terms and conditions, such as general ordering and provisioning terms from the Tariff, are not cited. Charter would apparently claim that it need not comply with CenturyTel's ordering and provisioning terms, leaving the parties' implementation of Charter's request without a set of requirements to follow. Ambiguity would also be created because it would not be clear as to whether changes to the parts of the Tariff "specifically and expressly identified" would apply to the Agreement, or whether the Agreement would need to be amended in order to incorporate the changes.</p> <p>This issue affects many sections of the Agreement, including the general reference to Charter's own Tariff in Art. II, Section 30.4.2.</p>

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ART. III, GENERAL TERMS AND CONDITIONS						
4.	Termination of Agreement (Sub-Issues 4(A) and (B))					
4(a)	<p>Should the Agreement include terms that allow one Party to terminate the Agreement without any oversight, review, or approval of such action, by the Commission?</p> <p><u>Should a Party be allowed to suspend performance under or terminate the Agreement when the other Party is in default, and the defaulting Party refuses to cure such default within thirty (30) days after receiving notice of such default? How should "default" be defined in the Agreement?</u></p>	2.6	<p><u>Suspension or Termination Upon Default.</u> Either Party may suspend or terminate this Agreement, in whole or in part, in the event of a Default (defined below) by the other Party; <i>provided, however</i>, that the non-defaulting Party has complied with the dispute resolution provisions of this Agreement, including Section 20.</p> <p>"Default" is defined to include:</p> <p>(a) A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or</p> <p>(b) The final revocation by the Commission of a Party's Certificate of Operating Authority and transition of End Users to another carrier, or</p> <p>(c) A decision pursuant to the Formal Dispute Resolution provisions</p>	<p>Termination of the agreement should be subject to either Party's right to invoke dispute resolution procedures of the agreement, and only after this Commission specifically authorizes such action. Because termination of the agreement could have severe potential ramifications to end user subscribers of both parties, such action should only occur under the direct supervision and oversight of this Commission.</p> <p>For that reason, Charter's proposed language would establish that any potential action deemed to constitute a default of the Agreement would be defined as both the action constituting the failure to perform, and the resolution of a dispute proceeding arising out of such alleged failure to perform. This approach will ensure that neither Party could use these provisions to threaten termination of the Agreement on mere <i>allegations</i> of default. Where the Commission finds that a Party has in fact failed to perform, following an adjudicative proceeding, it can deem such Party in default of the Agreement and approve the other Party's right to</p>	<p>2.6 <u>Suspension or Termination Upon Default.</u> Either Party may suspend or terminate this Agreement, in whole or in part, in the event of a Default (defined below) by the other Party; <i>provided, however</i>, that the non-defaulting Party <u>notifies the defaulting Party in writing of the Default and the defaulting Party does not cure the Default within thirty (30) calendar days of receipt of written notice thereof. Following CenturyTel's notice to **CLEC of its Default, CenturyTel shall not be required to process new service orders until the Default is timely cured.</u></p> <p>"Default" is defined to include:</p> <p>(a) A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or</p> <p>(b) The revocation by the Commission of a Party's Certificate of Operating Authority, or</p>	<p>The language at issue is a standard and commercially reasonable contract term that provides the Party that is experiencing the negative effects of the other Party's default a means to ameliorate those negative effects. This "stick," therefore, creates an incentive for both Parties (or any other party adopting the terms of this Agreement) to live up to their respective obligations under the Agreement, without unnecessary Commission intervention.</p> <p>For example, if CenturyTel's language was not included and Charter failed to pay "undisputed" billed amounts, CenturyTel would be obligated to go to the Commission, commence a dispute proceeding and await a determination before it could suspend processing Charter's orders for Charter's failure or refusal to pay <i>undisputed</i> charges. Charter has not and cannot explain why such a result is appropriate or necessary, let alone required under the Act or state law.</p> <p>CenturyTel's proposed language provides a reasonable incentive for <i>the offending</i> Party to comply with the terms of the Agreement. CenturyTel's notice requirement gives Charter the opportunity to cure a default or to seek</p>

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			<p>of Section 20 of this Agreement that a Party has materially breached any of the terms or conditions hereof, except that in no event should termination occur unless so ordered by the Commission, or</p> <p>(d) Failure of a Party to pay undisputed amounts or to properly dispute unpaid amounts in accordance with Section 9, and subject to either Party invoking its rights under Section 20, Dispute Resolution, except that in no event should termination occur unless so ordered by the Commission.</p>	<p>terminate the Agreement. That approach provides sufficient contractual protections for both Parties, while at the same time ensuring that neither Party will be able to improperly use the default/termination provisions of the Agreement to gain an improper advantage. Furthermore, Commission oversight and involvement will ensure that subscribers' interests are properly protected in the event that the Agreement is terminated.</p>	<p>(c) <u>A Party's violation of any material term or condition of the Agreement</u>; or</p> <p>(d) <u>A Party's refusal or failure in any material respect properly to perform its obligations under this Agreement, including but not limited to its refusal or failure to pay undisputed charges (pursuant to Section 9) within thirty (30) calendar days after the bill date.</u></p>	<p>an injunction if Charter really does not believe it is in default. Thus, <i>neither</i> Party would be required to take disputes to the Commission unless there was legitimate need to do so. In contrast, Charter's language creates an incentive for the offending Party to violate the terms of the Agreement by placing the burden of initiating and undertaking formal Commission proceedings on the non-offending Party in order to obtain payment. This perverse incentive violates elementary notions of contract law and sound public policy.</p> <p>Finally, even in those instances where the Parties are in agreement that there is a failure to pay, Charter's proposed language still requires a Commission finding of default prior to any action by the non-defaulting Party. Such a requirement is not necessary. Charter's requirement simply adds expense and time to a billing issue that eliminates any incentive for proper conduct under the Agreement.</p> <p>With respect to what should constitute a "default" under the Agreement, CenturyTel notes that both Parties agree that "insolvency" is a default and thus subsection 2.6(a) is not in dispute. With respect to subsection (b) regarding the "revocation of a Certificate of Operating Authority [COA]," CenturyTel submits that this is a</p>

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						<p>standard ICA term. Moreover, from a practical perspective, it is also self-evident whether an entity's COA is or is not revoked. In this instance, the Commission would have to act and that action is a matter of public record. Charter's proposed insertion of "final" with this section simply creates ambiguity as to what is a "final" revocation.</p> <p>At the same time, issues regarding the transition of end users is within the control of the entity whose COA is being revoked, including how best that transition should occur. However, end user transition issues are within the Commission's province to decide and should be left to the Commission in the first instance.</p> <p>With respect to CenturyTel's proposed language in subsections (c) and (d) of Section 2.6 ("violation of material term of Agreement" and "failure to perform, including failure to pay undisputed amounts", respectively), such provisions are also standard, commercially reasonable terms. CenturyTel's wording incorporates the more narrowed events that Charter proposes, and thus ensures that both Parties' rights are protected where the other Party refuses or fails to properly perform its obligations "in any material respect" under the Agreement.</p>

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4(b)	What terms should govern the right of a Party to terminate this Agreement upon the sale of a specific operating area?	2.7	<p>2.7 <u>Termination Upon Sale.</u> Notwithstanding anything to the contrary contained herein, a Party may terminate this Agreement as to a specific operating area or portion thereof if such Party sells or otherwise transfers the area or portion thereof to a non-affiliate. The right of termination provided herein is expressly conditioned upon, and subject to, unconditional and prompt acceptance of the terms of this Agreement by the non-affiliated Party. The selling or transferring Party shall provide the other Party with at least ninety (90) calendar days' prior written notice of such termination, which shall be effective on the date the non-Affiliated Party provides formal, written notice of its acceptance and assumption of the rights, obligations, and duties of the Party selling or transferring the area, and the other Party being reasonably satisfied that the Party acquiring the area is able to fulfill the obligations hereunder. Such acceptance and assumption shall be memorialized in a form mutually agreed upon by both</p>	<p>Neither Party should be authorized to terminate the Agreement in conjunction with the sale of an exchange or portion of the service area, unless the acquiring entity assumes the terms of the Agreement, and sufficient notice is provided to the other Party.</p> <p>Charter seeks a fair and equitable process to ensure that if CenturyTel sells operations with respect to a specific operating area to another entity the Parties' interconnection arrangements would continue in effect once the acquiring entity assumes operations in that area. Without such a process it is possible that the acquiring entity could simply refuse to interconnect and exchange traffic with Charter. Should that occur, Charter's subscribers would be unable to send and receive calls to the public switched telephone network. That result would be contrary to the public interest, and inequitable. Accordingly, the Commission should require that the Parties engage in a fair process to ensure that any acquiring entity assumes the terms of this Agreement, or agrees to some other equitable process.</p>	<p>2.7 <u>Termination Upon Sale.</u> Notwithstanding anything to the contrary contained herein, a Party may terminate this Agreement as to a specific operating area or portion thereof if such Party sells or otherwise transfers the area or portion thereof to a non-affiliate. The selling or transferring Party shall provide the other Party with at least ninety (90) calendar days' prior written notice of such termination, which shall be effective on the date <u>specified in the notice</u>. Notwithstanding termination of this Agreement as to a specific operating area, this Agreement shall remain in full force and effect in the remaining operating areas. <u>The Parties agree to abide by any applicable Commission Order regarding such sale or transfer.</u></p>	<p>CenturyTel submits that the Commission should reject Charter's inappropriate attempt to bind unidentified third party transferees, to constrain CenturyTel's rights to freely contract and to reduce the value of CenturyTel's assets and operations. The Commission has the authority necessary to protect the interests of end users and ensure service continuity in the event of any transfer of CenturyTel assets. Therefore, it is not necessary for Charter's proposed language to be added into the Agreement in order to protect these interests.</p> <p>CenturyTel notes that Charter's position in this regard is directly at odds with its position in Issue 5. In Issue 5, Charter states: "There is no reason for either Party to have the right to withhold consent to the assignment of this Agreement in a manner <i>that will have the effect of undermining the other Party's ability to freely contract with third parties . . .</i>" Charter's "free to contract" position in Issue 5 undermines its position here in Issue 4(b). Indeed, the language that Charter proposes here restricts CenturyTel's right to freely contract, while the language CenturyTel properly proposes advances that right.</p> <p>The imposition of an existing</p>

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			<p>Parties. Notwithstanding termination of this Agreement as to a specific operating area, this Agreement shall remain in full force and effect in the remaining operating areas.</p>			<p>agreement upon a purchasing party cannot be an absolute. For example, the purchasing party may have different systems/processes/service offerings and, therefore, the purchasing party must be provided a period of time to review the selling party's Interconnection Agreements ("ICAs") to determine which terms, if any, are compatible with the purchasing party's capabilities. Charter's proposed language <i>does not</i> account for this possibility nor does its proposed language address the possibility that a purchasing party's systems, capabilities, or offerings may not be compatible with some terms of CenturyTel's ICAs. Charter's proposal to contractually require that any purchasing party "unconditionally and promptly" accept and assume terms of this Agreement is therefore unreasonable.</p> <p>Charter's proposal appears based on a presumption of "absolutes" with respect to carrier operations that is inconsistent with the myriad operational systems and issues that may exist and, thus, may make wholesale adoption of an agreement impractical. Additionally, Section 51.715 of the FCC's rules affords Charter all necessary protections with respect to interim interconnection service arrangements.</p> <p>Charter has also failed to demonstrate</p>

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						why its proposed language in Section 2.7 is proper. Specifically, Charter's proposed revisions provide the non-selling Party with an effective "veto" over any sale. That result is unreasonable. In addition, by virtue of the fact that any acceptance must be "memorialized" in a form mutually agreed upon by both Parties," Charter has effectively afforded itself the opportunity to trigger Section 20 dispute resolution if it withholds its approval, irrespective of whether such withholding is reasonable or unreasonable. Such an arrangement impermissibly restricts the fundamental right of free transferability of property and will, very likely, result in devaluation of the property to be transferred.
5.	Should the Agreement allow either Party to assign the Agreement to a third-party in connection with a sale, without having to first obtain the other Party's consent? <u>Should a Party's right to assign its</u>	5	5. ASSIGNMENT Any assignment, in whole or in part, by either Party of any right, obligation, duty or interest arising under the Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, shall be null and void, except that either Party may assign, in conjunction with the sale of all or substantially all assets, and to	Assignment upon sale of all or substantially all assets shall not be unreasonably withheld, conditioned or delayed. Either Party should be permitted to assign all of its rights, and delegate its obligations, liabilities and duties under this Agreement, to a third party without being required to seek the consent of the other Party. There is no reason for either Party to have the right to withhold consent to the assignment of this Agreement in a manner that will have the effect of undermining	5. ASSIGNMENT Any assignment, in whole or in part, by either Party of any right, obligation, duty or interest arising under the Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, shall be null and void, except that either Party may assign, to the extent consistent with Applicable Law, all of its rights, and delegate its	CenturyTel's language is proper and the insertion of Charter's language is confusing and otherwise unnecessary. Charter claims that its language would allow it to assign the Parties' agreement without consent to a third party that may purchase "all or substantially all" of one of the Parties' assets. Charter's language does not accomplish that result. Rather, Charter's language limits the ability of one of the Parties to assign the agreement to one of that Parties'

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	<u>rights and obligations under the Agreement, without consent, to a subsidiary or Affiliate be restricted to only those assignments made in conjunction with the sale of all or substantially all of the Party's assets?</u>		the extent consistent with Applicable Law, all of its rights, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a subsidiary or Affiliate of that Party without consent, upon ninety (90) calendar days' written notification. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party, and the other Party being reasonably satisfied that the assignee is able to fulfill the assignor's obligations hereunder. Any attempt to make an assignment or delegation in violation of this section shall constitute a default of this Agreement.	the other Party's ability to freely contract with third Parties for the purposes of the sale or all, or substantially all, assets.	obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a subsidiary or Affiliate of that Party without consent, upon ninety (90) calendar days' written notification. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party, and the other Party being reasonably satisfied that the assignee is able to fulfill the assignor's obligations hereunder. Any attempt to make an assignment or delegation in violation of this section shall constitute a default of this Agreement.	Affiliates or subsidiaries. There is no basis to limit the assignment to an Affiliate or subsidiary <i>only</i> in the event that the transaction involves a sale of assets to that Affiliate. As proposed by CenturyTel's language, the general exception is both a common provision and is otherwise reasonable in commercial agreements. Indeed, each Party may desire to assign its rights and obligations to a subsidiary or Affiliate in the normal course of business, regardless of whether such Party sells all or substantially all of its assets to such subsidiary or Affiliate. Thus, Charter's proposed language in Issue 5 should be rejected.
6.	Under what conditions should CenturyTel be permitted to require a deposit or assurance of payment from Charter?	6.1-6.3	6. ASSURANCE OF PAYMENT 6.1 To the extent Charter may not have already established and maintained satisfactory credit with CenturyTel affiliates, CenturyTel may request Charter to provide to CenturyTel a	Charter should only be required to provide a deposit upon a specific, pre-defined event, not simply when CenturyTel deems it necessary. CenturyTel should not be allowed to draw upon the deposit at will, but may only do so after pre-defined events have occurred. Under CenturyTel's proposal there is no	6. ASSURANCE OF PAYMENT 6.1 To the extent Charter may not have already established and maintained satisfactory credit with CenturyTel affiliates, CenturyTel may request Charter to provide to CenturyTel a	CenturyTel's response will address each subsection of Section 6 separately. CenturyTel's proposed terms for each subsection are standard and commercially reasonable. For example, CenturyTel's decision to seek a deposit or assurance of payment is based on a carrier's payment history and credit

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			<p>deposit for or an adequate assurance of payment of amounts due (or to become due) to CenturyTel hereunder.</p> <p>6.1.1 When _____ a <u>Deposit/Assurance of Payment Is Requested</u>. Such deposit or assurance of payment of charges may be requested by CenturyTel when Charter fails to timely pay (as defined by Section 9 of this Agreement, an undisputed invoice rendered by CenturyTel) or if Charter has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization, winding-up composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding. Upon the conclusion of this review, if CenturyTel continues to require an additional security deposit, at Charter's request, CenturyTel will provide a written explanation to Charter.</p> <p>6.1.2 The Parties will work together to determine the need for</p>	<p>apparent standard by which a deposit could be required of Charter. Instead, whether a deposit is necessary rests solely within CenturyTel's discretion. That process leaves open the possibility of potential abuse, or arbitrary demands, by CenturyTel. Instead, the Commission should adopt Charter's proposal that seeks to identify those specific instances upon which a deposit may be required.</p> <p>Any disputes regarding the need for, or amount of, a deposit should be resolved via the Agreement's dispute resolution process, upon either Party's initiative. However, the burden for initiating a dispute should not rest entirely upon Charter (as CenturyTel proposes), but should instead be borne by either Party, depending upon the outcome of the informal dispute resolution process. CenturyTel's proposal would have the effect of forcing Charter to bear the burden of filing a formal petition; and improperly suggests that CenturyTel invoices are presumptively accurate.</p> <p>Further, during the pendency of any dispute over invoices, neither Party should take any action that could threaten the exchange of traffic, or</p>	<p>deposit for or an adequate assurance of payment of amounts due (or to become due) to CenturyTel hereunder.</p> <p>6.1.1 When _____ a <u>Deposit/Assurance of Payment Is Requested</u>. Such deposit or assurance of payment of charges may be requested by CenturyTel <u>based on CenturyTel's analysis of the CenturyTel Credit Application ("Credit Application") and other relevant information regarding Charter's credit and financial condition. In determining whether an additional security deposit is required, CenturyTel may request an updated Credit Application and will review Charter's credit rating and report details, any documentation relative to bankruptcy, insolvency or similar proceeding, Charter's payment history with CenturyTel affiliates, and to the extent available, Charter's financial information.</u> Upon the conclusion of this review, if CenturyTel continues to require an additional security deposit, at Charter's request,</p>	<p>rankings, typical standards in any commercial setting.</p> <p>CenturyTel's concern with respect to the need for proper deposit language in this case is not speculative. Charter's delay in paying service order charges has already been experienced by CenturyTel. CenturyTel's seeks to avoid this delay in the future.</p> <p>With respect to Section 6.1.1, Charter's proposed revisions are improper. Under Charter's proposed language, CenturyTel could not require Charter to make a deposit until after Charter has failed to pay. Charter has provided no sustainable basis for a "one free pass" concept with respect to its requirement to establish its ability to pay CenturyTel for the services Charter receives.</p> <p>Charter's effort to limit the right to seek a deposit until the event of a bankruptcy should also be rejected. If an entity has a properly established credit history, a credit check is appropriate, particularly by someone to whom that entity may be indebted. The need to address this concern cannot wait for a bankruptcy filing. Credit-worthiness must be established <i>before the debt is incurred</i>. Indeed, once a party has declared bankruptcy, it will be difficult, if not impossible, to enforce deposit and other remedies.</p>

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			<p>or amount of a reasonable initial or increase in deposit. If the Parties are unable to agree, then either Party may initiate dispute resolution proceedings pursuant to Section 20 of this Agreement. The Parties agree that any decision ordered by the Commission will be binding for the state covered by this Agreement. In the case of a disputed initial deposit, the Parties acknowledge that CenturyTel will be required to accept any orders for service during the time in which the deposit dispute is ongoing. CenturyTel may not terminate service to Charter on the basis of any dispute arising between the Parties concerning any security deposits that may be required of Charter.</p> <p>6.2 <u>Calculating the Amount of Deposit/Assurance of Payment.</u> Unless otherwise agreed by the Parties, such deposit will be calculated based on the total of two (2) months of CenturyTel's charges to Charter (including, but not limited to, both recurring and non-recurring charges), from the previous six (6) month period.</p>	<p>other essential actions, between the Parties. CenturyTel's proposal that it be allowed to terminate service during that period of time is inequitable and unreasonable. Any disputes should be resolve on their terms, not based upon CenturyTel's ability to threaten to discontinue services, or terminate the Agreement.</p> <p>Because Charter and CenturyTel are already interconnected in Texas, there is a history of invoicing and payments between the Parties. Therefore, because the Parties have actual evidence of invoicing, payments and services utilized, there is no reason for the Parties to utilize projections of what may be invoiced between the two Parties, i.e. forecasts, as CenturyTel proposes. Where actual billing history and data exists, as is the case here, the Parties should use such data to determine the amount of any deposit or assurance of payment that may be established under this Agreement.</p> <p>Should CenturyTel wish to modify the amount of deposit required of Charter, it should only be permitted to do so based upon certain specific, pre-defined, events or actions. The Agreement should not give CenturyTel the unfettered discretion</p>	<p>CenturyTel will provide a written explanation to Charter.</p> <p>6.1.2 The Parties will work together to determine the need for or amount of a reasonable initial or increase in deposit. If the Parties are unable to agree, then <u>Charter must file a petition for resolution of the dispute. Such petition shall be filed with the Commission.</u> The Parties agree that any decision ordered by the Commission will be binding for the state covered by this Agreement. In the case of a disputed initial deposit, the Parties acknowledge that CenturyTel will <u>not</u> be required to accept any orders for service <u>until such time as the requested deposit is paid or the dispute is settled. In the event Charter fails to file a petition with the Commission or pay the disputed deposit within 30 days of the request for an additional deposit, then</u> CenturyTel may terminate service to Charter <u>in accordance with Sec.</u></p>	<p>As a provider of services, it is reasonable for CenturyTel to take steps to ensure that the party to whom it provides services is capable of paying for them. CenturyTel's Section 6.1.1 achieves that result. And, absent that result, CenturyTel's rate payers will be put in a position of financing Charter's bad debt.</p> <p>Charter's proposed revision to Section 6.1.2 should also be rejected. While Charter seeks to engage in formal dispute resolution of any disagreement over the amount of the initial deposit, CenturyTel's language would require the matter to go directly to the Commission. In this instance, there is no need for dispute resolution because the Parties have already disagreed and could not reach agreement. Due to the anticipated internal escalation of the issue by both Parties, the additional time and expense required to engage in Section 20 dispute resolution is unnecessary.</p> <p>With respect to Section 6.2, CenturyTel notes that there are two (2) major flaws with Charter's proposed revisions. First, Charter's proposed language regarding an amount based on "2 months of CenturyTel's charges from the previous 6 month period" is, at best, vague. Charter's language does not</p>

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			<p>6.3 <u>Modifying the Amount of Deposit/Assurance of Payment.</u> CenturyTel reserves the right to request an additional amount of the deposit or assurance of payment required of Charter if Charter is repeatedly delinquent in making its payments, or Charter is being reconnected after a disconnection of service or discontinuance of the processing of orders by CenturyTel due to Charter's previous non-payment. "Repeatedly delinquent" means any non-disputed payment received thirty (30) calendar days or more after the bill due date, three (3) or more times during a twelve (12) month period.</p>	<p>to modify deposit amounts simply when CenturyTel believes "conditions otherwise justify" such action.</p>	<p><u>2 and any security deposits will be applied to Charter's account.</u></p> <p>6.2 <u>Calculating the Amount of Deposit/Assurance of Payment. Unless otherwise agreed by the Parties, such deposit will be calculated based on the greater of (1) CenturyTel's estimated two-month charges to Charter (including, but not limited to, both recurring and non-recurring charges) using Charter's forecast of interconnection facilities and any other facilities or services to be ordered from CenturyTel, or (2) \$5,000. If Charter does not provide a forecast of its facility or service demand under this Agreement, Charter shall provide, upon CenturyTel's request, a deposit or assurance of payment of charges in an amount of \$5000.</u></p> <p>6.3 <u>Modifying the Amount of Deposit/Assurance of Payment.</u> CenturyTel reserves the right to request an additional amount of the deposit or assurance of payment required of Charter if Charter is repeatedly delinquent in</p>	<p>identify which two months billings to use in that 6-month period. Thus, the proposal is likely to result in disputes. Second, Charter's proposed language does not address the situation where Charter's service orders begin to increase. In this situation, Charter's historical 2-month measurement may be much lower, and thus an insufficient measure to properly establish the level of a deposit in those instances where Charter's service order activity increases.</p> <p>Both of these flaws are avoided in CenturyTel's language. CenturyTel's proposed language for Section 6.2 pegs the deposit amount not to a historical 2-month time period but to Charter's 2-month "forecast." This is another reason why CenturyTel needs "service order" activity to be forecasted—see dispute on Art. III, Sec. 11 in Issue 41.</p> <p>Finally, CenturyTel believes that its revisions to Section 6.3 are reasonable to insure that Charter's ongoing payment history and credit rating can be taken into account with respect to the level of any deposit or assurance of payment. Thus, CenturyTel's language insures that factors associated with the level of security for proper payment by Charter do not remain static over the term of the Agreement.</p>

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					making its payments, or Charter is being reconnected after a disconnection of service or discontinuance of the processing of orders by CenturyTel due to Charter's previous non-payment, <u>or when conditions otherwise justify such action based on actual billing history and/or the credit rating of Charter.</u> "Repeatedly delinquent" means any non-disputed payment received thirty (30) calendar days or more after the bill due date, three (3) or more times during a twelve (12) month period.	
7.	Should Charter be required to "represent and warrant" to CenturyTel, or simply provide proof of certification, that it is a certified local provider of Telephone Exchange Service in the State?	8.4	8.4 **CLEC Certification. Notwithstanding any other provision of this Agreement, CenturyTel shall have no obligation to perform under this Agreement until such time as **CLEC has obtained such FCC and Commission authorization(s) as may be required by Applicable Law for conducting business in the State as **CLEC. **CLEC will provide a copy of its Certificate of Operating Authority or other evidence of its status to CenturyTel upon request. **CLEC shall not place any orders under this Agreement until it has obtained such authorization.	Charter should not be required to "represent and warrant" to CenturyTel that it is a certified local provider of Telephone Exchange Service. There is no reason for Charter to make such assurances through the use of a "representation and warranty" clause, rather than a simple statement that it is certified. Indeed, Charter has already provided such proof to CenturyTel, and has contractually agreed that it will provide such proof to CenturyTel upon request. But CenturyTel's request that Charter "represent and warrant" to its status is problematic because it is tied to a	8.4 <u>**CLEC Certification.</u> Notwithstanding any other provision of this Agreement, CenturyTel shall have no obligation to perform under this Agreement until such time as **CLEC has obtained such FCC and Commission authorization(s) as may be required by Applicable Law for conducting business in the State as **CLEC. <u>**CLEC must represent and warrant to CenturyTel that it is a certified local provider of Telephone Exchange Service in the State.</u> **CLEC will provide a copy of its Certificate of Operating Authority or other evidence of its status to	Each Party's rights and obligations as set forth in this Agreement are predicated on its status under applicable law and continued compliance with it. In Missouri, Charter is not permitted to offer local exchange services as a CLEC unless it holds a valid COA. <i>See</i> RSMo § 392.410 (1) Thus, the requirement to maintain a valid COA should be and is a continuing obligation under the Agreement. Charter's representation that it <i>currently</i> is a certificated provider, and the fact that Charter has provided proof that it <i>currently</i> maintains a COA, does not address the broader issue of whether Charter's obligation to remain certificated should run for the entire

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				remedy that would allow CenturyTel to excuse itself from performing under this Agreement –in effect voiding the terms of the Agreement. That result could seriously undermine Charter's ability to serve its subscribers, because it could eliminate Charter's ability to interconnect with, and exchange traffic to, the PSTN. This Agreement should not include provisions that have the potential to affect subscribers in that way without prior approval from the Commission; an outcome that is not in the public's interest.	CenturyTel upon request. **CLEC shall not place any orders under this Agreement until it has obtained such authorization.	term of the Agreement. The warranty being requested is not burdensome. CenturyTel's proposal merely requires Charter to warrant the fact of its continuing compliance with Missouri law throughout the term of the Agreement, not just upon the effective date of the Agreement.
8.	There are two separate issues presented in Issue 8: (a) Should the bill payment terms related to interest on overpaid amounts be equitable? <u>(a) Should the billed Party be entitled to receive interest from the billing Party on amounts paid to</u>	9.4.2, 9.5	<u>9.4.2 Billing Disputes Related to Paid Amounts</u> If any portion of an amount paid to a Party under this Agreement is subject to a bona fide dispute between the Parties ("Disputed Paid Amount"), the billed Party may provide written notice to the billing Party of the Disputed Paid Amount, and seek a refund of such amount already paid, at any time prior to the date that is one (1) year after the date of the invoice containing the disputed amount that has been paid by the billed Party ("Notice Period"). If the billed Party fails to provide written notice of a Disputed Paid Amount within the Notice Period,	<u>Issue 8(a):</u> Following the resolution of a billing dispute the Party who prevails in the dispute should be "made whole." Thus, if the billing party prevails the billed party should pay any amount underpaid. At the same time, if the billed party prevails, and is found to have overpaid the billing party, then the billed party should be entitled to request a refund of amounts that were overpaid. In addition, the amounts overpaid should be subject to a basic rate of interest that is fair and equitable. Such rate should be equal to the rate of interest that would be assessed by the billing Party for any late payment charges (as CenturyTel has proposed, and as	<u>9.4.2 Billing Disputes Related to Paid Amounts</u> If any portion of an amount paid to a Party under this Agreement is subject to a bona fide dispute between the Parties ("Disputed Paid Amount"), the billed Party may provide written notice to the billing Party of the Disputed Paid Amount, and seek a refund of such amount already paid, at any time prior to the date that is one (1) year after the date of the invoice containing the disputed amount that has been paid by the billed Party ("Notice Period"). If the billed Party fails to provide written notice of a Disputed Paid	<u>Issue 8(a):</u> By its suggested revision, Charter would have CenturyTel act as Charter's "investment bank". Under the undisputed language in Art. III, Sec. 9 <i>et seq.</i> , Charter can choose one of two options: (1) it can withhold disputed charges before the Bill Due Date (<i>see</i> Sec. 9.4.1); or (2) it can pay all amounts (withhold nothing) by the Bill Due Date and later seek recovery of any disputed amounts already paid. If Charter seeks option 2, it would have 1 year from the date of invoice to dispute any charge. As a result, under option 2, Charter's proposed revision would effectively require CenturyTel to

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	<p><u>the billing Party in error and which are later returned to the billed Party?</u></p> <p>(b) Should the bill dispute provisions ensure that neither Party can improperly terminate the Agreement in a manner that could impair service to the public?</p> <p><u>(b) Should the billing Party be permitted to suspend or discontinue accepting orders from the billed Party under certain conditions when the billed Party fails or refuses to pay "undisputed" charges?</u></p>		<p>the billed party waives its rights to dispute its obligation to pay such amount, and to seek refund of such amount. At the billed Party's request, the billing Party will refund the entire portion of any Disputed Paid Amounts resolved in favor of the billed Party, subject to a rate of interest equal to one and one half (1 ½%) per month or the highest rate of interest that may be charged under Applicable Law, compounded daily, for the number of days from the Bill Date until the date on which such payment is made.</p> <p>9.5 <u>Effect of Non-Payment.</u></p> <p>9.5.1 If the billed Party does not remit payment of all undisputed charges on a bill by the Bill Due Date, the billing Party may initiate dispute resolution procedures under Section 20 of this Agreement.</p>	<p>Charter has agreed).</p> <p><u>Issue 8(b):</u></p> <p>Any and all disputes about the failure to pay certain charges should be resolved through the Dispute Resolution process of the Agreement. That process allows for either Party to seek an informal resolution thru negotiations, or business discussions. In addition, that process also allows an aggrieved Party to file an appropriate action seeking relief that it believes is necessary for any alleged failures to pay. Under such circumstances, both Parties interests are preserved, and protected.</p>	<p>Amount within the Notice Period, the billed party waives its rights to dispute its obligation to pay such amount, and to seek refund of such amount.</p> <p>9.5 <u>Effect of Non-Payment.</u></p> <p>9.5.1 If the billed Party does not remit payment of all undisputed charges on a bill by the Bill Due Date, the billing Party may <u>discontinue processing orders for relevant or like services provided under this Agreement on or after the tenth (10th) calendar day following the Bill Due Date.</u></p>	<p>remit any overpayment <i>plus interest</i> at a rate of 1.5% per month on any amount that Charter successfully disputes. Consequently, Charter's revision creates the incentive for Charter to avoid taking commercially prudent/reasonable steps to review its bills and submit notices of billing disputes prior to or coincident with the Bill Due Date (<i>i.e.</i>, option 1). This incentive is created because if Charter paid all charges and disputed those charges later (within 1 year of billing), any recovery of an overpayment would be subject to what amounts to 18% per annum interest. Such a result is untenable, and Charter's revision should be rejected.</p> <p><u>Issue 8(b):</u></p> <p>Charter's proposed language in Section 9.5.1, limiting CenturyTel's rights to <i>only</i> instituting a dispute proceeding if Charter fails to pay <i>undisputed charges</i>, is patently unreasonable. If charges are undisputed, they should be paid. If Charter fails to pay such charges, CenturyTel should, as the CenturyTel language provides, be permitted to discontinue processing Charter's orders. Absent that conclusion, the payment due date is meaningless and would result in untold disputes and resource commitments by CenturyTel for collecting charges which, <i>as the language states, are undisputed</i></p>

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			9.5.2 [INTENTIONALLY LEFT BLANK].	<p>In contrast, CenturyTel's proposal simply seeks to impose a process which is inequitable and one-sided (in CenturyTel's favor). For example, under CenturyTel's proposal it would have the right to discontinue processing orders, and disconnect services and circuits unilaterally, and without Commission authorization. That result could have serious ramifications for end user subscribers, as well as for Charter's reputation as a service provider, and is thus contrary to the public interest.</p>	<p><u>The billing Party will notify the other Party in writing, via email or certified mail, at least five (5) Calendar Days prior to discontinuing the processing of orders for the relevant services. If the billing Party does not refuse to accept additional orders for service(s) on the date specified in such notice, and the billed Party's non-compliance continues, nothing contained herein shall preclude the billing Party from refusing to accept any or all additional orders for service(s) from the non-complying Party without further notice or from billing and collecting the appropriate charges from the billed Party. For order processing to resume, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services. Additionally, the billing Party may require a deposit or assurance of payment (or additional deposit or assurance of payment) from the billed Party, pursuant to Section 6. In addition to other remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief, including injunctive relief and specific</u></p>	<p><i>charges.</i></p> <p>CenturyTel should not be placed in a position of expending unnecessary resources to collect charges that no one disputes. At the same time, Charter should not expect to receive free service by forcing CenturyTel to decide whether an amount due is worth the cost of pursuing dispute resolution under the Agreement.</p> <p>Charter's proposed revision to Section 9.5.1 should be rejected.</p> <p>At the same time, CenturyTel's proposed language in Section 9.5.1 is entirely reasonable and consistent with the common sense notion that a CLEC is required to pay for services provided by an ILEC. Moreover, CenturyTel's proposed language provides Charter with notice and then the ability to cure. Thus, CenturyTel's proposed language should be adopted.</p>

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					<p><u>performance.</u></p> <p>9.5.2 <u>Notwithstanding 9.5.1 above, if the billed Party does not remit payment of all undisputed charges on a bill by the Bill Due Date, the billing Party may at its option disconnect any and all relevant or related services provided under this Agreement following written notification to the billed Party at least seven (7) Business Days prior to disconnection of the unpaid service(s). Such notification may be included in a notification to refuse to accept additional orders so long as the appropriate dates for each consequence are listed therein. If the billed Party subsequently pays all of such undisputed charges and desires to reconnect any such disconnected services, the billed Party shall pay the applicable charge set forth in this Agreement or in the applicable Tariff for reconnecting each service disconnected pursuant to this paragraph. In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due and payable. If the billing Party does not disconnect the billed Party's</u></p>	

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					<u>service(s) on the date specified in such notice, and the billed Party's non-compliance continues, nothing contained herein shall preclude the billing Party from disconnecting all service(s) of the non-complying Party without further notice or from billing and collecting the appropriate charges from the billed Party. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services. Additionally, the billing Party may require a deposit or assurance of payment (or additional deposit or assurance of payment) from the billed Party, pursuant to Section 6. In addition to other remedies that may be available at law or equity, the billing Party reserves the right to seek equitable relief, including injunctive relief and specific performance.</u>	
9.	Should Charter be required to pay a penalty charge for facilities that it forecasts, but	11.6	11.6 [INTENTIONALLY LEFT BLANK]	CenturyTel should not be entitled to assess an unspecified, and undefined, "service order charge" for so-called stranded plant or facilities. To the extent that any facility is ordered by Charter, and	11.6 <u>CenturyTel reserves the right to assess **CLEC a TBD charge for stranded interconnection plant/facility capacity forecast by **CLEC but not used by **CLEC within six</u>	Charter's issue and position statements are misleading. CenturyTel's proposed language does not purport to assess a penalty where Charter forecasts the need for a facility and then under-utilizes that facility. Rather, by its

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	<p>which CenturyTel determines that Charter has not fully utilized?</p> <p><u>If CenturyTel builds interconnection plant or facility at Charter's request and Charter fails to use such plant or facility within six (6) months, may CenturyTel reserve the right to assess a stranded interconnection plant/facility charge on Charter?</u></p>			<p>deployed by CenturyTel, the Parties should work cooperatively to ensure that the facility is utilized based upon industry standard utilization levels. To the extent that the Parties believe that a facility is not fully utilized the Parties should work cooperatively to re-engineer the facility to ensure efficient utilization of the facility, consistent with industry-accepted standards.</p>	<p><u>(6) months after a forecast period to the extent that CenturyTel built the plant/facility based on **CLEC's order.</u></p> <p>[NOTE: This dispute also encompasses whether to include the following language in Article XI (Pricing):]</p> <p>Article XI (Pricing), § I(E):</p> <p><u>I(E). Stranded Interconnection plant/facility per Article III, Section 11.6:</u></p> <p><u>"TBD"</u></p>	<p>proposed Section 11.6, CenturyTel makes clear that it seeks the right, when necessary, to assess "stranded plant/facility" charges in <i>the limited situation</i> where: (1) CenturyTel constructs plant or a facility "based on Charter's order"; and (2) such facility is not used by Charter within six (6) months. Unless CenturyTel has the ability to assess such charge, CenturyTel (and its end users) could be required under the Agreement to incur significant costs of building plant/facility at Charter's specific request, and then not be able to recover such sunk costs if Charter walks away from the very facility that it ordered.</p> <p>Taken to its logical conclusion, Charter could utilize the provision to run up the costs of its competitor (<i>i.e.</i>, CenturyTel) without constraint. Artificially increasing a competitor's costs to inhibit its ability to compete constitutes anticompetitive behavior. That result is encouraged under Charter's language, and provides an independent reason for rejecting Charter's proposed language.</p>
10.	When should certain changes in law be given retroactive effect?	12.3	<p>12.3 Retroactive Application of Change in Law.</p> <p>If the Parties amend the terms and conditions of this Agreement to add, remove, or modify terms</p>	Where a change of law requires an amendment, or modification, to the Agreement, any retroactive effect, or true up of rates, should occur upon express direction by the authority whose actions precipitated the	<p>12.3 Retroactive Application of Change in Law.</p> <p><u>Except as set forth in Section 12.2 with respect to the addition of new services, if the Parties amend</u></p>	Aspects of this issue relate directly to Issue 26. Thus, Issue 10 and Issue 26 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel.

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			<p>of the Agreement following a change in Applicable Law, and pursuant to this Section 12, such amended terms and conditions shall apply retroactively to the effective date for the change specified by Applicable Law, if so ordered by the FCC, court of competent jurisdiction, or the Commission ("Relevant Authority"). Further, to the extent a true-up of any billing or payment for existing services and/or facilities is required by the change in Applicable Law, the Parties shall include in the change in law amendment appropriate true-up terms and conditions, if so ordered by the Relevant Authority.</p>	<p>change of law event. In other words, if the Commission, a court, or the FCC directs the Parties to give retroactive effect to its decision, then the Parties should do so. However, if those decision making bodies do not direct the Parties to give retroactive effect to the decision, the Parties should do so only where mutually agreed upon. The Agreement should not give one Party the unilateral right to establish a retroactive right or obligation where the other Party does not agree, and where the Commission, court or the FCC has not specifically directed.</p> <p>Moreover, CenturyTel's proposal is effectively one-sided because it would apply only to those amendments which result in the removal of contractual obligations. If Charter proposed an amendment that would have the effect of imposing new, or additional, obligations upon CenturyTel, then CenturyTel's proposal would not allow such new obligations to have any retroactive effect. Thus, CenturyTel's proposal would have the effect of limiting Charter's rights to seek retroactive effect of changes of law which may benefit Charter, while at the same time giving CenturyTel the full benefit of any</p>	<p>the terms and conditions of this Agreement to remove or modify terms of the Agreement following a change in Applicable Law, such amended terms and conditions shall apply retroactively to the effective date for the change specified by Applicable Law, if so ordered by the FCC, court of competent jurisdiction, or the Commission ("Relevant Authority"). <u>If the Relevant Authority does not specify a date certain for when such change in Applicable Law shall take effect, such amended terms and conditions shall apply retroactively to the date on which the Party that first submitted a written request to amend the Agreement pursuant to Section 12.1 delivered such notice to the other Party.</u> Further, the Parties shall include in the change in law amendment appropriate true-up terms and conditions <u>for the billing or payment for existing services and/or facilities affected by the change in Applicable Law, if any.</u></p>	<p>The Parties have resolved almost all of the language related to amending the Agreement in the event of a "change in law." The one exception is whether and in what manner certain changes in law should be retroactively applied. While the Parties obviously have agreed to retroactively apply changes in law when so required by the relevant legal authority, the Parties dispute whether certain changes in law should be applied retroactively when the relevant authority is silent on retroactive application. The rules proposed by CenturyTel are simple and straightforward –</p> <p>(1) If the authority directing the change expressly provides when the change should take effect, that date will be used.</p> <p>(2) Conversely, if the authority is silent as to when the change should take effect, it is the date that one of the Parties makes a request of the other to incorporate the change into the Agreement.</p> <p>(3) New service rates are effective on the date of that the amendment that incorporates that service is approved by the Commission.</p> <p>These rules are implemented through CenturyTel's language and are entirely</p>

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				retroactive effect of changes in law that may benefit CenturyTel. This Commission should not accept, or endorse, a provision that favors one Party over the other in this way.		reasonable.
11.	<p>Should CenturyTel be allowed to incorporate its Service Guide as a means of imposing certain process requirements upon Charter, even though Charter has no role in developing the process and procedural terms in the Service Guide?</p> <p><u>Should certain business and operational processes and procedures set forth in CenturyTel's "Service Guide" be incorporated by reference into the Agreement?</u></p>	Art. I, §41	<p>41. STANDARD PRACTICES</p> <p>41.1 The Parties acknowledge that CenturyTel shall be adopting some industry standard practices and/or establishing its own standard practices to various requirements hereunder applicable to the CLEC industry which may be added in the CenturyTel Service Guide. Charter agrees that CenturyTel may implement such practices to satisfy any CenturyTel obligations under this Agreement. Where a dispute arises between the Parties with respect to a conflict between the CenturyTel Service Guide and this Agreement, the terms of this Agreement shall prevail. The CenturyTel Service Guide is to be used as a reference only, and is not a part of the Agreement, and is not contractually binding on **CLEC.</p>	<p>For purposes of establishing obligations under the Agreement, the CenturyTel Service Guide should be used as a reference only, and should not be incorporated into the Agreement. As such, the Service Guide should not be contractually binding on Charter.</p> <p>CenturyTel's proposal that it be allowed to implement practices in its "Service Guide", and in that way satisfy "any contractual obligations" under this Agreement is problematic for several reasons. First, the Service Guide is developed and written by Century Tel alone. It is a unilateral document that CenturyTel prepares without input from Charter, or any other competitive LECs. If the Service Guide is incorporated into the Agreement, as CenturyTel proposes, it will have the effect of modifying contractual obligations of both Parties. It is patently unfair, and unreasonable, to allow one Party to a contract to have the right to modify contractual obligations by amending terms of an incorporated document which is unilaterally</p>	<p>41. STANDARD PRACTICES</p> <p>41.1 The Parties acknowledge that CenturyTel shall be adopting some industry standard practices and/or establishing its own standard practices to various requirements hereunder applicable to the CLEC industry which may be added in the CenturyTel Service Guide, <u>which is further described in Section 53.</u> Charter agrees that CenturyTel may implement such practices to satisfy any CenturyTel obligations under this Agreement. Where a dispute arises between the Parties with respect to a conflict between the CenturyTel Service Guide and this Agreement, the terms of this Agreement shall prevail.</p>	<p>Charter mischaracterizes the role of the CenturyTel Service Guide, and misstates the issue.</p> <p>The role of the CenturyTel Service Guide is to assist CLECs, like Charter, by describing common operational procedures for interacting with CenturyTel. These procedures are maintained in an open and transparent document that is posted on CenturyTel's website. Besides ease of interaction with CenturyTel, the Service Guide is also intended to ensure parity treatment to all CenturyTel CLEC customers by applying a set of common operating procedures to them. Thus, when viewed properly, the role of the Service Guide is to communicate, in a uniform manner, the various CenturyTel procedures related to CenturyTel's commitments under applicable law and its various ICAs. At the same time, the terms of the Agreement set forth CenturyTel's obligations to Charter and those obligations cannot be changed through the Service Guide. Consequently, CenturyTel believes that its Section 53 proposal, in conjunction with</p>

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				<p>prepared by only one Party to the Agreement; and which is not subject to oversight or review by a state Commission.</p> <p>Furthermore, Charter's proposal does not prohibit CenturyTel from publishing a Service Guide for use with Charter, or other LECs. CenturyTel may continue to do so if it believes that it is operationally efficient to do so. This is consistent with the traditional use of a Service Guide in the telecommunications industry, where a Guide is written and provided to facilitate the conduct of business between the parties by informally documenting business processes, but where the Guide is not itself a contract between the parties and does not contractually bind either party. Thus, while Century Tel should be permitted to write and provide a Service Guide, CenturyTel should not be able to use its Service Guide as a binding component of the Parties' Agreement. Again, allowing one Party to bind the other by modifying a unilaterally controlled document is unreasonable and unfair. Therefore, Charter does not object to CenturyTel's proposed use of a Service Guide, but will not agree that such document is incorporated into the Agreement, or</p>		<p>CenturyTel's proposed language in Section 41.1, strikes the right balance by accommodating Charter's concerns while at the same time accomplishing CenturyTel's (indeed, both Parties') operational objectives.</p> <p>Moreover, if Charter does not wish to utilize, for example, CenturyTel's automated order processing systems that are continually being developed, Charter has the option to use manual processes. As such, Charter should not be permitted to challenge or call into question CenturyTel's system wide upgrades and changes which are otherwise aimed at providing a benefit to the total universe of system users—the CLECs.</p> <p>Charter asserts that CenturyTel will be able to impose changes to the Service Guide on Charter that are inconsistent with the Agreement. CenturyTel has resolved Charter's concern. Specifically, CenturyTel proposed Art. III, Sec. 53 which states, in effect, that the Service Guide will <i>only</i> supplement and <i>not contradict or modify</i> the terms of Agreement. As a result, Section 53 makes clear that the Agreement prevails over the Service Guide, and that the Service Guide will apply only with respect to those matters for which it is specifically referenced in Agreement (<i>i.e.</i>, billing disputes (Art. III, Sec.</p>

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				that the document is contractually binding upon Charter.		9.4.1), escalation lists (Art. III, Sec. 16), ordering processes and provisioning intervals (Art. VI, Sec. 2.3), procedures for reporting circuit trouble (Art. VIII, Sec. 2.4), LNP ordering process (Art. IX, Sec. 1.2.2), and ordering/provisioning/billing/maintenance processes (Art. X, Sec. 6.3)). Additionally, Charter is provided with electronic notification of all Service Guide changes and a 60-day period during which any changes are suspended if such change adversely impacts Charter. This suspension period affords the Parties an opportunity to resolve any potential conflicts.
11. (cont'd)	(Cont'd) <i>See</i> Parties' issue statements immediately above.	Art. I, §53	53. [INTENTIONALLY LEFT BLANK]	<i>See</i> Charter Position Statement above, under Issue 11, Section 41.	<u>53. CENTURYTEL SERVICE GUIDE</u> <u>53.1 The CenturyTel Service Guide ("Guide") is a handbook that contains CenturyTel's operating procedures for service ordering, provisioning, billing, maintenance, trouble reporting and repair for wholesale services. In addition to setting forth operational procedures to facilitate the implementation of this Agreement, the Guide serves as a conduit for the conveyance of</u>	<i>See</i> CenturyTel's Position Statement above, under Issue 11 related to Art. III, Section 41.

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					<p><u>day-to-day information that **CLEC will need to operate under this Agreement (e.g., repository for CenturyTel's contact and escalation lists available to **CLEC). **CLEC agrees that, where the terms of this Agreement specifically reference the Guide, **CLEC will abide by the Guide with respect to such specifically-referenced matters. **CLEC may receive email notification of any changes made to the Guide so long as **CLEC subscribes to such electronic notification procedure, which subscription is at no cost to **CLEC.</u></p> <p><u>53.2 The Guide is intended to supplement the terms of this Agreement where specifically referenced in the Agreement; however, the Guide shall not be construed as contradicting or modifying the terms of this Agreement, nor shall it be construed as imposing a substantive term unrelated to operational procedure (e.g., payment terms) upon **CLEC that is not otherwise contained in this Agreement. Where a dispute arises between the Parties with respect to a conflict between the Guide and this Agreement, the</u></p>	

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					<p><u>terms of this Agreement shall prevail. If Charter believes that a change to the Guide materially and adversely impacts its business, the implementation of such change, upon Charter's written request, will be delayed as it relates to Charter for no longer than sixty (60) days to provide the Parties with an opportunity to discuss a resolution to the alleged adverse impact, including but not limited to other potential modifications to the Guide. If the Parties are unable to resolve the dispute regarding the change to the Guide, the Parties will resolve the dispute pursuant to the Dispute Resolution procedures set forth in Section 20.3.</u></p> <p><u>53.3 The Parties acknowledge that, under their prior interconnection agreement, they have or have had disputes pertaining to the applicability and effect of certain provisions in the Guide ("prior Guide disputes"). Section 53.2 is intended to prevent such disputes on a going-forward basis under this Agreement. Nevertheless, neither this Section 53 nor any of the concessions reflected therein shall be considered an admission by either Party with respect to any</u></p>	

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					<p><u>prior Guide dispute, and neither Party will attempt to use Section 53.2 for that purpose. To that end, each Party expressly reserves its rights with respect to any position taken in any prior Guide dispute, and nothing in this Agreement shall be deemed or construed to limit or prejudice any position a Party has taken or may take before the Commission, the FCC, or a court of applicable jurisdiction regarding any prior Guide dispute.</u></p>	
11. (cont'd)	(Cont'd) Should the CenturyTel Service Guide be incorporated for: establishing bill dispute processes?	Art. III, §9.4.1	<p>If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party may withhold payment of such Disputed Amounts only if it gives written notice to the billing Party of the amounts it disputes and includes in such notice the specific details and reasons for disputing each item. Such written notice shall be submitted in accordance with the following agreed upon procedures; as set forth in Attachment 1 to the Interconnection Agreement.</p> <p>[NOTE: Charter's proposed Attachment 1 sets forth bill dispute processes that are</p>	<p>The Parties should specifically agree upon mutually acceptable processes for submitting bill disputes to the other Party. To that end, Charter has proposed to use the current process that is outlined in the Service Guide, with several minor modifications. Charter proposes to include the process in Attachment 1 to the Agreement, such that both Parties will be contractually obligated to follow that process, unless a new process is developed and implemented, by mutual agreement.</p>	<p>9.4.1 <u>Disputed Amounts Withheld From Payment.</u></p> <p>If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party may withhold payment of such Disputed Amounts only if it gives written notice to the billing Party of the amounts it disputes and includes in such notice the specific details and reasons for disputing each item. Such written notice shall be submitted in accordance with the <u>guidelines for submitting billing dispute claims set forth in CenturyTel's CLEC Service Guide.</u> Disputed billing claims shall be submitted no later</p>	<p>See CenturyTel's Position Statement above concerning Issue 11 related to Art. III, Section 41. In addition, and specific to the dispute in Section 9.4.1, Charter's proposal to incorporate as an attachment to the Agreement a partial version of the billing dispute procedures currently contained in the Service Guide should be rejected. These operational processes and procedures may change as CenturyTel (even in conjunction with input from the CLEC-community) identifies further efficiencies and modifications to such processes and procedures. Charter's proposal would unnecessarily require the Parties to "amend" the Agreement to take effect of any such changes to increase operational efficiencies.</p>

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			intended to mirror those processes in the current CenturyTel Service Guide.] [<i>excerpt</i> – remaining language not included...]		than the Bill Due Date. Failure by the billed Party to file any such claim on or prior to the Bill Due Date means that the total charges billed are due and payable to the billing Party on the due date. The billed Party shall pay all undisputed amounts no later than the Bill Due Date. The billed Party may not withhold payment of amounts past the due date pending a later filing of a dispute, but must pay all amounts due for which it has not provided a written notice of dispute on or prior to the Bill Due Date. If the billed Party disputes charges after the Bill Due Date and has not paid such charges, such charges shall be subject to late payment charges. If the billed Party disputes any charges and any portion of the dispute is resolved in favor of the billed Party, the Parties shall cooperate to ensure that the billing Party shall credit the invoice of the billed Party for that portion of the Disputed Amount resolved in favor of the billed Party, together with any late payment charges assessed with respect thereto no later than the second Bill Due Date after the resolution of the billing dispute. Nothing in this Section 9.4.1 shall constitute a waiver, or negotiation,	

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					of a Party's right to seek recovery of amounts already paid pursuant to Section 9.4.2 below.	
11. (cont'd)	(Cont'd) Should the CenturyTel Service Guide be incorporated for: providing escalation lists?	Art. III, §16.	Each Party shall update its own contact information and escalation list and shall provide such information to the other Party for purposes of inquiries regarding the implementation of this Agreement. Each Party shall accept all inquiries from the other Party and provide a timely response.	With respect to the provision of contact and escalation lists, Charter believes that the Parties should be obligated to provide such lists to the other Party, directly, rather than publishing those lists in the Service Guide or some other document (as CenturyTel proposes). That approach ensures that the Parties have current, updated, information should the need for contact or escalation of problems arise. Moreover, Charter believes that CenturyTel's proposal fails to contemplate the exchange of information for contacts which may be necessary on weekends and evenings, should a service outage, or other service-affecting problem arise. In the event of such a problem, Charter would need CenturyTel to provide contact information for purposes of contacting persons responsible for addressing such issues on weekends, and in the evenings.	16. CONTACTS BETWEEN THE PARTIES Each Party shall update its own contact information and escalation list and shall provide such information to the other Party for purposes of inquiries regarding the implementation of this Agreement. Each Party shall accept all inquiries from the other Party and provide a timely response. <u>CenturyTel will provide and maintain its contact and escalation list in its CenturyTel Service Guide ("Guide") as amended and updated from time to time. The Guide is provided to **CLEC on CenturyTel's Website, and any updates also will be provided on the Website in the event such information changes. Information contained in the Guide will include a single contact telephone number for CenturyTel's CLEC Service Center (via an 800#) that **CLEC may call for all ordering and status inquiries and other day-to-day inquiries between 8 a.m. and 5 p.m., Monday through</u>	<i>See CenturyTel's Position Statement above, under Issue 11 related to Art. III, Section 41.</i>

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					<u>Friday (except holidays). In addition, the Guide will provide **CLEC with contact information for the personnel and/or organizations within CenturyTel capable of assisting **CLEC with inquiries regarding the ordering, provisioning and billing of interconnection services. Included in this information will be the contact information for a person or persons to whom **CLEC can escalate issues dealing with the implementation of the Agreement and/or for assistance in resolving disputes arising under the Agreement.</u>	
11. (cont'd)	(Cont'd) Should the Century Tel Service Guide be incorporated for: ordering processes and provisioning intervals?	Art. VI, §2.3	Standard provisioning intervals shall be substantially the same as the intervals under which CenturyTel provisions the same Network Elements to itself.	See Charter Position Statement above, under Issue 11, Section 41.	Article VI: Unbundled Network Elements (UNEs), § 2.3: 2.3 <u>Unless expressly stated otherwise in this Article, the ordering processes and standard provisioning intervals applicable to UNEs made available pursuant to this Article shall be as set forth in the CenturyTel Service Guide.</u> Standard provisioning intervals shall be substantially the same as the intervals under which CenturyTel provisions the same Network Elements to itself.	See CenturyTel's Position Statement above, under Issue 11 related to Art. III, Section 41.
11. (cont'd)	(Cont'd)	Art. VIII,	Art. VIII §2.4 **CLEC agrees to follow the process and	See Charter Position Statement above, under Issue 11, Section 41.	Article VIII (Maintenance), § 2.4:	See CenturyTel's Position Statement above, under Issue 11 related to Art. III,

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)	Should the CenturyTel Service Guide be incorporated for: reporting and resolving circuit troubles or repairs?	§2.4	procedures for reporting and resolving circuit trouble or repairs as may be agreed to by the Parties . Before contacting CenturyTel's Trouble Maintenance Center (CTMC), **CLEC must first conduct trouble isolation to ensure that the trouble does not originate from **CLEC's own equipment or network or the equipment of **CLEC's customer.		2.4 **CLEC agrees to follow the process and procedures for reporting and resolving circuit trouble or repairs as <u>set forth in the CenturyTel Service Guide, or as otherwise agreed to by the Parties</u> . Before contacting CenturyTel's Trouble Maintenance Center (CTMC), **CLEC must first conduct trouble isolation to ensure that the trouble does not originate from **CLEC's own equipment or network or the equipment of **CLEC's customer.	Section 41.
11. (cont'd)	(Cont'd) Should the CenturyTel Service Guide be incorporated for: submitting LNP requests?	Art. IX § 1.2.2	A Party requesting a number to be ported must send the other providing Party a Local Service Request (LSR). If **CLEC requests that CenturyTel port a number, the Parties shall follow the "Local Number Portability Ordering Process" set forth in CenturyTel Service Guide. **CLEC's consent to follow the Local Number Portability Ordering Process in the CenturyTel Service Guide shall not be deemed as consent that the Service Guide is incorporated into, or otherwise made a part of, this Agreement.	See Charter Position Statement above, under Issue 11, Section 41.	Article IX (Additional Services), § 1.2.2: 1.2.2 A Party requesting a number to be ported must send the other providing Party a Local Service Request (LSR). If **CLEC requests that CenturyTel port a number, the Parties shall follow the "Local Number Portability Ordering Process" set forth in CenturyTel Service Guide, <u>which will comply with applicable FCC rules, regulations and orders.</u>	See CenturyTel's Position Statement above, Issue 11 related to Art. III, Section 41.

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			Further, **CLEC's consent to follow the Local Number Portability Ordering Process in the CenturyTel Service Guide shall not establish any liability upon **CLEC, nor shall CenturyTel assess any charges on **CLEC for number porting, or service order charges associated with such requests.			
11. (cont'd)	(Cont'd) Should the CenturyTel Service Guide be incorporated for: "service ordering, provisioning, billing and maintenance processes and procedures"?	Art. X § 6.3	Except as specifically provided otherwise in this Agreement, service ordering, provisioning, billing and maintenance processes and procedures shall be governed by the CenturyTel Service Guide. Notwithstanding the foregoing, the CenturyTel Service Guide is to be used as a reference only, and is not a part of the Agreement, and is not contractually binding on CLEC. The service order charges set forth pursuant to this agreement shall apply to all orders placed via OSS or pre-OSS services, except as specifically provided otherwise in this Agreement.	See Charter Position Statement above, under Issue 11, Section 41.	Article X (OSS), § 6.3: 6.3 Except as specifically provided otherwise in this Agreement, service ordering, provisioning, billing and maintenance processes and procedures shall be governed by the CenturyTel Service Guide. The service order charges set forth pursuant to this Agreement, if any, shall apply to all orders placed via OSS or pre-OSS services, except as specifically provided otherwise in this Agreement.	See CenturyTel's Position Statement above, under Issue 11 related to Art. III, Section 41.
12.	Should the Agreement allow one Party to force	20.2, 20.3	20.2 <u>Informal Resolution of Disputes.</u> At the written request of a Party, each Party will appoint	Disputes arising out of this Agreement should be resolved and litigated before the Commission, the	20.2 <u>Informal Resolution of Disputes.</u> At the written request of a Party, each Party will appoint	The Parties are in apparent agreement that disputes which arise under the Agreement should be submitted to the

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	<p>the other Party into commercial arbitration under certain circumstances?</p> <p><u>If neither the FCC nor the Commission accepts jurisdiction over a dispute between the Parties arising out of the Agreement, should the Agreement permit a Party to submit such dispute to binding commercial arbitration before a mutually agreed upon arbitrator?</u></p>		<p>a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon mutual agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in any action between the Parties without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, and be admitted in evidence, in the arbitration or lawsuit.</p>	<p>FCC, or a court of competent jurisdiction. <i>Only</i> where both Parties mutually agree, should the dispute be submitted to binding commercial arbitration. Commercial arbitration can be used as an alternative form of dispute resolution, but only upon mutual agreement. This Commission should be the primary forum for interpreting and enforcing the terms of this Agreement. <i>See Sw. Bell Tel. Co. v. Pub Util Comm'n of Texas</i>, 208 F.3d 475, 479-80 (5th Cir. 2000). For that reason, there should not be any language in the Agreement that could be construed as depriving this Commission of the jurisdiction to interpret and enforce agreements established pursuant to 47 U.S.C. 252.</p> <p>CenturyTel's proposal contemplates that some disputes will not be heard by this Commission. But the Fifth Circuit, and every federal appellate court to consider the issues has determined or assumed that state commissions have the authority to hear interpretation and enforcement actions regarding approved interconnection agreements. Therefore, it is very unlikely, if not impossible, that this Commission would simply refuse to hear disputes arising out of this Agreement, as</p>	<p>a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon mutual agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in any action between the Parties without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, and be admitted in evidence, in the arbitration or lawsuit. <u>Unless otherwise provided herein, or</u></p>	<p>Commission for resolution. The point on which the Parties' current positions diverge is the dispute resolution procedure that is to be applied in the event that the Commission or FCC either declines jurisdiction or it is determined that the Commission and FCC lack subject matter jurisdiction over a particular dispute.</p> <p>CenturyTel's proposed language for the Agreement also incorporates a provision that the Parties may, pursuant to 47 U.S.C. § 252(e)(5), seek resolution of a dispute in the event that the Commission fails to act in response to such dispute. However, the FCC has ruled that disputes concerning payments pursuant to an interconnection agreement will not be accepted by the FCC. <i>In re Qwest Communications Corp v Farmers and Merchants Mutual Telephone Company</i>, FCC 07-175, 22 FCC Rcd 17,973; 2007 WL 28727554 (rel'd October 2, 2007), ¶ 29. Thus, in this type of situation, commercial arbitration is reasonable and should be required.</p> <p>Accordingly, CenturyTel's proposed language provides that in the event that the FCC or the Commission declines jurisdiction, the dispute shall be submitted to binding commercial arbitration before a single arbitrator.</p>

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			<p>20.3 <u>Formal Dispute Resolution</u>. If the negotiations referenced in Section 20.2 above fail to produce an agreeable resolution within thirty (30) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction. In addition, upon mutual agreement of the Parties such disputes may also be submitted to binding commercial arbitration before a mutually agreed upon arbitrator.</p>	<p>CenturyTel's proposal contemplates. Indeed, because it is not clear when, or whether, this Commission would ever decline to accept jurisdiction (as CenturyTel suggests), over a dispute arising out of this Agreement, CenturyTel's proposal is without merit.</p> <p>Furthermore, even if the Commission or the FCC did not accept jurisdiction over a dispute arising from this Agreement, the appropriate forum may then be federal or state courts. Neither Party should be constrained in its right to pursue relief before federal or state courts, if both the Commission and FCC decline jurisdiction over a dispute arising from this Agreement.</p>	<p><u>upon the Parties' agreement, either Party may invoke formal dispute resolution procedures including arbitration or other procedures as appropriate, not earlier than thirty (30) days after the date of the dispute notice, provided the Party invoking the formal dispute resolution process has in good faith negotiated, or attempted to negotiate, with the other Party.</u></p> <p>20.3 <u>Formal Dispute Resolution.</u></p> <p><u>20.3.1 If the negotiations referenced in Section 20.2 above fail to produce an agreeable resolution within thirty (30) days, the Parties agree that all unresolved disputes arising under this Agreement, including without limitation, whether the dispute in question is subject to arbitration, shall be submitted to the Commission for resolution in accordance with its dispute resolution process and the outcome of such process will be binding on the Parties, subject to any right to appeal a decision reached by the Commission under applicable law.</u></p>	<p>CenturyTel's proposed language is also consistent with the FCC's conclusion that "parties may be bound by dispute resolution clauses in their interconnection agreement to seek relief in a particular fashion . . ." <i>In re Starpower Communications, LLC</i>, 15 FCCR 11277 ¶ 6, fn. 14.</p> <p>Based on this guidance, requiring the Agreement arising from this proceeding to provide that commercial arbitration shall be utilized by the Parties in the event that the Commission declines to accept or does not have jurisdiction over a dispute: (1) is within the Commission's authority under § 252(b)(4)(C); (2) avoids the gaps in the FCC's jurisdiction; and (3) brings to the dispute resolution process all of the benefits customarily associated with arbitration (<i>e.g.</i>, cost savings, ability to choose an expert arbitrator, timely dispute resolution).</p> <p>Charter's proposed language regarding this Issue should be rejected and CenturyTel's language should be accepted.</p>

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					<p><u>20.3.2 In the event that the Commission fails to act in response to any dispute arising under this Agreement, the dispute may be submitted to the FCC pursuant to 47 U.S.C. § 252(e)(5). If the FCC declines to accept jurisdiction over any such dispute, or if the Commission declines to accept jurisdiction over any dispute arising under this Agreement, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A Party may demand such arbitration in accordance with the procedures set out in those rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section or upon approval or order of the arbitrator. Each Party may submit in writing to a Party, and that Party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: interrogatories; demands to produce documents; requests for admission.</u></p>	

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					<p><u>Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within ninety (90) days of the demand for arbitration. The arbitration shall be held in Missouri, unless otherwise agreed to by the Parties or required by the FCC. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties shall submit written briefs five days before the hearing. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The arbitrator has no authority to order punitive or consequential damages. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.</u></p> <p><u>20.3.3 Costs. Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the</u></p>	

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					<u>responding Party the reasonable costs of production of documents (including search time and reproduction costs). The Parties shall equally split the fees of the arbitration and the arbitrator.</u>	
13.	<p>Should the Parties agree to a reasonable limitation as to the period of time by which claims arising under the Agreement can be brought?</p> <p><u>There are two issues presented in this Issue 13:</u></p> <p><u>(a) If the Parties are unable to resolve a "billing dispute" through established billing dispute procedures, should the billed Party be required to file a petition for formal dispute resolution within one (1) year of providing written notice of such dispute, or</u></p>	9.4, and 20.4	<p>9.4 Disputed Amounts. The following shall apply where a Party disputes, in good faith, any portion of an amount billed under this Agreement ("Disputed Amounts"). Both **CLEC and CenturyTel agree to expedite the investigation of any Disputed Amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested by the other Party, and work in good faith in an effort to resolve and settle the dispute through informal means prior to initiating formal dispute resolution</p>	<p>The Parties should agree to limit the time period by which either Party can bring a claim arising under the Agreement. Charter proposes that period of time be established as two years from the date of the occurrence of the action that gives rise to the dispute.</p> <p>This proposal benefits both Parties to the contract because it provides a specific time frame by which either Party can make a claim against the other. Upon the expiration of that time period, all potential claims that arose prior to that time would be waived. One benefit of this approach is that it provides both Parties certainty as to when, or if, claims will be brought. That, in turn, provides the business and operations units of each company greater assurance in the resolution of intercompany disputes.</p>	<p>9.4 Disputed Amounts. The following shall apply where a Party disputes, in good faith, any portion of an amount billed under this Agreement ("Disputed Amounts"). Both **CLEC and CenturyTel agree to expedite the investigation of any Disputed Amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested by the other Party, and work in good faith in an effort to resolve and settle the dispute through informal means prior to initiating formal dispute resolution. <u>If the Parties cannot resolve the dispute through established billing dispute procedures within 180 days of the billed Party providing written notice of Disputed Amounts to the billing Party, the billed Party shall file a petition for formal dispute resolution pursuant to Section 20.3 of this Article (without regard for any further informal dispute resolution negotiations that may be referenced in Section</u></p>	<p><u>Issue 13(a):</u></p> <p>CenturyTel has proposed its language in Sections 9.4 and 20.4 to address the on-going issues that it has had with resolving billing disputes with Charter. In general, this language reflects the fact that, as the provider of the service, CenturyTel is obligated to investigate disputes regarding its service offerings and in good faith report its findings to Charter. Once an investigation is conducted and the conclusions reported to Charter, it is up to Charter to either accept those conclusions and follow them or escalate the issue to the Commission. Absent that approach, the dispute process acts as nothing more than a delay for the proper payment of charges under the Agreement and/or an effort to ensure that unnecessary resources are expended by CenturyTel beyond those required to investigate the dispute and report those results and conclusions to Charter.</p> <p>Unfortunately, CenturyTel's experience is that Charter simply disputes Service Order charges for years and never seeks</p>

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	<u>otherwise waive the dispute?</u>		<p>20.4 Except as otherwise specifically provided in this Agreement, no Claims will be brought for disputes arising from this Agreement more than twenty-four (24) months from the date of the occurrence which gives rise to the dispute. Notwithstanding the foregoing, Claims for indemnification will be governed by the applicable statutory limitation period.</p>		<p><u>20.3). If the billed Party fails to seek formal dispute resolution pursuant to Section 20.3 within one (1) year of the billed Party providing written notice to the billing Party of such Disputed Amounts, the billed Party waives its alleged entitlement to and/or right to withhold such Disputed Amount.</u></p> <p>20.4 <u>[Intentionally omitted]</u></p>	<p>formal resolution of those disputes. CenturyTel's language addresses that experience as well as properly places the consequences of dilatory conduct by Charter upon Charter.</p> <p>Specifically, CenturyTel's proposed language would require Charter to file a dispute resolution petition if the Parties cannot resolve a billing dispute within one hundred and eighty (180) days of the dispute notice. If Charter fails to file such petition within one (1) year, it waives the dispute. As explained below, this provision is rational and avoids unnecessary expenditure of Party resources and those of the Commission.</p> <p>Charter should not be permitted to withhold payment with a sense of impunity, knowing that the expense of dispute resolution would chill CenturyTel's willingness to seek recovery of lesser amounts. CenturyTel's language would resolve this conduct by placing the obligation to file a petition on Charter with the corresponding consequence of waiving the dispute if it does not. Thus, CenturyTel's language creates incentives for Charter to withhold <i>only legitimately disputed charges</i> in light of the fact that it will have to justify its withholding of such charges to the Commission or risk waiving its alleged entitlement to same.</p>

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	<p><u>(b) To the extent a "Claim" arises under the Agreement, should a Party be precluded from bringing such "Claim" against the other Party more than twenty-four (24) months from the date of the occurrence giving rise to the "Claim"?</u></p>		<p>[NOTE: ACCOMPANYING PROPOSED DEFINITIONS, ART. II, § 2.26.1:</p> <p>"CLAIMS"</p> <p>The term Claims means any pending or threatened claim, action, proceeding or suit.</p>			<p><u>Issue 13(b):</u></p> <p>Through its revisions to Section 20.4, Charter proposes language to the effect that neither Party may bring a "Claim" for disputes arising more than 24 months from the date of the occurrence giving rise to the Claim. While Charter's intentions may be focused on cutting off potential liability for unpaid/disputed charges related to billing, its language is too broad. Charter has not explained why it is reasonable to cover any potential claim a Party might have against the other under this Agreement or why it is reasonable to waive any applicable statute of limitation that may apply to a specific contract dispute arising under the Agreement. CenturyTel should not be required to waive these rights.</p> <p>Nonetheless, CenturyTel is willing to consider a more narrowly focused provision associated with a twenty-four (24) month window assuming that the provision can bring to both Parties a greater degree of financial certainty. <i>Thus, with respect to billing claims only</i>, Charter's proposal may be worthy of consideration provided that Charter is required by the Agreement (as described in Issue 13(a) above) to file billing dispute petitions for a determination. However, if Charter is</p>

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						unwilling to do so, there is no basis for CenturyTel to be required to accept a more narrowly focused version of Section 20.4. Otherwise, Charter would refuse to pay, and Charter's potential liability would be cut off after two (2) years unless CenturyTel incurred the cost to file a billing dispute proceeding.
14.	<p>Should CenturyTel be allowed to assess charges upon Charter for as yet unidentified and undefined, potential "expenses" that CenturyTel may incur at some point in the future?</p> <p><u>There are two issues presented in this Issue 14:</u></p> <p><u>(a) If Charter requests that CenturyTel provide a service or perform an act not otherwise provided for under the Agreement,</u></p>	22, and Art. I, § 3	<p>22.1 [INTENTIONALLY LEFT BLANK]</p>	<p>The costs incurred by each Party in performing under this Agreement are a consequence of their respective obligations to one another under Section 251 of the Communications Act, and other applicable law. Neither Party should be allowed to recover its costs or "expenses" from the other Party unless specifically authorized to do so, as evidenced by the inclusion of rates in the price list.</p> <p>Should CenturyTel conclude at some point in the future that it incurs some costs for which it is entitled to compensation, there is already a process under this Agreement for which it can seek to recover such costs. Specifically, pursuant to Sections 4 and 12 of the current draft Agreement, CenturyTel can propose an amendment to the Agreement which specifically details the costs and expenses it seeks to recover, and the basis for</p>	<p>22. EXPENSES</p> <p><u>22.1 In performing under this Agreement, if **CLEC makes a request not already provided for in this Agreement, CenturyTel may be required to make expenditures or otherwise incur costs that are not otherwise reimbursed under this Agreement. In such event, CenturyTel is entitled to reimbursement from **CLEC for all such reasonable and necessary costs to the extent pre-approved by **CLEC. For all such costs and expenses, CenturyTel shall receive through nonrecurring charges ("NRCs") the actual costs and expenses incurred, including labor costs and expenses, overhead and fixed charges, and may include a reasonable contribution to CenturyTel's common costs. If **CLEC makes a request that involves expenditures or costs not</u></p>	<p>This issue relates directly to Issue 3. Thus, Issue 3 and Issue 14 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel.</p> <p><u>Issue 14(a):</u> This issue involves fundamental fairness and traditional cost-causation principles. The proposed language by CenturyTel is akin to a "Special Assemblies" tariff provision or an "Individual Case Basis" offering. As such, if Charter requests CenturyTel to perform a service or do something that is not otherwise provided for in the Agreement, and CenturyTel is otherwise willing to provide such service or engage in some act for the benefit of Charter, Charter should pay the actual costs incurred by CenturyTel. Moreover, CenturyTel's language makes clear that prior to undertaking any effort, the Parties <i>must first agree that the charges are reasonable</i>. See CenturyTel Proposed Section 22.1.</p>

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	<p><u>and Charter pre-approves the quoted costs of CenturyTel's performance, should the Agreement include a provision requiring Charter to pay such costs as pre-approved by Charter?</u></p> <p><u>(b) If a service or facility is offered under the Agreement but does not have a corresponding charge set forth in the Pricing Article, should such service or facility be subject to "TBD" pricing pursuant to Article III, Section 46.</u></p>			<p>requiring Charter to compensate CenturyTel. Under that scenario Charter will be required to engage in negotiations to amend the Agreement to incorporate CenturyTel's proposed cost recovery scheme. For that reason, there is no need to include CenturyTel's ambiguous proposed language in the current Agreement. Accordingly, because CenturyTel has sufficient opportunity to address the potential issue of unrecovered costs through the contract amendment process, the Commission should reject its proposed language here.</p>	<p><u>otherwise covered under this Agreement, CenturyTel will provide a quote to **CLEC in a timely manner and **CLEC must agree in writing to accept the quoted charges prior to CenturyTel's initiation of work.</u></p>	<p>Absent CenturyTel's proposed Section 22.1, and given Charter's position that it should not be required to pay any charge not expressly set forth in the Pricing Article, Charter ostensibly could request CenturyTel perform, induce CenturyTel to perform by approving quoted charges, and then refuse to pay after CenturyTel performed. This result is unreasonable. CenturyTel's customers should not be required to subsidize Charter's business, particularly where costs are incurred at Charter's request.</p> <p><u>Issue 14(b):</u></p> <p>Effectively, Charter's position is that if a service or facility (or anything) is offered in the Agreement, and it does not have a corresponding rate set forth in the Pricing Article, CenturyTel must provide it <i>without charge</i>. In comparison, CenturyTel's position is that if a service or facility is offered in the Agreement, and it does not have a corresponding rate set forth in the Pricing Article, such service or facility is subject to "TBD" pricing.</p> <p>CenturyTel's proposed language avoids subsidization of Charter and requires the Parties to confer in an effort to develop a rate before any service or facility for which a rate is not provided</p>

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			<p>Article I, § 3:</p> <p>Art. I, § 3 Notwithstanding any other provision of this Agreement, neither Party will assess a charge, fee, rate or any other assessment (collectively, for purposes of this provision, "charge") upon the other Party except where such charge is specifically authorized and identified in this Agreement, and is (i) specifically identified and set forth in the Pricing Article, or (ii) specifically identified in the Pricing Article as a "TBD" charge. Where this Agreement references a Tariff rate or provides that a specific service or facility shall be provided pursuant to a Tariff, the Tariff rates associated with such specifically referenced service or facility shall be deemed a charge that has been specifically authorized under this provision.</p> <p>The Parties do not intend for this provision to be construed to create any obligation upon CenturyTel to provide, or for **CLEC to pay, for a service that is not otherwise identified in this Agreement.</p>		<p>Article I, § 3:</p> <p>Notwithstanding any other provision of this Agreement, neither Party will assess a charge, fee, rate or any other assessment (collectively, for purposes of this provision, "charge") upon the other Party except where such charge is specifically authorized and identified in this Agreement, and is (i) specifically identified and set forth in the Pricing Article, or (ii) specifically identified in the Pricing Article as a "TBD" charge. Where this Agreement references a Tariff rate or provides that a specific service or facility shall be provided pursuant to a Tariff, the Tariff rates associated with such specifically referenced service or facility shall be deemed a charge that has been specifically authorized under this provision.</p> <p><u>If a service or facility otherwise offered under the Agreement does not have a corresponding charge specifically set forth in the Pricing Article, or is not specifically identified in the Pricing Article as being subject to "TBD" pricing,</u></p>	<p>can be ordered. Moreover, in light of Section 20, any disputes over TBD rates are resolved through the dispute resolution process.</p> <p>As a result, CenturyTel's provision acts as a "safety net". While CenturyTel has endeavored to make every effort to specifically tie each and every service to a specific rate, the provision allows for the possibility of human error with respect to CenturyTel's efforts. Thus, it is, in CenturyTel's view, entirely reasonable and appropriate.</p>

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					<u>such service and/or facility is not available to **CLEC under this Agreement.</u>	
15.	Indemnity, Warranties and Limitation of Liability Issues (Sub-Issues 15(a), 15(b) and 15(c))					
15(a)	<p>Should Charter be required to indemnify CenturyTel even where CenturyTel's actions are deemed to be negligent, grossly negligent, or constituting intentional or willful misconduct; or if CenturyTel otherwise contributes to the harm that is the subject of the cause of action?</p> <p><u>Issue 15(a) consists of two sub- parts):</u></p> <p><u>Part (1):</u></p> <p><u>Should</u></p>	30.1	<p><u>30.1 Indemnification Against Third-Party Claims.</u> Each Party (the "Indemnifying Party") agrees to indemnify, defend, and hold harmless the other Party (the "Indemnified Party") and the other Party's Subsidiaries, predecessors, successors, Affiliates, and assigns, and all current and former officers, directors, members, shareholders, agents, contractors and employees of all such persons and entities (collectively, with Indemnified Party, the "Indemnatee Group"), from any and all Claims, except to the extent that such Claims arise from the Indemnified Party's negligence, gross negligence, or intentional or willful misconduct. For purposes of this Section 30, "Claim" means any action, cause of action, suit, proceeding, claim, or demand of any third party (and all resulting judgments, bona fide settlements, penalties, damages, losses, liabilities, costs, and expenses</p>	Each Party's obligations to indemnify the other Party should be limited where the indemnified Party bears some responsibility for the alleged harms which are the basis for the action for relief. Put simply, where one Party has caused the harm, whether due to negligent actions or intentional misconduct, then that Party should not be indemnified against any losses arising from an action against that Party. Charter's proposal with respect to Section 30.1 in particular, and elsewhere in Section 30, introduces a concept of contributory negligence in to the indemnity obligations, such that indemnity obligations are limited where the indemnified Party has contributed to the alleged harm. The Commission should recognize that reasonable limitation and order the Parties to incorporate the principle in to the Agreement.	<p><u>30.1 Indemnification Against Third-Party Claims.</u> Each Party (the "Indemnifying Party") agrees to indemnify, defend, and hold harmless the other Party (the "Indemnified Party") and the other Party's Subsidiaries, predecessors, successors, Affiliates, and assigns, and all current and former officers, directors, members, shareholders, agents, contractors and employees of all such persons and entities (collectively, with Indemnified Party, the "Indemnatee Group"), from any and all Claims. For purposes of this Section 30, "Claim" means any action, cause of action, suit, proceeding, claim, or demand of any third party (and all resulting judgments, bona fide settlements, penalties, damages, losses, liabilities, costs, and expenses (including, but not limited to, reasonable costs and attorneys' fees)), (a) based on allegations that, if true, would establish (i) the Indemnifying</p>	<p>Indemnification issues arise when a third party makes a claim. Such claims cannot be ignored; they must be answered and defended. The Parties must be able to determine quickly who will be responsible for that defense. The Agreement requires either Party when seeking indemnification to give reasonably prompt notice of the third-party claim. Both Parties can then examine the claim and, without worrying about the merits of the claimant's allegations, determine whether those allegations, if true, would establish (for example) the Indemnifying Party's breach or fraud. If so, the Indemnifying Party must defend the claim and indemnify and hold the Indemnatee Group harmless.</p> <p>The language proposed by Charter would transform this straightforward – and standard – approach into an extended and expanded dispute between the Parties. Charter's approach is impractical if not wholly unworkable.</p> <p>Rather than focusing upon the</p>

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	<u>indemnification obligations be triggered by agreed-upon threshold issues or instead become the basis for protracted disputes between the Parties?</u>		(including, but not limited to, reasonable costs and attorneys' fees)), (a) based on allegations that, if true, would establish (i) the Indemnifying Party's breach of this Agreement; (ii) the Indemnifying Party's misrepresentation, fraud or other misconduct; (iii) the Indemnifying Party's negligence; (iv) infringement by the Indemnifying Party or by any Indemnifying Party product or service of any patent, copyright, trademark, service mark, trade name, right of publicity or privacy, trade secret, or any other proprietary right of any third party; (v) the Indemnifying Party's liability in relation to any material that is defamatory or wrongfully discloses private or personal matters; or (vi) the Indemnifying Party's wrongful use or unauthorized disclosure of data; or (b) that arises out of (i) any act or omission of the Indemnifying Party or its subcontractors or agents relating to the Indemnifying Party's performance or obligations under this Agreement; (ii) any act or omission of the Indemnifying Party's customer(s) or End User(s); (iii) the bodily injury or death of any person, or the loss or		Party's breach of this Agreement; (ii) the Indemnifying Party's misrepresentation, fraud or other misconduct; (iii) the Indemnifying Party's negligence; (iv) infringement by the Indemnifying Party or by any Indemnifying Party product or service of any patent, copyright, trademark, service mark, trade name, right of publicity or privacy, trade secret, or any other proprietary right of any third party; (v) the Indemnifying Party's liability in relation to any material that is defamatory or wrongfully discloses private or personal matters; or (vi) the Indemnifying Party's wrongful use or unauthorized disclosure of data; or (b) that arises out of (i) any act or omission of the Indemnifying Party or its subcontractors or agents relating to the Indemnifying Party's performance or obligations under this Agreement; (ii) any act or omission of the Indemnifying Party's customer(s) or End User(s); (iii) the bodily injury or death of any person, or the loss or disappearance of or damage to the tangible property of any person, relating to the Indemnifying Party's performance or obligations under this Agreement;	<p>allegations of the claimant, Charter's proposal requires an ultimate determination of who is responsible for the claim. Rather than encouraging the Parties to join forces and defeat or minimize liability to third parties, it encourages them to point fingers at each other and to expand the scope of the dispute. Rather than enabling one attorney to represent the indemnified and indemnifying Parties, it creates a conflict that likely precludes any joint representation.</p> <p>Charter's invocation of "contributory negligence" as a standard illustrates just a few of the problems that its language would create. How does "contributory negligence" work in a breach of contract action, or an action alleging patent infringement? How can "contributory negligence" be established before there's any determination of negligence or misconduct? The only predictable thing about Charter's language is that it will increase the cost of and diminish the likelihood of success in responding to a third-party claim.</p> <p>Further, Charter's proposed language would impose obligations on CenturyTel that are not imposed on Charter under its own tariffs and customer agreements. The</p>

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			disappearance of or damage to the tangible property of any person, relating to the Indemnifying Party's performance or obligations under this Agreement; (iv) the Indemnifying Party's design, testing, manufacturing, marketing, promotion, advertisement, distribution, lease or sale of services and/or products to its customers, or such customers' use, possession, or operation of those services and/or products; or (v) personal injury to or any unemployment compensation claim by one or more of the Indemnifying Party's employees, notwithstanding any protections the Indemnifying Party might otherwise have under applicable workers' compensation or unemployment insurance law, which protections the Indemnifying Party waives, as to the Indemnified Party and other persons and entities to be indemnified under this Section 30.1 (other than applicable employee claimant(s)), for purposes of this Section 30.1. "Reasonable costs and attorneys' fees," as used in this Section 30.1, includes without limitation fees and costs incurred to interpret or enforce this Section 30.1. The Indemnified Party will provide the		(iv) the Indemnifying Party's design, testing, manufacturing, marketing, promotion, advertisement, distribution, lease or sale of services and/or products to its customers, or such customers' use, possession, or operation of those services and/or products; or (v) personal injury to or any unemployment compensation claim by one or more of the Indemnifying Party's employees, notwithstanding any protections the Indemnifying Party might otherwise have under applicable workers' compensation or unemployment insurance law, which protections the Indemnifying Party waives, as to the Indemnified Party and other persons and entities to be indemnified under this Section 30.1 (other than applicable employee claimant(s)), for purposes of this Section 30.1. "Reasonable costs and attorneys' fees," as used in this Section 30.1, includes without limitation fees and costs incurred to interpret or enforce this Section 30.1. The Indemnified Party will provide the	indemnification exclusions Charter proposes for Section 30.1 are not included in the indemnification provisions of Charter's tariffs and customer agreements (<i>see</i> Charter Internet Residential Customer Agreement, Section 7; Charter Commercial Terms of Service, Section 12; Charter Fiberlink – Missouri, LLC Local Exchange Tariff P.S.C. MO. No. 1, Sections 1.5.3, 1.7.1; Charter Fiberlink – Missouri, LLC Switched Access Services Tariff P.S.C. MO. No. 2, Section 1.5; and Charter Fiberlink – Missouri, LLC Intrastate Interexchange Tariff P.S.C. MO. No. 4, Sections 2.2, 2.3). Charter's attempt to impose these unworkable exclusions on CenturyTel should be rejected. In the third paragraph of Section 30.1, Charter proposes to use the defined term "Claims" in place of "losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorneys' fees." The third paragraph speaks to claims by End User Customers and claims related to the content that they transmit. It implements the policy set forth in the second paragraph: Each Party shall be the Indemnifying Party with respect to such claims. There is no reason to import into the third paragraph the

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			<p>Indemnifying Party with reasonably prompt written notice of any Claim. At the Indemnifying Party's expense, the Indemnified Party will provide reasonable cooperation to the Indemnifying Party in connection with the defense or settlement of any Claim. The Indemnified Party may, at its expense, employ separate counsel to monitor and participate in the defense of any Claim.</p> <p>Notwithstanding anything to the contrary in this Section 30.1, a Party may not seek indemnification with respect to any Claim by that Party's customer(s) or End User(s), but rather shall be the Indemnifying Party with respect to all Claims by its customer(s) and End User(s).</p> <p>The Indemnifying Party agrees to release, indemnify, defend, and hold harmless the Indemnatee Group and any third-party provider or operator of facilities involved in the provision of products, services or facilities under this Agreement from all Claims suffered, made, instituted, or asserted by the Indemnifying Party's End User Customer(s)</p>		<p>reasonable cooperation to the Indemnifying Party in connection with the defense or settlement of any Claim. The Indemnified Party may, at its expense, employ separate counsel to monitor and participate in the defense of any Claim.</p> <p>Notwithstanding anything to the contrary in this Section 30.1, a Party may not seek indemnification with respect to any Claim by that Party's customer(s) or End User(s), but rather shall be the Indemnifying Party with respect to all Claims by its customer(s) and End User(s).</p> <p>The Indemnifying Party agrees to release, indemnify, defend, and hold harmless the Indemnatee Group and any third-party provider or operator of facilities involved in the provision of products, services or facilities under this Agreement from all <u>losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorneys' fees,</u> suffered, made, instituted, or asserted by the Indemnifying Party's End User Customer(s) arising from or</p>	lengthy but restrictive list of matters constituting "Claims" set forth in the first paragraph (e.g., claims by injured employees). To do so will create confusion and lead to unintended consequences.

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	<p><u>Part (2):</u></p> <p><u>Should the items of damage and cost for which the Indemnifying Party is responsible be identified where the claimant is that Party's customer?</u></p>		<p>arising from or relating to any products, services or facilities provided by or through the Indemnified Party or such third-party provider or operator, except to the extent that any such Claims were caused by the Indemnified Party's or other third-party provider's or operator's negligence, gross negligence, or intentional or willful misconduct. The Indemnifying Party further agrees to release, indemnify, defend, and hold harmless the Indemnatee Group from all Claims, suffered, made, instituted, or asserted by any third party against an Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by the Indemnifying Party's End User Customer(s).</p>		<p>relating to any products, services or facilities provided by or through the Indemnified Party or such third-party provider or operator. The Indemnifying Party further agrees to release, indemnify, defend, and hold harmless the Indemnatee Group from all <u>losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorneys' fees</u>, suffered, made, instituted, or asserted by any third party against an Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by the Indemnifying Party's End User Customer(s).</p>	

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15(b)	<p>Should the Parties disclaim implied warranties related to the provision of “information and services” that may arise under the Uniform Computer Information Transactions Act (UCITA)?</p> <p><u>Should the disclaimer of warranties be limited to product-based language or extend to the information and services that are the subject of the Parties' Agreement?</u></p>	30.2	<p>30.2 <u>Disclaimer of Warranties.</u> EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY STATUTE, EACH PARTY ON BEHALF OF ITSELF AND ITS AFFILIATES AND SUPPLIERS DISCLAIMS ALL WARRANTIES AND DUTIES, WHETHER EXPRESS OR IMPLIED, AS TO THE SERVICES, PRODUCTS AND ANY OTHER INFORMATION OR MATERIALS EXCHANGED BY THE PARTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY STATUTE, THERE IS NO WARRANTY OF TITLE, AUTHORITY, OR NON-INFRINGEMENT WITH RESPECT TO THE SERVICES,</p>	<p>The Parties should not disclaim any conceivable warranty that may exist under the law, but should limit their disclaimer of warranties to those that have some plausible relationship to the actions and obligations of both Parties under the Agreement. Consistent with that principle Charter proposes to delete CenturyTel's proposed language that the Parties mutually disclaim certain warranties listed in this provision, such as the warranties of “reasonable care”, “lack of negligence”, and “accuracy of completeness or responses.” Such warranties are not expressly contemplated by either Party, and more importantly, have no relation to each Party's obligations with respect to the interconnection and exchange of traffic contemplated under this Agreement.</p>	<p>30.2 <u>Disclaimer of Warranties.</u> EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY STATUTE, EACH PARTY ON BEHALF OF ITSELF AND ITS AFFILIATES AND SUPPLIERS DISCLAIMS ALL WARRANTIES AND DUTIES, WHETHER EXPRESS OR IMPLIED, AS TO THE SERVICES, PRODUCTS AND ANY OTHER INFORMATION OR MATERIALS EXCHANGED BY THE PARTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, <u>REASONABLE CARE, WORKMANLIKE EFFORT, RESULTS, LACK OF NEGLIGENCE, OR ACCURACY OR COMPLETENESS OF RESPONSES.</u> EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN</p>	<p>Charter argues that the warranty disclaimer language in the first sentence of Section 30.2 should address specifically only merchantability and fitness for a particular purpose. These concepts come from Article 2 of the Uniform Commercial Code, covering transactions in goods. The subject matter of this Agreement—interconnection and exchange of traffic—is information and services, not just goods. The Restatement (Second) of Torts § 552 (1997) creates warranty-like liability for inaccuracy in information that is supplied for the guidance of others, based upon a standard of reasonable care. Based upon this standard, the Uniform Computer Information Transactions Act (UCITA) establishes an implied warranty of accurate information. UCITA also provides for the disclaimer of this warranty through language that CenturyTel has proposed. UCITA §§ 404, 406(b). The reference to “quiet enjoyment” in the second sentence of Section 30.2 is also safe harbor language drawn from UCITA § 401(d), which addresses the warranty of non-infringement. There is no reason to favor disclaimer language that is</p>

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			PRODUCTS, AND ANY OTHER INFORMATION OR MATERIALS EXCHANGED BY THE PARTIES UNDER THIS AGREEMENT.		THIS AGREEMENT OR REQUIRED BY STATUTE, THERE IS NO WARRANTY OF TITLE, <u>QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION, AUTHORITY, OR NON-INFRINGEMENT WITH RESPECT TO THE SERVICES, PRODUCTS, AND ANY OTHER INFORMATION OR MATERIALS EXCHANGED BY THE PARTIES UNDER THIS AGREEMENT.</u>	incomplete and potentially ineffective.
15(c)	Should the Agreement limit direct damages to an amount equal to “monthly charges” assessed between the Parties; and otherwise limit liability in an equitable manner? <u>Should the Agreement limit damages in a manner that is consistent with telecommunications industry</u>	30.3, and 30.4	30.3 <u>Limitation of Liability; Disclaimer of Consequential Damages; Exceptions.</u> 30.3.1 Except as provided in Section 30.3.3, each Party's liability to the other, whether in contract, tort or otherwise, shall be limited to direct damages.	The Parties should not limit their damages in a way that would preclude one Party from obtaining meaningful relief. Although Charter agrees that damages should be limited to “direct damages”, it does not agree with CenturyTel's proposal that damages be further limited to the monthly charges, plus expenses, that either Party may recover from the other Party. Because this Agreement contemplates primarily the exchange of traffic, without significant liabilities for leasing, resale or other services, the amount of monthly charges that the Parties are subject to is relatively small. For that reason, CenturyTel's proposal to limit direct damages to no more than	30.3 <u>Limitation of Liability; Disclaimer of Consequential Damages; Exceptions.</u> 30.3.1 Except as provided in Section 30.3.3, each Party's liability to the other, whether in contract, tort or otherwise, shall be limited to direct damages, <u>which shall not exceed the monthly charges, plus any related costs/expenses the other Party may recover, including those under Section 22.1 above, and plus any costs/expenses for which the Parties specify reimbursement in this Agreement for the services or facilities for which the claim of liability arose. Except as provided in Section 30.3.3, each</u>	Charter has proposed deleting the provisions in Section 30.3.1 that limit recovery of direct damages, during any given year, to an amount equal to the total amount paid by Charter to CenturyTel during such year. CenturyTel's approach – limiting damages to the amount charged by CenturyTel for services – is well-established in the telecommunications industry and is reflected in the tariffs and customer agreements of both CenturyTel and Charter (<i>see</i> Charter Internet Residential Customer Agreement, Section 6.2; Charter Commercial Terms of Service, Sections 6, subsections (k),(l) and (m); Charter Fiberlink – Missouri, LLC Local Exchange Services Tariff P.S.C. MO. No. 1, Sections 1.5.2, 1.5.3, 1.5.4, 1.5.8;

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	<u>practice and Charter's own customer agreements and tariffs?</u>		<p>30.3.2 EXCEPT AS PROVIDED IN SECTION 30.3.3, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND</p>	<p>an amount equal to such monthly charges could effectively preclude recovery of the amount of direct damages that arise from a significant harm or error that occurred to one Party's network, employees, or other assets.</p> <p>The Parties agree that for some types of claims their potential liability should not be limited. Although the Parties agree as to the majority of such claims, there are two instances in which they do not agree. Charter's position is that neither Party should limit their liability for claims arising out of either Party's acts which are deemed to be grossly negligent. In such circumstances, the grossly negligent Party should be liable, and responsible for, the entire cost of any damages which arise. Further, Charter also proposes that liability not be limited in those instances where liability arises under the indemnity provisions of this Agreement.</p> <p>Additional liability limitations,</p>	<p><u>Party's liability to the other during any Contract Year resulting from any and all causes will not exceed the total of any amounts charged to **CLEC by CenturyTel under this Agreement during the Contract Year in which such cause accrues or arises. For purposes of this Section 30.3.1, the first Contract Year commences on the first day this Agreement becomes effective, and each subsequent Contract Year commences on the day following the anniversary of that date.</u></p> <p>30.3.2 EXCEPT AS PROVIDED IN SECTION 30.3.3, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN</p>	<p>Charter Fiberlink – Missouri, LLC Switched Access Services Tariff P.S.C. MO. No. 2, Section 1.5; Charter Fiberlink – Missouri, LLC Intrastate Interexchange Tariff P.S.C. MO. No. 4, Section 2.2; and CenturyTel of Missouri, LLC General and Local Exchange Tariff P.S.C. MO. No. 1, Section 2.B). Charter's attempt to prevent this industry standard approach from being applied to CenturyTel should be rejected.</p> <p>Charter has also proposed adding an exclusion for gross negligence to the specified exclusions to each Party's limitation of liability contained in Section 30.3.3 (the addition of gross negligence is in Section 30.3.3.7). This change should be rejected for two reasons.</p> <p>First, the proposed change is contrary to Charter's own tariffs and customer agreements, which contain no exclusion to Charter's limitation of liability based on Charter's gross negligence or any other Charter conduct, even intentional misconduct (<i>see</i> Charter Internet Residential Customer Agreement, Section 6.2; Charter Commercial Terms of Service, Sections 6, subsections (k),(l) and (m), and Section 11, subsection (a); Charter Fiberlink – Missouri, LLC Local Exchange Services Tariff P.S.C. MO. No. 1,</p>

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			<p>REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT.</p> <p>Should either Party provide advice, make recommendations, or supply other analysis related to the services or facilities described in this Agreement, this limitation of liability shall apply to the provision of such advice, recommendations, and analysis.</p> <p>30.3.3 Section 30.3.1 and Section 30.3.2 do not apply to the following:</p> <p>30.3.3.1 Indemnification under Section 30.1;</p> <p>30.3.3.2 Breach of any obligation of confidentiality referenced in this Agreement;</p> <p>30.3.3.3 Violation of security procedures;</p> <p>30.3.3.4 Any breach by **CLEC of any provision relating to **CLEC's access to or use of Operations Support Systems;</p> <p>30.3.3.5 Failure to properly safeguard, or any misuse of,</p>	<p>whether arising out of tariffs, other contracts, or errors, are generally appropriate. However, where the Agreement includes such additional limitations they should be operative as to both Parties, not unilateral, as to only protect CenturyTel. For that reason, Charter proposes to make mutual the additional limitations set forth in this Section 30.4, in recognition of the fact that such limitations should apply mutually, not simply to the benefit of CenturyTel alone.</p>	<p>CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT.</p> <p>Should either Party provide advice, make recommendations, or supply other analysis related to the services or facilities described in this Agreement, this limitation of liability shall apply to the provision of such advice, recommendations, and analysis.</p> <p>30.3.3 Section 30.3.1 and Section 30.3.2 do not apply to the following:</p>	<p>Section 1.5; Charter Fiberlink – Missouri, LLC Switched Access Services Tariff P.S.C. MO. No. 2, Section 1.5; and Charter Fiberlink – Missouri, LLC Intrastate Interexchange Tariff P.S.C. MO. No. 4, Section 2.2).</p> <p>Second, the addition of gross negligence as an exclusion to a party's limitation of liability is wholly unworkable. The distinction between negligence and intentional or willful misconduct is well-established in the law – it is the distinction between accidentally causing harm, on the one hand, and meaning to hurt someone and then hurting them, on the other. By contrast, there is no clear distinction between negligence and gross negligence. As a result, there can be no summary adjudication of the issue and very little predictability as to the final result. Contractual language should reduce the need for litigation, not encourage it. Charter's proposed language would have the perverse effect of encouraging more and longer lawsuits over the degree of a Party's culpability.</p> <p>Charter has also proposed replacing the references to "applicable provisions" of certain CenturyTel tariffs with specific tariff section references (<i>see</i> Sections 30.3.3.9 and 30.3.3.13). This change is unworkable and should be rejected.</p>

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			<p>customer data;</p> <p>30.3.3.6 Statutory damages;</p> <p>30.3.3.7 Liability for gross negligence, and intentional or willful misconduct;</p> <p>30.3.3.8 Liability arising under any applicable Tariff;</p> <p>30.3.3.9 Liability arising under any indemnification provision contained in this Agreement or any separate agreement or in Section I of the 911 portion of the CenturyTel of Missouri, LLC, PSC No. 10, Wholesale Tariff on file with the with the Missouri Public Service Commission related to provisioning of 911/E911 services;</p> <p>30.3.3.10 Each Party's obligations under Section 27, Intellectual Property, of this Article III;</p> <p>30.3.3.11 Section 30.4.2 and/or Section 30.4.3 of this Article III;</p> <p>30.3.3.12 Section 45, Taxes, of this Article III, and/or</p> <p>30.3.3.13 Liability arising under any indemnification</p>		<p>30.3.3.1 Indemnification under Section 30.1;</p> <p>30.3.3.2 Breach of any obligation of confidentiality referenced in this Agreement;</p> <p>30.3.3.3 Violation of security procedures;</p> <p>30.3.3.4 Any breach by **CLEC of any provision relating to **CLEC's access to or use of Operations Support Systems;</p> <p>30.3.3.5 Failure to properly safeguard, or any misuse of, customer data;</p> <p>30.3.3.6 Statutory damages;</p> <p>30.3.3.7 Liability for intentional or willful misconduct;</p> <p>30.3.3.8 Liability arising under any applicable Tariff;</p> <p>30.3.3.9 Liability arising under any indemnification provision contained in this Agreement or any separate agreement or the</p>	<p>Even assuming for argument that the section references for applicable liability provisions are accurately reflected in Charter's proposed language with respect to current CenturyTel tariffs, the organization and numbering of these tariffs could change, either by a revision requested by CenturyTel and approved by the Commission or by Commission requirement. Thus, Charter's language has the potential for becoming inaccurate in the future, with resulting confusion and unintended consequences. Accordingly, this unworkable and wholly unnecessary change should be rejected.</p>

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			<p>provision contained in this Agreement, a separate agreement or in Section(s) (G) of the Directory Services portion of the CenturyTel of Missouri, LLC, PSC No. 10,. Wholesale Services Tariff on file with the Missouri Public Service Commission related to provisioning of Directory Listing or Directory Assistance Services.</p> <p>30.4 <u>Liability of Each Party.</u></p> <p>In addition to the general limitation of liability in this Section 30, the following shall also limit each Party's liability under this Agreement.</p> <p>30.4.1 <u>Inapplicability of Tariff Liability.</u> CenturyTel's general liability, as described in its local exchange or other Tariffs, does not extend to **CLEC, **CLEC's End User Customer(s), suppliers, agents, employees, or any other third parties. Liability of CenturyTel to **CLEC resulting from any and all causes arising out of services, facilities or any</p>		<p><u>applicable provisions of the</u> CenturyTel of Missouri, LLC, PSC No. 10, Wholesale Tariff on file with the Missouri Public Service Commission related to provisioning of 911/E911 services;</p> <p>30.3.3.10 Each Party's obligations under Section 27, Intellectual Property, of this Article III;</p> <p>30.3.3.11 Section 30.4.2 and/or Section 30.4.3 of this Article III;</p> <p>30.3.3.12 Section 45, Taxes, of this Article III, and/or</p> <p>30.3.3.13 Liability arising under any indemnification provision contained in a separate agreement or <u>the applicable provisions of</u> the CenturyTel of Missouri, LLC, PSC No. 10, Wholesale Services Tariff on file with the Missouri Public Service Commission related to</p>	

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			<p>other items relating to this Agreement shall be governed by the liability provisions contained in this Agreement and no other liability whatsoever shall attach to CenturyTel. **CLEC's general liability, as described in its local exchange or other Tariffs, does not extend to CenturyTel, CenturyTel's End User Customer(s), suppliers, agents, employees, or any other third parties. Liability of **CLEC to CenturyTel resulting from any and all causes arising out of services, facilities or any other items relating to this Agreement shall be governed by the liability provisions contained in this Agreement and no other liability whatsoever shall attach to **CLEC.</p> <p>30.4.2 <u>**CLEC Tariffs or Contracts.</u> Nothing in this Agreement shall be deemed to create a third-party beneficiary relationship between CenturyTel and any of **CLEC's End User Customers, suppliers, agents, employees, or any other third parties. Nothing in this Agreement shall be deemed to</p>		<p>provisioning of Directory Listing or Directory Assistance Services.</p> <p>30.4 <u>Liability of Each Party.</u></p> <p>In addition to the general limitation of liability in this Section 30, the following shall also limit each Party's liability under this Agreement.</p> <p>30.4.1 <u>Inapplicability of Tariff Liability.</u> CenturyTel's general liability, as described in its local exchange or other Tariffs, does not extend to **CLEC, **CLEC's End User Customer(s), suppliers, agents, employees, or any other third parties. Liability of CenturyTel to **CLEC resulting from any and all causes arising out of services, facilities or any other items relating to this Agreement shall be governed by the liability provisions contained</p>	

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			<p>create a third-party beneficiary relationship between **CLEC and any of CenturyTel's End User Customers, suppliers, agents, employees, or any other third parties.</p> <p>30.4.3 No Liability for Errors. If **CLEC uses the signaling networks and call-related databases identified herein, then CenturyTel is not liable for mistakes in CenturyTel's signaling networks (including but not limited to signaling links and Signaling Transfer Points (STPs) and call-related databases (including but not limited to the Line Information Database (LIDB), Toll Free Calling database, Local Number Portability database, Advanced Intelligent Network databases, Calling Name database (CNAM), 911/E911 databases, and OS/DA databases). If **CLEC uses the signaling networks and call-related databases identified</p>	<p>Furthermore, with respect to Section 30.4.3, Charter does not use CenturyTel signaling networks or calling databases that are identified in Section 30.4.3. For that reason, there is no reason to specifically carve out such databases and networks for unique treatment under this Section 30. Instead, the provision should be eliminated from the Agreement because it is not</p>	<p>in this Agreement and no other liability whatsoever shall attach to CenturyTel. <u>Without limiting the generality of any other provision herein, CenturyTel shall not be liable for any loss, claims, liability or damages asserted by **CLEC, **CLEC's End User Customer(s), suppliers, agents, employees, or any other third parties arising out of or relating to CLEC's combination or commingling of its components with those components provided by CenturyTel to CLEC.</u></p> <p>**CLEC's general liability, as described in its local exchange or other Tariffs, does not extend to CenturyTel, CenturyTel's End User Customer(s), suppliers, agents, employees, or any other third parties. Liability of **CLEC to CenturyTel resulting from any and all causes arising out of services, facilities or any other items relating to this Agreement shall be governed by the liability provisions contained in this Agreement and no other liability whatsoever shall attach to **CLEC.</p> <p>30.4.2 <u>**CLEC Tariffs or Contracts.</u> Nothing in this Agreement shall be deemed to</p>	<p>With respect to the second sentence of Section 30.4.3, CenturyTel proposes a minor change to clarify that Charter's indemnification obligations are triggered by use of the referenced databases or signaling networks by or through Charter. CenturyTel also proposes that the defined term "Claims" not be used in this Section. As discussed above, the term "Claims" is defined in Section 30.1, and there is no reason to use this defined term – which definition includes several matters not applicable to Section 30.4.3 – instead of the straightforward phrase "claims, demands, causes of action and liabilities whatsoever, including costs, expenses and reasonable attorneys' fees."</p> <p>Charter also proposes to modify the last sentence of Section 30.4.3 by adding gross negligence as an exclusion from CenturyTel's liability limitation. As discussed above with respect to Section 30.3.3.7, this change should be rejected for two reasons.</p> <p>First, imposition of liability based on gross negligence is contrary to</p>

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			<p>herein, then **CLEC shall indemnify, defend and hold harmless CenturyTel and CenturyTel's Indemnitee Group from any and all Claims incurred on account thereof, by or to **CLEC's End User Customer(s), suppliers, agents, employees, or any other third parties. For purposes of this Section 30.4.3, mistakes shall not include matters arising out of the gross negligence or willful misconduct of CenturyTel or its employees or agents.</p>	<p>relevant to the Parties respective operations, as they relate to the interconnection and exchange of traffic.</p>	<p>create a third-party beneficiary relationship between CenturyTel and any of **CLEC's End User Customers, suppliers, agents, employees, or any other third parties, <u>except to the extent any such party is included within the applicable Indemnitee Group, for the purpose of indemnification as provided herein only.</u> Nothing in this Agreement shall be deemed to create a third-party beneficiary relationship between **CLEC and any of CenturyTel's End User Customers, suppliers, agents, employees, or any other third parties, <u>except to the extent any such party is included within the applicable Indemnitee Group, for the purpose of indemnification as provided herein only.</u></p> <p>30.4.3 <u>No Liability for Errors.</u> If **CLEC uses the signaling networks and call-related databases identified herein, then CenturyTel is not liable for mistakes in CenturyTel's signaling networks (including but not limited to signaling links and Signaling Transfer Points (STPs) and call-related databases (including but not limited to the Line Information Database</p>	<p>Charter's own tariffs and customer agreements, which contain no exclusion to Charter's limitation of liability based on Charter's gross negligence or any other Charter conduct, even intentional misconduct (<i>see</i> Charter Internet Residential Customer Agreement, Section 6.2; Charter Commercial Terms of Service, Sections 6, subsections (k), (l) and (m), and Section 11, subsection (a); Charter Fiberlink – Missouri, LLC Local Exchange Services Tariff P.S.C. MO. No. 1, Section 1.5; Charter Fiberlink – Missouri, LLC Switched Access Services Tariff P.S.C. MO. No. 2, Section 1.5; and Charter Fiberlink – Missouri, LLC Intrastate Interexchange Tariff P.S.C. MO. No. 4, Section 2.2). Second, as discussed above, a contract provision that allows a Party to circumvent the other Party's limitation of liability based on "gross negligence" is wholly unworkable and would encourage litigation.</p>

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					(LIDB), Toll Free Calling database, Local Number Portability database, Advanced Intelligent Network databases, Calling Name database (CNAM), 911/E911 databases, and OS/DA databases). **CLEC shall indemnify, defend and hold harmless CenturyTel and CenturyTel's Indemnitee Group from any and all <u>claims, demands, causes of action and liabilities whatsoever, including costs, expenses and reasonable attorneys' fees</u> incurred on account thereof, by or to **CLEC's End User Customer(s), suppliers, agents, employees, or any other third parties <u>based on any reason whatsoever arising out of or relating to any use of such signaling networks and call-related databases by or through CLEC</u> . For purposes of this Section 30.4.3, mistakes shall not include matters arising <u>exclusively out of the willful misconduct of CenturyTel</u> or its employees or agents.	
16.	Should both Parties be allowed to modify, and upgrade, their	47	47. TECHNOLOGY UPGRADES Notwithstanding any other provision of this Agreement, each	Both Parties should be able to modify their network through the incorporation of new equipment or software, assuming such modifications do not materially	47. TECHNOLOGY UPGRADES Notwithstanding any other provision of this Agreement,	The sole issue raised in Section 47 is whether the requirement for Charter to accommodate changes or modifications within CenturyTel's network should also be applied to CenturyTel with

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	<p>networks; and should the other Party be responsible for assuming the costs of such network upgrades or modifications?</p> <p><u>Should the Agreement contain a provision providing that CenturyTel is solely responsible for the costs and activities associated with accommodating changes to its network that are required due to Charter's modifications to its network?</u></p>		<p>Party shall have the right to deploy, upgrade, migrate and maintain its network at its discretion. Nothing in this Agreement shall limit CenturyTel's ability to modify its network through the incorporation of new equipment or software or otherwise. **CLEC shall be solely responsible for the cost and activities associated with accommodating such changes in its own network. Nothing in this Agreement shall limit **CLEC's ability to modify its network through the incorporation of new equipment or software or otherwise. CenturyTel shall be solely responsible for the cost and activities associated with accommodating such changes in its own network. Notwithstanding the foregoing, both Parties have the duty not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256 of the Act.</p>	<p>affect the other Party, consistent with 47 U.S.C. sections 255 and 256. Those provisions of the Communications Act specifically and expressly contemplate that entities will update their networks, and coordinate their actions in so doing. Thus the Telecommunications Act already ensures that the parties must update their networks, and coordinate their upgrades, in a manner that optimally maintains interconnection with interconnecting carriers. Furthermore, both Parties should be responsible for the costs associated with accommodating changes made by the other Party. This principle of cost responsibility is consistent with CenturyTel's original proposal, and principles of equitable allocation of cost obligations with respect to the cost of network upgrades.</p>	<p><u>CenturyTel</u> shall have the right to deploy, upgrade, migrate and maintain its network at its discretion. Nothing in this Agreement shall limit CenturyTel's ability to modify its network through the incorporation of new equipment or software or otherwise. **CLEC shall be solely responsible for the cost and activities associated with accommodating such changes in its own network. Notwithstanding the foregoing, both Parties have the duty not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256 of the Act.</p>	<p>respect to Charter's network modifications or changes. The answer is "no."</p> <p>Charter requested interconnection with CenturyTel's network as that network exists today and as that network will be developed in the future. CenturyTel did not request interconnection of Charter. Thus, Charter, and not CenturyTel, has assumed the responsibility associated with its request, including those related to accommodating any changes arising as CenturyTel's network evolves to address regulatory and technical requirements, expectations and industry standards.</p> <p>As the ILEC, CenturyTel's network must meet type-accepted standards while a CLEC (like Charter) does not. Further, CenturyTel also has the obligation consistent with 47 U.S.C. § 251(c)(2) to provide interconnection that is at least equal in quality to that provided to itself or to any subsidiary, affiliate, or any other party and in a just, reasonable, and nondiscriminatory manner. Accordingly, any issue of Charter's cost of accommodating changes in CenturyTel's network has bounds while the opposite is not true for CenturyTel if the provision at issue was mutual.</p> <p>Further, Charter is not without recourse.</p>

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						<p>CenturyTel has the duty under Section 251(a)(2) of the Act to avoid improper modifications to its network. Charter thus has dispute resolution ability before the Commission should CenturyTel's upgrades and/or modification of its network <i>ever</i> becomes an issue for Charter.</p> <p>Finally, under Charter's proposed language, and without being subject to the same duties and obligations as CenturyTel, there is nothing to restrict Charter from changing or modifying its network in an unjust and discriminatory manner to improve its competitive position at CenturyTel's expense.</p>
17.	<p>Should Charter be contractually bound by terms concerning liability for carrier change requests that exceed its obligations under existing law?</p> <p><u>Should the Agreement contain terms setting forth the process to be</u></p>	50	<p>50. Unauthorized Changes</p> <p>50.1 The Parties agree that each Party is required to comply with End User subscriber carrier change requests, as set forth in 47 C.F.R. § 64.1100, et. seq. ("Changes in Preferred Telecommunications Service Providers"), and any applicable rules or regulations promulgated by the Commission. As such, each Party will comply with such rules and regulations to ensure that End User subscribers are</p>	<p>This provision should not apply to Charter because FCC regulations establish the liability and remedy obligations if a subscriber is changed without necessary authorization. In addition if necessary, the Parties can agree upon procedures to exchange any necessary letters of authorization, which would ensure that Charter has necessary authorization before submitting a carrier change requests on behalf of a subscriber. Moreover, federal regulations, 47 C.F.R. 64.1100 et. seq., already establish liability obligations where one Party fails to obtain proper</p>	<p>50. UNAUTHORIZED CHANGES</p> <p><u>50.1 Procedures. If **CLEC submits an order for number portability under this Agreement in order to provide service to an End User Customer that at the time the order is submitted is obtaining its local services from CenturyTel, and the End User Customer notifies CenturyTel that the End User Customer did not authorize **CLEC to provide local Telephone Exchange Services to the End User Customer, **CLEC must provide</u></p>	<p>Charter's proposal to simply invoke the FCC's slamming rules (47 C.F.R. § 64.1100 <i>et seq.</i>) is insufficient to govern the Parties' relationship in the event Charter submits an unauthorized request to port a customer's telephone number. The FCC's slamming rules are intended primarily to protect the interests of consumers, not carriers that are parties to an ICA.</p> <p>CenturyTel notes that the slamming regulations provide for no compensation to an "executing carrier" -- the term given to the carrier effecting a change request, <i>see</i> 47 C.F.R. § 64.1100(b), when it is required under</p>

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	<p><u>followed if Charter submits an "unauthorized" request to CenturyTel to port an End User's telephone number, and should Charter be required to compensate CenturyTel for switching the unauthorized port back to the authorized carrier?</u></p>		<p>not changed without required authorizations.</p>	<p>authorization prior to submitting a carrier change request on behalf of a potential new subscriber.</p>	<p><u>CenturyTel with proof of authorization from that End User Customer within thirty (30) calendar days of notification by CenturyTel. If **CLEC cannot provide proof of authorization within such time frame, **CLEC must, within three (3) Business Days thereafter:</u></p> <p>(a) <u>direct CenturyTel to change the End User Customer back to the LEC providing service to the End User Customer before the change to **CLEC was made;</u></p> <p>(b) <u>provide any End User Customer information and billing records **CLEC has obtained relating to the End User Customer to the LEC previously serving the End User Customer; and</u></p> <p>(c) <u>notify the End User Customer and CenturyTel that the change back to the previous LEC has been made.</u></p>	<p>the rule to switch back an unauthorized change. The same is true of the Commission's slamming rules. <i>See</i> 4 CSR 240-33.150. Since this Agreement does not contain terms for Charter to resell CenturyTel's tariffed telecommunications services but does contemplate number porting, CenturyTel essentially is both the "executing carrier" and the "authorized carrier" under the FCC slamming rules with respect to any unauthorized change requested by Charter.</p> <p>Thus, CenturyTel's costs are not addressed under the FCC's rules. The Agreement, therefore, should provide for that recovery for costs incurred due to Charter slamming activities. CenturyTel's ability to recover such costs would be comparable to Charter's ability, pursuant to Charter Fiberlink – Missouri, LLC Local Exchange Tariff P.S.C. MO. No. 1, Section 1.7.15, to recover its nonrecurring charges to re-establish a customer's service with the customer's authorized telecommunications carrier following an unauthorized change of that customer's local service.</p>

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					50.2 CenturyTel will bill <u>**CLEC fifty dollars (\$50.00) per affected line in lieu of any additional charge in order to compensate CenturyTel for switching the End User Customer back to the original LEC.</u>	
ART. V, INTERCONNECTION						
18.	Should Charter be entitled to interconnect with CenturyTel at a single point of interconnection (POI) within a LATA? <u>What terms and conditions that govern the Point of Interconnection (POI) and trunking arrangements should be included in the Interconnection Agreement?</u>	2.2.2, 3.3.2 & 2.3.2. 4.4	A Point of Interconnection (POI) is a point in the network where the Parties deliver Local Traffic to each other, and also serves as a demarcation point between the facilities that each Party is responsible to provide. **CLEC may interconnect at any single technically feasible point on the CenturyTel network within a LATA. The technically feasible point at which **CLEC elects to interconnect will be the established POI for such LATA.	Charter is entitled, under federal law, to establish a single point of interconnection (POI) per LATA with CenturyTel as the point at which it will exchange all traffic with CenturyTel in that LATA. The governing statutory standard on this issue is 47 U.S.C. § 251(c)(2). Interpreting this statute, current FCC rules permit Charter to insist on a single POI per LATA, if that is Charter's preference. As the FCC has explained, an ILEC "must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA." <i>In the Matter of Developing a Unified Intercarrier Compensation Regime</i> , Notice of Proposed Rulemaking, FCC 01-132 (released April 21, 2001) at ¶ 112 (footnote omitted). <i>See also</i> , 47 C.F.R. § 51.321; and <i>In the Matter</i>	2.2.2 A Point of Interconnection (POI) is a point in the network where the Parties deliver Local Traffic to each other, and also serves as a demarcation point between the facilities that each Party is responsible to provide. <u>Requirements for a Local POI are set forth in Section 3.3.2 of this Article. In some cases, multiple POI(s) may be necessary to provide the best technical implementation of Interconnection requirements to each End Office within a CenturyTel company's service area.</u> <p style="text-align: center;">* * * *</p> 3.3.2. <u>Direct Network Connection and Point of Interconnection (POI)</u> 3.3.2.1 <u>Unless the Parties</u>	Contrary to Charter's position, nothing within the Act precludes multiple Points of Interconnection ("POIs") or multiple trunk groups for the exchange of local traffic with a non-Bell Operating Company ILEC such as CenturyTel, particularly in those instances in which such requirements are triggered by traffic volumes and other issues that address the continuing need for quality service to the end users of each Party. CenturyTel's proposed language is reasonable and entirely appropriate because, among other reasons, it ensures that: (1) each party's network obligations to the POI are properly established so that quality of service does not suffer; (2) the reliance on a non-interconnection and otherwise inferior service – "transit" – is properly limited (also related to Issues 19, 21 and 22); and (3) the ever-evolving network and changing levels of traffic are accommodated properly within the network/operational obligations of the

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				<p><i>of Application by SBC Communications Inc. et al. to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238 at ¶ 78, n.174 (rel. June 30, 2000).</i></p> <p>Notably, these authorities establish that a competing carrier, like Charter, is entitled to establish a single POI per LATA, subject only to limits where such arrangement is not technically feasible. However, CenturyTel proposes to limit Charter's right to establish a single POI per LATA in several ways, none of which are supported by the statutory standard, and the FCC's orders. For this reason, CenturyTel's suggestion that the POI will be "negotiated" based upon criteria that include its network architecture, potential costs, future capacity needs, etc., is not consistent with federal law. Furthermore, CenturyTel's proposal is inconsistent with federal law in that it contemplates the establishment of a so-called "Local POI." Although the term is not well defined, CenturyTel's language suggests that Charter would be obligated to establish multiple POIs in each local exchange area in which it provides service, or exchanges traffic.</p>	<p><u>mutually agree otherwise, a Direct Network Connection and a POI shall be established upon occurrence of any of the triggers set forth in Section 3.3.2.4 of this Article.</u></p> <p><u>3.3.2.2 A Direct Network Connection shall be established by connecting **CLEC's network to CenturyTel's network at a technically feasible point on CenturyTel's network within the CenturyTel local exchange. The connection can be established in any of the manners described in Section 2 of this Article.</u></p> <p><u>3.3.2.3 The Direct Network Connection point established in Section 3.3.2.2 of this Article shall also be the POI. Each Party shall be responsible for establishing and maintaining all facilities on its side of the POI. Each Party is responsible for the appropriate sizing, operation, and maintenance of the transport facility to the POI.</u></p> <p><u>3.3.2.4 Unless the Parties agree otherwise, a Direct Network Connection and POI shall be established upon the occurrence of either of the following:</u></p>	<p>Parties. As such, adoption of CenturyTel's provisions is fully consistent with the requirements of the Act.</p> <p>With respect to the Act's requirements, Charter's reliance on Local Access and Transport Area ("LATA") concepts is misplaced since: (1) the concept of a "LATA" is based on the specific network arrangements of the Bell Operating Companies ("BOCs") at the time of the break-up of the former AT&T, not the networks of the smaller independent Local Exchange Carriers such as CenturyTel; and (2) a "LATA" designation is relevant only to the BOCs' line of business restrictions. Thus, Charter is not "entitled" to a single POI within the LATA. Moreover, Charter references 47 C.F.R. § 51.321 of the FCC rules as providing that purported right to Charter. Section 51.321 says nothing of the sort. Section 51.321 addresses the methods of obtaining interconnection and access to unbundled elements under Section 251 of the Act.</p> <p>Further, Charter's reliance on the following two FCC actions is misplaced: <i>In the Matter of Developing a Unified Inter-carrier Compensation Regime, Notice of Proposed Rulemaking</i>, CC Docket No. 01-92, FCC 01-132 (rel'd April 27, 2001)</p>

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				<p>Further, Charter should be required to establish a so-called "Local POI" where transiting charges exceed a <i>de minimis</i> threshold of charges. Each of these limitations are, again, inconsistent with the clear federal rule on this issue, which establishes Charter's right to establish a single POI per LATA.</p> <p>To the extent that this proposal requires greater use of transit traffic arrangements, such arrangements are clearly proper under existing law, and industry practices. Further, this Commission has ruled that transit is a section 251(c) obligation, and the applicable pricing standard is TELRIC. Therefore, there can be no question that CenturyTel must provide such transit functionality, indeed all transit functionality, at TELRIC rates. <i>See Petition of Socket Telecom, LLC for Compulsory Arbitration of Interconnection Agreements with CenturyTel of Missouri, LLC and Spectra Communications, LLC, pursuant to Section 251(b)(1) of the Telecommunications Act of 1996, Case No. TO-2006-0299, 2006 Mo. PSC LEXIS 1380, at * 47-8 (Mo. PSC 2006).</i></p>	<p><u>3.3.2.4.1**CLEC has begun serving End Users within a CenturyTel local exchange, or has assigned to any End User numbers that are rated to a Rate Center that is within the Local Calling Area of a CenturyTel exchange and the resulting Local Traffic that is to be exchanged between the Parties is equal to or greater than a DS-1 trunk equivalency as described in Section 3.3.2.5 of this Article.</u></p> <p><u>3.3.2.4.2Either Party is assessed transiting costs by a third party and such charges associated with a single traffic exchange route exceed \$200.00 for one month.</u></p> <p><u>3.3.2.5 A DS-1 trunk equivalency is deemed established in any the following instances:</u></p> <p><u>3.3.2.5.1Traffic studies of peak busy CCS indicate that the number of trunks necessary to achieve a .001 Grade of Service based upon application of the Erlang B table is equal to or exceeds twenty-four (24) for three (3) consecutive months, or for three (3) months of any consecutive five (5) month period.</u></p> <p><u>3.3.2.5.2Combined two-way</u></p>	<p>(<i>"Unified Carrier Compensation NPRM"</i>) at ¶ 112 and <i>In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications, Inc. d/b/a Southwestern Bell Long Distance, Pursuant to § 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, Memorandum Opinion and Order</i>, CC Docket No. 00-65, FCC 00-238 (rel'd June 30, 2000) (<i>"SWBT Texas 271 Order"</i>). Neither of these FCC actions supports Charter's position.</p> <p>In paragraph 112 of the <i>Unified Carrier Compensation NPRM</i>, the FCC references footnote 91 and accompanying text. Footnote 91, in turn, references Section 51.321 (which is not applicable as noted above) and the <i>SWBT Texas 271 Order</i>. Thus, Charter's reliance for its "single POI per LATA" concept relies upon a <i>single reference</i> within the <i>SWBT Texas 271 Order</i> and that single reference is to a specific section within an interconnection agreement between Southwestern Bell Telephone Company (which is a "BOC") and MCI Worldcom. (<i>SWBT Texas 271 Order</i>, fn. 174) A private, third party contract provision <i>cannot</i> bind CenturyTel. Moreover, no private contract provision</p>

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			2.3.2.4.4 Design Four: Upon mutual agreement of the Parties, both **CLEC and CenturyTel		<p><u>traffic between two single Switches of each Party reaches 200,000 combined minutes of use per month for two (2) consecutive months, or for any two (2) months in a consecutive three-month period.</u></p> <p><u>3.3.2.5.3 At any point where a traffic forecast prepared pursuant to requirements of Article III, Section 11 or Article V, Section 3.5 indicates that combined two-way traffic between two single Switches of each Party will exceed 200,000 minutes of use per month.</u></p> <p><u>3.3.2.5.4 In any instance where **CLEC has requested to port a number or numbers associated with an End User Customer and it is known that local trunks previously associated with that customer and those numbers equaled or exceeded 24. In any other instance where it can be shown that a customer that **CLEC is about to serve previously had 24 or more local trunks associated with the service that the customer will disconnect or has disconnected in migrating its service to **CLEC.</u></p> <p><u>3.3.2.5.5 In any instance where</u></p>	<p>can create a general regulatory rule. Independently, however, the same conclusion can be reached based on the fact that the “single POI per LATA” was first raised in the context of the BOCs and the restrictions imposed upon them under the Act. (47 U.S.C. § 271) CenturyTel is not a BOC and is not subject to Section 271 restrictions. Thus, for all of the foregoing reasons, the “single POI per LATA” cannot apply to CenturyTel.</p> <p>Charter erroneously suggests that it is “entitled to establish a single POI per LATA,” subject <i>only</i> to limit that such arrangement is not “technically feasible.” First, the “single POI per LATA” concept is not applicable to CenturyTel. Second, Charter’s suggestion that the only consideration is technical feasibility ignores the other requirements contained in Section 251(c)(2), notably Section 251(c)(2)(C). Section 251(c)(2)(C) obligates CenturyTel to provide interconnection that is not more “than equal to” that provided by CenturyTel to itself, affiliates, subsidiaries or other carriers. To impose anything above this “equal to” requirement upon CenturyTel (as Charter’s proposal would do) would create a “superior” form of interconnection for the benefit of Charter that has been rejected by the Courts. <i>Iowa Utilities Bd. v. F.C.C.</i>,</p>

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			may each provide two fibers between their respective locations. This design may only be considered where existing fibers are Currently Available and there is a mutual benefit to both Parties. ILEC will establish, deploy, maintain, and assume responsibility for the fibers associated with the "working" side of the system. **CLEC will establish, deploy, maintain, and assume responsibility for the fibers associated with the "protection" side of the system. The Parties will work cooperatively to terminate each other's fiber in order to provision this joint SONET ring, or point-to-point linear system. Both Parties will work cooperatively to determine the appropriate technical handoff for purposes of demarcation and fault isolation. For purposes of this fiber meet design option, the POI will be defined as located at the POI location established by the Parties pursuant to this Section 2 of Article V . Notwithstanding the Parties' decision to define the POI in the manner described above, the Parties agree that each Party will be solely responsible for all of the deployment and ongoing maintenance costs		<p><u>**CLEC is providing a Tandem function then **CLEC must direct connect to CenturyTel pursuant to the terms of this section. In such situations, **CLEC also shall record and provide billing records for that traffic transiting its Switch and terminating to CenturyTel.</u></p> <p><u>3.3.2.6 The Parties may mutually agree to establish a Direct Network Interconnection even where none of the conditions set forth in Section 3.3.2.4 of this Article has occurred.</u></p> <p>* * * *</p> <p>2.3.2.4.4 Design Four: Upon mutual agreement of the Parties, both **CLEC and CenturyTel may each provide two fibers between their respective locations. This design may only be considered where existing fibers are Currently Available and there is a mutual benefit to both Parties. ILEC will establish, deploy, maintain, and assume responsibility for the fibers associated with the "working" side of the system. **CLEC will establish, deploy, maintain, and assume responsibility for the</p>	<p>120 F.3d 753, 813 (8th Cir. 1997) ("<i>IUB I</i>"); <i>Iowa Utilities Board v. Federal Communications Commission</i>, 219 F.3d 744, 758 (8th Cir. 2000) ("<i>IUB II</i>") Even when FCC rules existed that would have required superior forms of interconnection from the incumbent, the requesting party would have nevertheless been responsible for the costs associated with fulfilling the extraordinary request. <i>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</i>, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499 (1996) ("<i>First Report and Order</i>") at 15615 (¶225).</p> <p>Should Charter's proposal be adopted, it would require CenturyTel to deploy new trunking and network arrangements that are different than those that CenturyTel provides today for its own local traffic or with other carriers. Obligating CenturyTel to make this deployment, in turn, would violate the directives arising from <i>IUB I</i> and <i>IUB II</i>. To be sure, there may be no single point in any of the Missouri LATAs where a CenturyTel company in this proceeding has facilities linking all of the CenturyTel ILEC's end offices in a</p>

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			associated with the fibers that it establishes and deploys under this design option.		fibers associated with the "protection" side of the system. The Parties will work cooperatively to terminate each other's fiber in order to provision this joint SONET ring, or point-to-point linear system. Both Parties will work cooperatively to determine the appropriate technical handoff for purposes of demarcation and fault isolation. For purposes of this fiber meet design option, the POI will be defined as located at <u>CenturyTel's switch location</u> Notwithstanding the Parties' decision to define the POI in the manner described above, the Parties agree that each Party will be solely responsible for all of the deployment and ongoing maintenance costs associated with the fibers that it establishes and deploys under this design option.	LATA. Such a single point could <i>only</i> be created if a CenturyTel company were to build or purchase new trunking routes. Finally, Charter improperly suggests that the Commission should direct the Parties to place a greater reliance on third party transit arrangements. Indefinite use of third party transit arrangements cannot be imposed upon CenturyTel because such transit services are not an interconnection requirement. <i>In the Matter of Petitions of WorldCom, Inc., Cox Virginia Telcom, Inc., and AT&T Communications of Virginia, Inc. Pursuant to § 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.</i> , CC Docket Nos. 00-218, 00-249, and 00-251, FCC 02-1731 (rel'd July 17, 2002) ("Verizon Decision"), ¶ 117 (With respect to transit arrangements that involve third party intermediary carriers, the FCC has not had "occasion to determine whether incumbent LECs have a duty to provide transit service under this [§ 251(c)(2)] provision of the statute, <i>nor do we find clear Commission precedent or rules declaring such a duty.</i> ") (emphasis added). Moreover, a greater use of transit arrangements would encourage

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						the Parties to rely on an inferior form of interconnection. Further, any obligation that would be imposed upon CenturyTel to use third party tandem transit services beyond that which CenturyTel has agreed would: (1) require CenturyTel to be responsible for the delivery of traffic beyond the POI (thus creating a violation of the Section 251(c)(2)(B) requirements); and (2) provide solely for the benefit of Charter and Charter's end users a "superior" transport and traffic delivery service that goes beyond that which is equal to that provided by CenturyTel to its end users or any other carrier (and thus a violation of Section 251(c)(2)(C) and <i>IUB I</i> and <i>IUB II</i>).
19.	Should Charter's right to utilize indirect interconnection as a means of exchanging traffic with CenturyTel be limited to only those instances where Charter is entering a new service area, or market? <u>Should the</u>	3.3	3.3.1.1 Either Party may deliver Local Traffic and ISP-bound Traffic indirectly to the other for termination through any carrier to which both Parties' networks are interconnected directly or indirectly. The Originating Party shall bear all charges payable to the transiting carrier(s) for such transit service with respect to Local Traffic and ISP-bound Traffic. 3.3.1.2 Unless otherwise agreed, the Parties shall exchange all	Charter has the right to avail itself of indirect interconnection pursuant to Section 251(a). There are no limitations on such right, and Charter should be entitled to utilize indirect interconnection as a means of exchanging EAS, and other traffic, with CenturyTel's network. To break down barriers to competition in the local phone market, the Act requires all carriers to "interconnect, directly or indirectly" with other carriers. See 47 U.S.C. § 251(a)(1). The FCC and the courts have both reaffirmed	<u>3.3.1.1 Indirect Network Connection is intended only for de minimis traffic associated with **CLEC "start-up" market entry into a CenturyTel local exchange. Therefore Indirect Network Interconnection will be allowed only on routes between CenturyTel end offices and a **CLEC switch in instances where, and only so long as, none of the triggers set forth in Section 3.3.2.4 of this Article have been reached.</u>	CenturyTel's proposed language properly limits utilization of an inferior form of interconnection – third party tandem transit arrangements -- to a DS1 level of traffic, <i>i.e.</i> , 200,000 minutes of use per month of traffic exchanged between the Parties. As an initial matter, Charter has previously agreed that the DS1 level equals 200,000 and not 240,000 minutes of use in its prior ICA and in the currently disputed rural ICA (Art. V, § 2.2.2(c)). While proposing proper limitations on the use of transit arrangements, CenturyTel is not demanding that Charter construct its own trunks to CenturyTel. Charter may

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	<u>Agreement between the Parties limit the voluntary utilization of third party transit arrangements to a DS1 level of traffic?</u>		<p>Local Traffic and ISP-bound Traffic indirectly through one or more transiting carriers until the total volume of Local Traffic and ISP-bound Traffic being exchanged between the Parties' networks exceeds 240,000 minutes per month for three (3) consecutive months, at which time either Party may request the establishment of Direct Interconnection. Notwithstanding the foregoing, if either Party is unable to arrange for or maintain transit service for its originated Local Traffic upon commercially reasonable terms before the volume of Local Traffic and ISP-bound Traffic being exchanged between the Parties' networks exceeds 240,000 minutes per month, that Party may unilaterally, and at its sole expense, utilize one-way trunk(s) for the delivery of its originated Local Traffic to the other Party.</p> <p>3.3.1.3 After the Parties have established Direct Interconnection between their networks, neither Party may continue to transmit its originated Local Traffic and ISP-bound Traffic indirectly</p>	<p>that a competing carrier has the right to choose to avail itself of either the right of indirect interconnection under Section 251(c), or the right of indirect interconnection under Section 251(a). Further, the use of direct interconnection in one instance does not preclude the use of indirect interconnection in another instance. <i>See Atlas Tel. v. Okla. Corp. Comm'n</i>, 400 F.3d 1256, 1268 (10th Cir. 2005).</p> <p>If Charter desires to exchange local traffic with CenturyTel from an existing point of interconnection, and the indirect traffic exchange threshold for the switch serving that POI has been satisfied, Charter may elect to establish a direct interconnection arrangement between such switch and CenturyTel's network or to interconnect its switch to another Charter switch in order to utilize an existing direct interconnection arrangement already established between Charter Fiberlink and CenturyTel.</p> <p>To the extent that this proposal requires greater use of transit traffic arrangements, such arrangements are clearly proper under existing law, and industry practices. Further, this Commission has ruled that</p>	<p><u>3.3.1.2 Indirect Network Connection shall be accomplished by CenturyTel and **CLEC each being responsible for delivering Local Traffic to and receiving Local Traffic at the Tandem Switch serving the CenturyTel end office. Each Party is responsible for the facilities to its side of the tandem. Each Party is responsible for the appropriate sizing, operation, and maintenance of the transport facility to the tandem.</u></p>	<p>still connect indirectly through <i>the use of other carriers' facilities</i> including the use of the facilities of the same former transit provider. Thus, the "direct interconnection" arrangement that Charter references is the use of trunks <i>dedicated</i> for the exchange of traffic between the Parties rather than existing trunks from the tandem provider that would otherwise be jurisdictionally mixed trunk groups (<i>i.e.</i>, potentially carrying both exchange access traffic (<i>i.e.</i>, toll traffic) and non-exchange access traffic (<i>e.g.</i>, EAS) of multiple carriers). Charter's use of the term "indirect interconnection" should not, therefore, be used to confuse the issue. Charter's use of the term "indirect interconnection" refers to <i>transit arrangements offered by third party tandem providers</i>.</p> <p>CenturyTel's proposed language is proper. CenturyTel's position reflects the real-world issue of when it makes sense for Charter and CenturyTel, from an operational perspective, to begin discussions to migrate a transit arrangement to a dedicated trunking arrangement. Such discussions and migration are necessary in order that continued reliability for the exchange of traffic is ensured and that network control is not compromised. Not only does Charter apparently want the Commission to turn a blind eye to this</p>

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			<p>except on an overflow basis to mitigate traffic blockage, equipment failure or emergency situations.</p> <p>3.3.1.4 Local Traffic and ISP-bound Traffic exchanged by the Parties indirectly through a transiting carrier shall be subject to the same Reciprocal Compensation, if any, as Local Traffic and ISP-bound Traffic exchanged through Direct Interconnection.</p>	<p>transit is a section 251(c) obligation, and the applicable pricing standard is TELRIC. Therefore, there can be no question that CenturyTel must provide such transit functionality, indeed all transit functionality, at TELRIC rates. <i>See Petition of Socket Telecom, LLC for Compulsory Arbitration of Interconnection Agreements with CenturyTel of Missouri, LLC and Spectra Communications, LLC, pursuant to Section 251(b)(1) of the Telecommunications Act of 1996, Case No. TO-2006-0299, 2006 Mo. PSC LEXIS 1380, at * 47-8 (Mo. PSC 2006).</i></p>	<p><u>3.3.1.3 The Parties agree to enter into their own agreements with third-party providers. In the event that **CLEC sends traffic through CenturyTel's network to a third-party provider with whom **CLEC does not have a traffic interexchange agreement, then **CLEC agrees to indemnify CenturyTel for any termination charges rendered by a third-party provider for such traffic.</u></p> <p><u>3.3.1.4 To the extent a Party combines Local Traffic and Jointly-Provided Switched Access Traffic on a single trunk group for indirect delivery through a tandem, the originating Party, at the terminating Party's request, will declare quarterly Percentages of Local Use (PLUs). Such PLUs will be verifiable with either call summary records utilizing Calling Party Number (CPN) information for jurisdictionalization of traffic or call detail samples. Call detail or direct jurisdictionalization using CPN information may be exchanged in lieu of PLU, if it is available. The terminating Party</u></p>	<p>practical, real world issue, but Charter does so in a manner contrary to any rational reading of the Act's requirements.</p> <p>Charter's position rests upon a fundamentally erroneous premise – that Section 251(a) establishes interconnection standards, <i>i.e.</i>, third party transit arrangements can be required of each Party to be used indefinitely. Charter's reliance on "transit" services is fatally flawed because, as the FCC has indicated, the use of transit services is not an interconnection requirement. <i>See Verizon Decision</i>, ¶ 117. Moreover, the FCC has left unanswered a variety of issues associated with the legal status of transit services. The FCC has also stated that transit arrangements were assumed to be applicable to situations "when carriers do not exchange significant amounts of traffic." <i>In the Matter of Developing a Unified Intercarrier Compensation Regime, Further Notice of Proposed Rulemaking</i>, CC Docket No. 01-92, FCC 05-33 (rel'd March 3, 2005) ("Unified Carrier Compensation FNPRM"), ¶ 126 (footnote omitted). Charter has not and cannot explain these fundamental flaws. If a service that is integral to Charter's theory (<i>i.e.</i>, transit) is not an interconnection requirement in the first place and</p>

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					<u>should apportion per minute of use (MOU) charges appropriately.</u>	<p>otherwise is assumed to be used for a limited volume of traffic, how can a transit arrangement be imposed upon CenturyTel, let alone indefinitely?</p> <p>In any event, Section 251(a) creates no standards. The Section 251(a) directive is a general duty which CenturyTel is already meeting – to interconnect directly or indirectly with other telecommunications carriers. Charter's position would turn Section 251(a)'s duty into a more onerous interconnection obligation upon CenturyTel than that required under Section 251(c)(2). Charter improperly attempts to turn this general duty equally applicable to each carrier into a unilateral right for Charter to demand how both carriers comply with the general duty. No such right exists. As the FCC has stated, the requirements Section 251 "create[s] a three-tiered hierarchy of escalating obligations based on the type of carrier involved." <i>In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation</i>, Memorandum Opinion and Order, File No. E-97-003, FCC 01-84, released March 13, 2001 ("Atlas Decision"), ¶ 25. Thus, Section 251(a) cannot be interpreted in a manner that is more onerous than Section 251(b) duties, and Section 251(a) and (b) duties cannot be</p>

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						<p>interpreted in a manner more onerous than Section 251(c). Nonetheless, that is the result of Charter's proposal.</p> <p>Charter wants to be able to require the Parties to utilize a third party transit arrangement indefinitely (or as Charter states, at its "elect[ion]"). The approach would require CenturyTel to have the financial responsibility to transport traffic beyond its network. That result is more onerous than the requirements of Section 251(c)(2)(B) and of Section 251(c)(2)(C) which requires CenturyTel to deliver traffic to a POI within its network and to be obligated to provide interconnection to Charter at no more than "equal to" that which CenturyTel provides to itself, respectively. And, as to this latter point, Charter's suggested resolution of Issue 19 would impose a "superior" form of interconnection upon CenturyTel that would run counter to the directives of <i>IUB I</i> and <i>IUB II</i>.</p> <p>Finally, Charter's reliance on <i>Atlas Telephone Company v. Oklahoma Corporation Commission</i>, 400 F.3d 1256 (10th Cir. 2005) (<i>Atlas</i>) is misplaced. The issue in <i>Atlas</i> was whether the obligation to enter into reciprocal compensation obligations under Section 251(b)(5) was altered based on whether the requesting carrier was directly or indirectly connected. The Court's discussion of Section</p>

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						251(a) and Section 251(c) rights were made as the preface to its statement that the "obligation to establish reciprocal compensation arrangements with the CMRS provider in the instant case is not impacted by the presence or absence of a direct connection." (<i>Atlas</i> , 400 F.3d at 1268) Such Section 251(b)(5) issues are not present in this proceeding.
20.	<p>Should Charter be entitled to lease interconnection facilities from CenturyTel at cost-based rates pursuant to Section 251(c)(2) of the Act?</p> <p><u>How long should the Agreement provide the Parties to negotiate cost-based rates for such facilities before they may seek Commission intervention?</u></p>	2.3.1	Where facilities exist, Charter may lease facilities from CenturyTel at cost-based rates pursuant to Section 251(c)(2). Upon the Effective Date of this Agreement, the Parties shall attempt to negotiate such cost-based rates for up to ninety (90) days. If the Parties cannot reach agreement with respect to such cost-based rates within 90 days of the Effective Date, either Party may seek to resolve the dispute by filing an action with the Commission to determine the appropriate rate pursuant to Section 251(c)(2) of the Act. If a party files such an action with the Commission, that action, including resolution of any permissible appeals thereto, shall be the sole mechanism for resolving the dispute. Until such time as the	The FCC has ruled that competitive carriers, like Charter, are entitled to lease those facilities used to interconnect two LEC networks for the exchange of traffic) at cost-based rates pursuant to Section 251(c)(2). The FCC reaffirmed this ruling in its Triennial Review Order. In that order the FCC explained that interconnection facilities must be provided to competitive carriers, when such facilities are used for interconnection purposes (but not when used as an unbundled network element, or UNE). <i>See In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers</i> , Triennial Review Order, Report and Order and Order on Remand and Further NPRM, 18 FCC Rcd 16978 at para. 366 (2003) (the "TRO").	Where facilities exist, Charter may lease facilities from CenturyTel. <u>Such facilities shall be provided pursuant to the CenturyTel Tariff identified in Section II, Article XI (Pricing), which currently governs Charter's leasing of such facilities pursuant to its prior interconnection agreement with CenturyTel. The rates set forth in such Tariff shall be deemed "interim rates." Upon the Effective Date of this Agreement, the Parties shall attempt to negotiate new rates for such facilities, which rates shall be cost-based pursuant to Section 251(c)(2) of the Act and shall replace the interim rates once agreed upon by the Parties. If the Parties cannot reach agreement with respect to such new rates within six (6) months of the Effective Date of this Agreement,</u>	<p>As an initial point, Charter's statement of the Issue and its position explanation are not consistent with the status of the negotiations. The Parties have agreed to develop mutually agreeable cost-based rates for the referenced Agreement section after the effective date of the Agreement. The issue to be resolved (as evidenced by Charter's proposed language and CenturyTel's latest proposal) is the amount of time to be afforded for the Parties to negotiate resolution, and the specific means later to resolve any dispute should the Parties not arrive at mutually agreeable rates.</p> <p>The disagreement between the Parties relates to when the Commission should be asked to resolve a dispute between the Parties regarding the pricing of direct connection facilities that Charter may lease from CenturyTel. Charter requests a thirty (30) day period for negotiations prior to seeking</p>

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			<p>Commission finally determines the appropriate rate pursuant to Section 251(c) (2), such facilities shall be provided pursuant to an “Interim Rate” as defined herein. For purposes of this Section 2.3.1, the Interim Rate will be established by applying the originated local traffic factor of fifty percent (50%), set forth in Article XI (Pricing), to the rate set forth in the section of the CenturyTel Tariff that is identified in Section II of Article XI (Pricing). After the Commission finally determines the appropriate cost-based rate pursuant to Section 251(c) (2), the rate for such facilities will be trued-up back to the Effective Date of this Agreement. Charter also may lease facilities from a third party, or may construct or otherwise self-provision facilities.</p>	<p>Charter's proposed language is consistent with the FCC's decision in this regard because Charter is proposing that the interconnection facilities deployed under this section be used for the purposes of interconnection, <i>not</i> as an UNE. Therefore, Charter is entitled to obtain such facilities at cost-based rates pursuant to Section 251(c)(2). The Seventh Circuit recently affirmed this principle in its review of an interconnection arbitration decision requiring the incumbent LEC, SBC, to provide interconnection facilities to a competitive LEC at cost-based rates pursuant to Section 251(c)(2). <i>See Illinois Bell v. Box</i>, Nos. 07-3557, 07-3683 (slip op.) (7th Cir. May 23, 2008). <i>See also Southwestern Bell Telephone, L.P. v. Missouri Public Service Comm'n</i>, 530 F.3d 676, 684 (8th Cir. 2008) (finding that “CLECs must be provided access to entrance facilities at TELRIC rates”).</p> <p>The Parties clearly disagree as to the scope of unresolved issues. To the extent that CenturyTel agrees with the principles and authorities cited above in Charter's position statement, then Charter agrees that the scope of the issue may be narrowed. Assuming that CenturyTel no longer disputes its</p>	<p><u>either Party may seek to resolve the dispute pursuant to the formal dispute resolution procedures set forth in Article III, Section 20.</u> Charter also may lease facilities from a third party, or may construct or otherwise self-provision facilities.</p>	<p>Commission intervention. CenturyTel seeks six (6) months for such negotiations. (As an aside, the <i>TRRO</i> was addressing “entrance facilities” which are the same as direct interconnection facilities – “dedicated transmission facilities that connect ILEC and CLEC locations.” (<i>United States Telecom Ass’n v. FCC</i>, 359 F.3d 544, 589 (D.C. Cir. 2004)).</p> <p>The need for the full 6-month period will permit the Parties an appropriate amount of time to try to amicably resolve any pricing issue. In that discussion, and based on Charter's reference to <i>Illinois Bell Telephone Company v. Charles Box et al.</i>, Nos. 07-3557 and 07-3683 (<i>slip opinion</i>) (7th Cir. May 23, 2008) (“<i>Illinois Bell</i>”), one of the subjects of discussion will be the determination of the standard referenced by the FCC in paragraph 140 of <i>In the Matter of Unbundled Access to Network Elements, Order on Remand</i>, WC Docket No. 04-313, FCC 04-290, 20 FCC Rcd 2533 (2005) with respect to what is “cost-based.” Because, as the <i>Illinois Bell</i> Court noted, “[w]hat the FCC said in ¶140 is that ILECs must allow use of entrance facilities for interconnection at ‘cost-based rates.’ TELRIC is a cost-based rate, <i>though not the only one.</i>”) (emphasis added).</p> <p>With respect to timing, CenturyTel</p>

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				<p>obligation to provide access to these facilities under Section 251(c)(2), then the immediate questions for resolution are: (1) what time period should apply for the establishment of a new rate?; (2) how should the interim rate be established?; and, (3) what pricing standard should apply to the rates.</p> <p>With respect to the last question, the Eighth Circuit has recently construed the FCC's decisions as requiring incumbent LECs, like CenturyTel, to provide access to entrance facilities, and that the applicable pricing standard is TELRIC. <i>See also Southwestern Bell Telephone, L.P. v. Missouri Public Service Comm'n</i>, 530 F.3d 676, 684 (8th Cir. 2008) (finding that "CLECs must be provided access to entrance facilities at TELRIC rates"). Therefore, this is now a settled question of law in the Eighth Circuit.</p> <p>With respect to the second question, "what interim rates should be used?", Charter has proposed a specific, and precise, formula for establishing rates that will apply during the negotiations period. This formula is intended to fairly compensate CenturyTel for facilities it provides, while at the same time</p>		<p>believes that six (6) months is a reasonable time to permit the Parties to meet and exchange proposals in an effort to agree on rates. This 6-month period will afford the Parties the time to engage in the necessary good-faith "gives and takes" with respect to negotiating rate issues. Moreover, in light of CenturyTel's willingness to agree to Charter's proposed "true-up", the only issue with respect to providing the additional time is the potential level of a payment being required of one of the Parties at the time the rate is either approved by the Commission (arising from the Parties' agreement) or the establishment by the Commission of the rate (where the Parties disagree on the rate). Given that fact, providing additional time for good faith negotiations is entirely reasonable and does not prejudice either Party's rights.</p>

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				<p>not requiring Charter to pay more than is reasonably required (and consistent with a TELRIC standard for such facilities).</p> <p>Finally, with respect to the first question, "what time period should apply for the establishment of a new rate?" Charter notes that CenturyTel has inaccurately stated Charter's position concerning the time period to negotiate and implement new rates. Charter has proposed a period of three months (or 90 days) to negotiate such rates. That period represents a reasonable period of time for the parties to complete the work necessary to implement new TELRIC-based rates.</p>		
21.	Should Charter be allowed to deploy one-way trunks at its discretion; and without having to assume the entire cost of interconnection facilities used to carry traffic between the Parties' respective networks?	3.2.3	Notwithstanding 3.2 above, the Parties recognize that certain technical and billing issues may necessitate the use of one-way trunking for an interim period. Either Party may provision its own one-way trunks. Notwithstanding any other provision of this Article V, (including those provisions which establish that each Party is individually responsible to provide facilities to the POI), where one-way trunks are deployed then each Party is	Charter should be allowed to establish one-way trunks, at its discretion, for the purpose of delivering its traffic to CenturyTel's network. FCC regulations, 47 C.F.R. § 51.305(f), establishes that one-way trunks are available by default, to the competitive LEC. Specifically, the regulation requires that incumbent LECs provide two-way trunking, upon request. For that reason, it is clear that federal law establishes that one-way trunks are available by default. Or, put differently, the competitive LEC	Notwithstanding 3.2 above, the Parties recognize that certain technical and billing issues may necessitate the use of one-way trunking for an interim period. Either Party may provision its own one-way trunks. <u>Regardless of whether one-way or two-way facilities are provisioned</u> each Party is individually responsible to provide facilities to the POI. The Parties will <u>negotiate</u> the appropriate trunk configuration, whether one-way or two-way giving consideration to relevant	<u>Issue 21(a):</u> To the extent that the Parties are exchanging defined local traffic between their respective end users, there is no sound reason why the Parties would not want to deploy two-way trunks which are more efficient than one-way trunks. To the extent that there may be extraordinary circumstances where the Parties mutually agree that one-way trunks may be preferable to two-way trunks, one-way trunks may then be used. However, and most importantly, it

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	<p><u>There are two separate issues presented in Issue 21.</u></p> <p><u>(a) Under what terms and conditions should one-way trunks be used for the exchange of traffic within the scope of this Agreement?</u></p> <p><u>(b) Regardless of whether one-way or two-way trunks are deployed, where should Points of Interconnection (POIs) be located and what are each party's responsibilities with respect to facilities to reach the POI?</u></p>		<p>responsible for establishing any necessary interconnection facilities, over which such one-way trunks will be deployed to the other Party's switch. Subject to the terms herein, each Party is individually responsible to provide facilities to the POI. The Parties will implement the appropriate trunk configuration, whether one-way or two-way giving consideration to relevant factors, including but not limited to, existing network configuration, administrative ease, any billing system and/or technical limitations and network efficiency. Any disagreement regarding appropriate trunk configuration shall be subject to the dispute resolution process in Section 20 of Article III.</p>	<p>may deploy one-way trunks at its discretion. <i>See also In the Matter of 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,</i> Memorandum Opinion and Order, 17 FCC Rcd 27039 at para. 147 (2002). <i>See also US West v. MFS Intelenet</i>, 193 F.3d 1112, 1124-25 (9th Cir. 1999).</p>	<p>factors, including but not limited to, existing network configuration, administrative ease, any billing system and/or technical limitations and network efficiency. Any disagreement regarding appropriate trunk configuration shall be subject to the dispute resolution process in Section 20 of Article III.</p>	<p>appears that the only reason that Charter is arguing for less efficient one-way trunks is in an attempt to apply terms and conditions that would impose interconnection requirements and extraordinary costs on CenturyTel (as discussed in Issue 21(b)) beyond those that actually apply under the controlling interconnection requirements.</p> <p><u>Issue 21(b):</u></p> <p>Charter's proposed language is vague and confusing, and it is not clear what Charter proposes. In any event, the Act and the FCC's rules require that exchange of traffic take place at a Point of Interconnection ("POI") established within the incumbent network of CenturyTel and require only that each Party bring its facilities to its side of the POI. To the extent that Charter's "one-way trunk" proposal is intended to foist transport obligations on CenturyTel beyond those that are required by the Act and the FCC rules implementing those requirements, Charter's proposal must be rejected.</p> <p>Moreover, to the extent that Charter's proposal may also be an improper attempt to obtain a "superior" form of interconnection from CenturyTel for Charter's sole benefit, it must also be rejected. No requirement exists for CenturyTel to fulfill a request by</p>

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						<p>Charter for the provision of a superior form of interconnection.</p> <p>Section 251(c)(2)(C) of the Act requires that the interconnection provided by an incumbent LEC be no more than “at least equal in quality to that provided by the [incumbent LEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.” The form of interconnection that Charter seeks, based on its apparent one-way trunk and contract proposal, appears to be an attempt by Charter to obtain interconnection that goes beyond that standard. Charter’s language could be interpreted as requiring CenturyTel to provide a one-way trunk beyond the POI to the Charter switch if Charter elects one-way trunking.</p> <p>CenturyTel has no such obligation. CenturyTel’s facility and traffic responsibility is solely with respect to <i>its side of the POI</i> and with respect to interconnection within its incumbent service area. Nonetheless, if CenturyTel was directed by the Commission to comply with Charter’s language, CenturyTel could be held to be responsible for facilities, delivery of traffic, and a transport service beyond CenturyTel’s ILEC network for the sole benefit of Charter and its end users. That obligation would be far beyond</p>

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						that provided by CenturyTel today to CenturyTel end users. Accordingly, if this reading of Charter's proposal is correct, Charter's proposal must be rejected.
22.	<p>What threshold test should be used to determine when the Parties will establish direct end office trunks?</p> <p><u>Should the Parties utilize reasonable projections of traffic volumes in addition to actual traffic measurement in their determination of whether the threshold has been reached for purposes of establishing dedicated end office trunks versus after-the-fact traffic measurement solely for such</u></p>	3.4.2.1.1	<p>The Parties shall establish a direct End Office primary high usage Local Interconnection Trunk Groups for the exchange of Local Traffic, where actual traffic volume reaches twenty four (24) or more trunks, for three consecutive months.</p>	<p>The threshold test for determining when the Parties will establish direct end office trunks must be based on actual traffic volumes, rather than simply potential, or speculative, volumes of traffic that may exist in the future. Charter's proposal ties the threshold test to the concept of actual, rather than potential, traffic. Further, Charter's proposed language includes a consecutive three month to ensure that such traffic volume is sustained, and truly representative of consistent traffic flows, rather than simply a single month of high-volume traffic, which would represent an anomaly.</p>	<p><u>As described in 3.3.1.1, the Parties have established</u> a direct End Office primary high usage Local Interconnection Trunk Groups for the exchange of Local Traffic, where actual <u>or projected</u> traffic <u>demand is or will be</u> twenty four (24) or more trunks, <u>as described in Section 3.3.2.5 of this Article.</u></p>	<p>The Parties are not in dispute about the level of traffic under which dedicated end office trunks would be established for the exchange of traffic that is within the scope of the Agreement. Charter's position is that only <i>actual</i> traffic volumes should be relied upon as the trigger to establish dedicated trunks, and that reasonable projections of traffic volumes should be disregarded. Charter's position undermines the purpose of the provision.</p> <p>The purpose of including reasonable forecasts of anticipated traffic volumes (together with actual ongoing measurement) is for the Parties to move to dedicated end office trunks in time to avoid overburdening common trunking facilities. Rather than create a standard by which end user service quality standard and network degradation issues can be avoided, which is advanced under CenturyTel's language, Charter wants to address such issues <i>after the problem arises</i>. Charter's position is contrary to service quality standards and the public interest and should be rejected.</p>

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	<u>determination?</u>					
23.	<p>Should Charter pay CenturyTel a tariffed access charge for transiting traffic where CenturyTel end office switches perform a transit functionality for unqueried calls that have been ported to another carrier?</p> <p><u>There are two separate issues presented in Issue 23:</u></p> <p><u>(a): Where Charter is the N-1 carrier for calls to ported numbers of third party carriers, should Charter be responsible for data base queries and the proper routing of its calls to third party carriers?</u></p>	4.6.5	<p>When CenturyTel receives an unqueried call from **CLEC to a telephone number that has been ported to another local service provider, CenturyTel will complete such calls to the new local service provider and Charter shall pay CenturyTel the applicable transit rate(s) and NP query charge set forth in Article XI (Pricing).</p>	<p>Where CenturyTel routes an unqueried call on Charter's behalf, it should be compensated for such transit service at an appropriate cost-based rate listed in this agreement. However, the Parties should use a reasonable proxy rate for the transit, or transit-like functions, in these circumstances. Charter proposes that the Parties utilize the specific rate of \$.005 per MOU, previously negotiated, and implemented, in other pending agreements between the Parties.</p> <p>With respect to CenturyTel's proposed statement of disputed issues, Charter does not agree that this issue raises two separate questions.</p> <p>As to CenturyTel's statement of issue 23(a), Charter does not dispute that it is required to perform its N-1 query and routing obligations for calls to ported numbers of third party carriers. Charter does perform such query and routing functions, and has never disavowed its obligation to do so. The language in the agreement reflects the common industry practice of addressing the possibility that Charter may, for</p>	<p>When CenturyTel receives an unqueried call from **CLEC to a telephone number that has been ported to another local service provider, Charter shall pay CenturyTel the applicable transit rate and NP query charge set forth in Article XI (Pricing).</p> <p><i>[Article XI Pricing excerpt]:</i> B. Transiting Charges:</p> <p>Tandem Switching per MOU: \$.0016835</p> <p>Tandem Transport Termination per MOU \$.0000663</p> <p>Tandem Transport Facility Mileage per MOU per Mile \$.0000017</p>	<p>As a preliminary point, this issue arises primarily in the instances where Charter fails to perform its "N-1 carrier" obligations for a call to a telephone number that was originally assigned to CenturyTel but has now been ported to a third party carrier or, when CenturyTel is providing a tandem-like function, calls to other carriers' numbers. In these instances, the call delivered to CenturyTel for termination cannot be completed through normal network architecture because the routing of calls to the ported numbers is not intended to take place via the particular end office of CenturyTel to which Charter directs these calls. Although not specifically obligated to do so on Charter's behalf, CenturyTel has, in the public interest, taken extraordinary measures to complete these improperly routed calls. The extraordinary measures include unique switching and trunking over facilities for which the network architecture of certain end offices was not designed.</p> <p>Issue 23(a):</p> <p>Yes. Charter should be required to perform its N-1 obligations for calls to ported numbers of third party carriers. If Charter performed its responsibilities</p>

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	(b): For calls that Charter fails to fulfill its N-1 carrier obligations and are routed improperly to a CenturyTel end office, what should Charter be required to pay to CenturyTel for the completion of such calls to third parties?			<p>technical or operational reasons not be able to perform those functions in certain limited circumstances. In such circumstances, CenturyTel will perform the query and routing functions, as both parties have already agreed.</p> <p>Accordingly, the actual dispute centers around what rate should apply when CenturyTel performs the routing functions, and delivers traffic to another provider. In that circumstance CenturyTel acts as a transit provider. The rate for performing that transit function should be the same rate for performing all transit functions under the agreement. Because this Commission has ruled that transit is a section 251(c) obligation, and the applicable pricing standard is TELRIC, CenturyTel must provide such transit functionality, indeed all transit functionality, at TELRIC rates. <i>See Petition of Socket Telecom, LLC for Compulsory Arbitration of Interconnection Agreements with CenturyTel of Missouri, LLC and Spectra Communications, LLC, pursuant to Section 251(b)(1) of the Telecommunications Act of 1996, Case No. TO-2006-0299, 2006 Mo. PSC LEXIS 1380, at * 47-8 (Mo. PSC 2006). Alternatively, Charter</i></p>		<p>properly, this issue would not exist.</p> <p>Issue 23(b):</p> <p>Where Charter fails to perform its N-1 carrier obligation and improperly routes calls to CenturyTel end offices, Charter should pay to CenturyTel the NP Dip Charge for performing the N-1 query function and must compensate CenturyTel for the extraordinary transit functions performed by CenturyTel. For the transit functions, Charter should pay the intrastate switched access rate elements related to the functions of transit (<i>i.e.</i>, Tandem Switching, Tandem Switching Facility, and Transport Switched Termination) as set forth in the pricing attachment to the proposed Agreement. No one should be permitted to obtain “free service.”</p> <p>Moreover, the scope of the issue is narrow. Charter has not disputed the transit charge for calls for which no query is required of CenturyTel. <i>See</i> Section 4.6.4.4.1 of the Interconnection Attachment to the proposed agreement and the pricing attachment. Charter also has not disputed the specific charge for queries (the “NP dip charge” as set forth in Section 4.6.5 and the pricing attachment). Thus, the only apparent issue is whether Charter should pay these charges for queries and transit functions for improperly routed calls</p>

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				has proposed a compromise rate of \$.005 per MOU, a rate which the Parties have previously negotiated for another agreement.		<p>where Charter fails to perform its N-1 obligations.</p> <p>Charter's position is not clear. It appears that Charter may simply want the sub-rate elements proposed by CenturyTel for the transit and query functions related to these improperly routed calls to be combined into a single charge that is much less than the total of the charge elements. Charter should not be rewarded by affording it reduced compensation responsibilities when it is Charter that fails to fulfill its own obligations to route this traffic properly.</p> <p>Regardless of the lack of clarity with respect to Charter's position, Charter has cited to no legal obligation under the Act requiring CenturyTel to provide this form of transiting when Charter does not perform its N-1 obligations and routes traffic incorrectly, much less to do so at rates dictated or proposed by Charter (such as its proposed \$.005 per call rate). CenturyTel's already established intrastate rates are the available rates under which CenturyTel provides the transit functions at issue here for intrastate calls. These are the lawful rates for the functions that CenturyTel would perform for Charter and they are appropriate for application to Charter.</p>

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						Charter also appears to assert that the transit rate should be \$0.005 per minute. Charter provides no support for this contention, and CenturyTel disagrees with that rate. CenturyTel states that it has no legal obligation under the 1996 Act to provide transiting much less do so at Charter's unsupported proposed rates. CenturyTel will, however, provide to Charter transit services as agreed to by the Parties at CenturyTel's applicable intrastate access rates. Further, because the agreed-to transiting provisions included in CenturyTel's transiting proposal are commercial terms and conditions for voluntary services offered by CenturyTel, the intrastate access rates proposed are entirely reasonable.
ART. VI, UNBUNDLED NETWORK ELEMENTS						
24.	Should Charter have access to the customer side of the Network Interface Device ("NID") without having to compensate CenturyTel for such access? <u>CenturyTel believes that there are two issues presented in</u>	3.3, 3.4, 3.5, and 3.5.1	3.3 Subject to the provisions of this Section 3.0 and its subsections, CenturyTel shall provide access to the NID under the following terms and conditions. Rates and charges applicable to NIDs are set forth in Article XI (Pricing), and such rates and charges shall apply.	The question of who owns and maintains control over Inside Wiring is a question of federal and state law, to which the Parties can not simply contract around. CenturyTel's language suggests that CenturyTel may in fact own and maintain control over Insider Wire within certain buildings, which is contrary to applicable law.	3.3 Subject to the provisions of this Section 3.0 and its subsections, CenturyTel shall provide access to the NID under the following terms and conditions. Rates and charges applicable to NIDs are set forth in Article XI (Pricing), and such rates and charges shall apply <u>to any Charter use of the CenturyTel NID. Charter's use of the NID is defined as any circumstance where a Charter provided wire is connected to End User Customer's Inside</u>	Aspects of this issue relate directly to Issue 2. Thus, Issue 2 and Issue 24 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel. <u>Issue 24(a):</u> The End User maintains control over Inside Wire, "[e]xcept in those multi-unit tenant properties where CenturyTel owns and maintains control over Inside Wire within a building." Charter objects to the quoted language above arguing that it is inconsistent with

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	<p><u>this issue:</u></p> <p>(a) <u>Should Article IX, Section 3.4 clarify that the End User controls Inside Wire except in those multi-tenant properties where CenturyTel owns and maintains such Inside Wire?</u></p> <p>(b) <u>Is Charter required to submit an order to and pay CenturyTel for accessing CenturyTel's NID when Charter connects its loop to the End User's Inside Wiring through the customer access side of the CenturyTel NID?</u></p>		<p>3.4 Maintenance and control of the End User Customer's inside wiring (<i>i.e., on the End User Customer's side of the NID</i>) is under the control of the End User Customer. Conflicts between telephone service providers for access to the End User's inside wire on the End User's side of the NID must be resolved by the End User.</p> <p>3.5 Charter may access the NID on CenturyTel's network side or the End User Customer's side on a stand-alone basis to permit Charter to connect its own loop facilities to the premises wiring at any customer location. Any repairs, upgrade and/or rearrangements to the NID requested or required by Charter will be performed by CenturyTel based on the Time and Material Charges set out in Article XI (Pricing). CenturyTel, at the request of Charter, will disconnect the CenturyTel Local Loop from the NID, at charges reflected in Article XI (Pricing). Charter may elect to disconnect CenturyTel's Local Loop from the NID on the customer's side of the NID, but Charter shall not perform any disconnect on the network side of the NID. Under no circumstances, however, shall</p>	<p>Charter should be allowed to access the customer side of the NID, for the purpose of connecting its own loop facilities to the customer's inside wire. Such access does not constitute the use of the NID as an unbundled network element, and does not create any obligation for Charter to pay CenturyTel.</p>	<p><u>Wiring in any manner and such connection is housed within housed within any portion of the NID.</u></p> <p>3.4 <u>Except in those multi-unit tenant properties where CenturyTel owns and maintains control over inside wire within a building, maintenance and control of the End User Customer's Inside Wiring is under the control of the End User Customer.</u> Conflicts between telephone service providers for access to the End User's Inside Wire must be resolved by the End User.</p> <p>3.5 Charter may access the NID on CenturyTel's network side or the End User Customer's <u>access</u> side on a stand-alone basis to permit Charter to connect its own loop facilities to the premises wiring at any customer location. <u>Charter may not access the NID except in accordance with these terms.</u> Any repairs, upgrade and/or rearrangements to the NID requested or required by Charter will be performed by CenturyTel based on the Time and Material Charges set out in Article XI (Pricing). CenturyTel, at the</p>	<p>applicable law.</p> <p>CenturyTel's language is not inconsistent with applicable law. CenturyTel's language is fully consistent with the underlying principle reflected in the FCC rules that contemplate instances in multi-unit properties where ILEC owns Inside Wire. See 47 C.F.R. §51.319(b)(2).</p> <p><u>Issue 24(b):</u></p> <p>In its position statement, Charter asserts that it should be permitted "to access" CenturyTel's NID for the purpose of connecting its own loop facilities to the customer's inside wire. This is apparently what Charter means in its proposed Section 3.5.1 when it "is connecting a Charter provided loop to the Inside Wiring of a customer's premises <i>through the customer side of the CenturyTel NID.</i>" This language is at best vague, but is clarified by Charter's position statement.</p> <p>By its position statement, Charter claims a right to place its loop facilities within CenturyTel's NID, by either connecting to the customer's Inside Wire inside the customer access side of CenturyTel's NID, or running its loop facility through the customer access side of CenturyTel's NID to connect with the customer's Inside Wire. In</p>

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			<p>Charter connect to either side of the NID unless the CenturyTel network is first disconnected from the NID as set forth in this Article.</p> <p>3.5.1 Notwithstanding any other provision of this Agreement, when Charter is connecting a Charter provided loop to the inside wiring of a customer's premises through the customer side of the CenturyTel NID, Charter does not need to submit a request to CenturyTel and CenturyTel shall not charge Charter for access to the CenturyTel NID.</p>		<p>request of Charter, will disconnect the CenturyTel Local Loop from the NID, at charges reflected in Article XI (Pricing). Charter may elect to disconnect CenturyTel's Local Loop from the NID on the End User Customer's <u>access</u> side of the NID, but Charter shall not perform any disconnect on the network side of the NID. Under no circumstances, however, shall Charter connect to <u>use</u> either side of the NID unless the CenturyTel network is first disconnected from the NID as set forth in this Article.</p> <p><u>3.5.1 Notwithstanding any other provision of this Agreement, when Charter is connecting a Charter provided loop to the End User Customer's Inside Wiring at the Charter provided interface device (i.e. terminal equipment) without also connecting within the End User Customer access side of the CenturyTel NID, Charter does not need to submit a request to CenturyTel and CenturyTel shall not charge Charter for access to the CenturyTel NID, unless any</u></p>	<p>either case, Charter would place its loop facilities inside of CenturyTel's NID.</p> <p>Charter contends that housing all or part of its connection with the customer within the NID "does not constitute the use of the NID as an unbundled network element, and does not create any obligation for Charter to pay CenturyTel." Charter's position defies common sense. Charter's placement of its facilities inside CenturyTel's NID constitutes use of the NID, just as CenturyTel uses the NID when it connects its loop facilities to the End User Customer's Inside Wire.</p> <p>Section 3.5 provides that "Charter may access the NID on CenturyTel's network side or the End User Customer's access side on a stand-alone basis to permit Charter to connect its own loop facilities to the premises wiring at any customer location." CenturyTel agrees that the Parties have agreed that Charter may elect to disconnect CenturyTel's loop on the customer access side of NID, and there is no charge associated with the access provided to perform this activity except if Charter houses any portion of its connection with the customer's Inside Wire within the NID.</p> <p>Where Charter elects to place its loop</p>

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					<p><u>portion of such connection, including but not limited to the End User Customer's Inside Wire or the Charter provided loop, is housed within any portion of the NID. If any portion of such connection is housed within any portion of the NID, NID use charges shall apply. Removing the End User Customer's Inside Wire from the protector lugs and leaving the capped off customer wire within the NID is the only situation not considered use of the NID.</u></p>	<p>facilities in CenturyTel's NID, it must compensate CenturyTel for the use. Charter has no right to use CenturyTel's NIDs without compensation. Charter conceded in the Wisconsin arbitration (as referenced by CenturyTel in Issue 2) that the NID is owned in its entirety by CenturyTel. While CenturyTel's retail tariff provides CenturyTel customers with a right to access the side of the NID where the customer's Inside Wire connects to CenturyTel facilities (the customer's "access side" of the NID), this right is neither unfettered nor free. The customer's access is restricted by the retail tariff rules designed to protect the NID and CenturyTel's system – and the customer pays for the NID through CenturyTel's regulated rates.</p> <p>When the customer ceases to be a customer of CenturyTel, the customer loses the right of access to CenturyTel's NID. CenturyTel has agreed that Charter may access CenturyTel's NID to disconnect the customer's Inside Wire, but if Charter wants access for the purpose of placing any of its (or the customer's) plant inside the NID, Charter must compensate CenturyTel for the use of the NID.</p> <p>This issue was fully litigated in a recent AAA arbitration proceeding concerning CenturyTel's Wisconsin properties, and</p>

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						CenturyTel prevailed. The arbitrator's ruling could not be clearer: "In the end, the location of the demarcation point simply does not matter. No matter where that point is, a CLEC does not have the right to use an ILEC's network facilities without compensation. An ILEC customer has access to remove its wire from the ILEC's NID and become a CLEC's customer. After that, neither the customer nor the CLEC have the right to use the ILEC's NID, much less to house the CLEC's interconnection with the customer, unless the CLEC purchases the NID as a UNE." Findings, Conclusions and Award of Arbitrator at p.8, <i>CenturyTel, Inc. v. Charter Fiberlink, LLC</i> , AAA Case No. 51 494 Y 00524-07 (Aug. 24, 2007).
ART. IX, ADDITIONAL SERVICES						
25.	How should the Parties define certain extraordinary and unique port requests which may require a unique process known as "project management"?	1.2.2.3	For purposes of this Article, the Donor Party may request to use a project management approach for the implementation of LSRs for large quantities of numbers ported from a single End User location. For purposes of this provision, "large quantities" shall mean one hundred (100) or more numbers. The Donor Party also may request to use a project management approach for the implementation of LSRs for complex ports, which shall be defined as those ports that	The Parties should define any unique number port requests which would require special processes known as a "project management" approach as those involving the transfer of one hundred or more numbers from any single end user location. It is appropriate to define such processes in this way because that presents the appropriate threshold by which either Party should be excused from its established number porting operational obligations under this	1.2.2.3 For purposes of this Article, the Donor Party may request to use a project management approach for the implementation of LSRs for large quantities of numbers ported from a single End User location. For purposes of this provision, "large quantities" shall mean <u>fifty (50)</u> or more numbers. The Donor Party also may request to use a project management approach for the implementation of LSRs for complex ports, which shall be	This issue arises when Charter makes a request for a large number of porting requests that relate to a single End User location. Charter requests that "large quantities" be defined as "100 or more numbers." CenturyTel requests that this level is "50 or more numbers." Where the specified volume of requests is triggered, the Parties have agreed to use a "project management" approach where the standard processing time intervals would not apply to such LSRs (currently four (4) days) Rather, the

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			include complex switch translations (<i>e.g.</i> , Centrex, ISDN, AIN services, remote call forwarding, or multiple services on the loop). Under such managed projects (“projects”), the Parties may negotiate implementation details including, but not limited to: due dates, cutover intervals and times, coordination of technical resources, and completion notice.	Agreement, and applicable law.	defined as those ports that include complex switch translations (<i>e.g.</i> , Centrex, ISDN, AIN services, remote call forwarding, or multiple services on the loop). Under such managed projects (“projects”), the Parties may negotiate implementation details including, but not limited to: due dates, cutover intervals and times, coordination of technical resources, and completion notice.	processing interval would be negotiated. The Commission should adopt CenturyTel's position. CenturyTel's personnel cannot process more than 50 number ports during the standard interval. The difficulty of processing 50 or more ports is increased if the ported numbers are not sequential. Thus, any request to port 50 or more numbers from a single End User location should be the trigger for when the Parties institute “project management” requirements, <i>i.e.</i> , subject to negotiated intervals.
26.	<p>Should the Parties agree to complete number port requests pursuant to the intervals and confirmation periods (“FOCs”) required by applicable law?</p> <p><u>Should the Agreement set forth the specific interval applicable to port requests using an LSR and the specific time</u></p>	<p>1.2.2.1, 1.2.2.2</p>	<p>1.2.2.1 The LSR will have a requested due date that is not less than the standard interval that is required by Applicable Law.</p> <p>1.2.2.2 Both Parties agree to provide a Firm Order Confirmation (FOC) to the Recipient Party within the time frame required by Applicable Law.</p>	<p>Where the Parties intend to include specific contract language concerning the specific technical and operational requirements associated with porting a number, such requirements should be guided by binding FCC precedent, which is covered under “Applicable Law” (as defined in the Agreement). Rather than refer to specific timeframes in such proposals, the Parties are better served by simply referring to Applicable Law because the FCC has recently announced its intent to modify certain rules associated with operational requirements of number porting. Specifically, in October of 2007 the FCC issued a notice of</p>	<p>1.2.2.1 The LSR will have a requested due date that is not less than the standard interval <u>of four (4) Business Days.</u></p> <p>1.2.2.2 Both Parties agree to provide a Firm Order Confirmation (FOC) to the Recipient Party within <u>24 hours from the time a LSR is received.</u></p>	<p>This issue relates directly to Issue 10, and therefore Issue 10 and Issue 26 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel.</p> <p>As a matter of clarification, Charter's DPL correctly identifies CenturyTel's proposed language in Section 1.2.2.2 (“24 hours from the time a LSR is received”). Charter's position statement, however, incorrectly asserts that CenturyTel's proposal is to return Firm Order Confirmations (“FOCs”) in 48 hours. “CenturyTel's Language” column in Issue 26 accurately represents CenturyTel's position.</p>

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	<u>deadline for returning a Firm Order Confirmation (FOC) associated with such LSR?</u>			<p>proposed rulemaking, in which it has announced its consideration of a rule that would reduce the current porting “interval” from four days to forty-eight (48) hours. <i>See In the Matter of Local Number Portability Porting Interval and Validation Requirements</i>, 22 FCC Rcd 19531, at paras. 59-63 (2007). There has been a significant amount of support for the FCC’s tentative conclusion, and there is some possibility that this conclusion could be adopted as a final rule later this year. For that reason, it is not appropriate, or wise, to adopt a specific timeframe in Section 1.2.2.1, as CenturyTel has proposed.</p> <p>Furthermore, CenturyTel’s proposal that confirmation of receipt of port requests, known as firm order confirmations (or “FOCs”), be delivered in 48 hours. However, current FCC regulations require that such confirmations be provided in 24 hours. <i>See In the Matter of Local Number Portability Porting Interval and Validation Requirements</i>, 22 FCC Rcd 19531, at para. 61 (2007). Therefore, CenturyTel’s proposal conflicts with applicable law. For that reason, CenturyTel’s proposals should be rejected and the Agreement should agree to meet these deadlines</p>		<p>Current law is clear and unambiguous. Porting requests are required to be completed within four (4) days and FOCs are required to be made within 24 hours from the time a LSR is received. If these requirements change, the change of law provisions will afford the Parties the opportunity to amend the interconnection agreement to reflect those changes. <i>See also</i> Discussion of Issue 10, <i>supra</i>.</p> <p>Setting aside the legal obligation, the use of a specific time interval within the Agreement (and which Charter’s proposed language avoids) also ensures prompt and proper implementation of the Agreement. The specific time intervals are used by CenturyTel’s operational personnel that would process Charter’s orders. The use of actual time frames within the Agreement, therefore, avoids any question as to when action must occur. The Commission should reject Charter’s proposed language and adopt CenturyTel’s proposed language on this ground alone.</p> <p>Charter has also failed to explain the inconsistency of its position on Issue 26 with its position with respect to the retroactive application of certain “changes in law” in Issue 10. In Issue 10, Charter opposes CenturyTel’s proposed language that retroactively</p>

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				consistent with applicable law.		<p>applies certain changes in law, alleging that it is “effectively one-sided” to CenturyTel’s benefit. In Issue 10, however, Charter takes the position that all such changes should be subject to negotiation, arbitration and amendment with no retroactive application when it claims that all changes in applicable law are likely only to benefit CenturyTel.</p> <p>Yet, here in Issue 26, Charter identifies a change of law – porting intervals – that would benefit Charter (since it is more likely that end users would initially migrate to Charter rather than vice versa). Charter’s position in this Issue 26 fatally undercuts Charter’s position in Issue 10.</p> <p>Moreover, CenturyTel’s position provides the specificity that Charter requests in other areas. See Issue 3 regarding tariff references and 11 regarding Service Guide references. CenturyTel’s position is consistent throughout, and CenturyTel’s position on Issue 26 should be adopted.</p>
27.	Should CenturyTel be allowed to assess a charge for administrative costs for porting telephone	1.2.3	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	Neither Party should be permitted to assess charges upon requests from the other Party to fulfill a subscriber’s number porting requests. In several orders implementing 47 U.S.C. § 251(e)(2) shortly after enactment of the	1.2.3 <u>The Party receiving the LSR will bill the service order charges set forth in the Pricing Article XI for each LSR received. The Party receiving the LSR will bill an Initial Service Order Charge for each initial LSR</u>	<p>This issue relates directly to Issue 40 discussed below. Thus, Issue 27 and Issue 40 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel.</p> <p>Charter mischaracterizes the non-</p>

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	<p>numbers from its network to Charter's network?</p> <p><u>When Charter submits an LSR requesting a number port, should Charter be contractually required to pay the service order charge(s) applicable to such LSR?</u></p>		<p>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.</p>	<p>Telecommunications Act of 1996, the FCC held that carriers are required to recover their costs of implementing local number portability ("LNP") through tariffed end user charges. <i>See Telephone Number Portability</i>, Third Report and Order, 13 FCC Rcd 11701 (1998) (the "Cost Recovery Order"), <i>aff'd</i>, <i>Telephone Number Portability</i>, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002) (the "Cost Recovery Reconsideration Order"). <i>See also Telephone Number Portability Cost Classification Proceeding</i>, Memorandum Opinion and Order, 13 FCC Rcd 24495 (1998). In these orders the FCC determined that recovery by ILECs through end user charges of carrier-specific costs directly related to providing number portability best serves the statutory goal of competitive neutrality. <i>Cost Recovery Order</i>, at ¶¶ 8, 39 and 135.</p> <p>Accordingly, the FCC promulgated its current rule, codified at 47 C.F.R. § 52.33, entitled "Recovery of carrier-specific costs directly related to providing long-term number portability." The rule states that ILECs may recover their carrier-specific costs directly related to</p>	<p><u>submitted. A Subsequent Service Order Charge applies to any modification to an existing LSR.</u></p>	<p>recurring order charges that CenturyTel seeks to recover as the costs of <i>implementing</i> LNP. To the contrary, these charges relate to the processing activity that is involved prior to and after a port request, and the charges arise only as a result of one Party's request for a port. Basic "cost causation" principles require the "cost causer" (<i>i.e.</i>, Charter when requesting the port) to pay the cost of the entity responding to the cost causer's request (<i>i.e.</i>, CenturyTel processing the port request). The FCC has already determined that its cost recovery policies <i>do not</i> bar the recovery that CenturyTel is seeking through its NRCs when incurred for LNP orders. <i>See In the Matter of Telephone Number Portability</i>, 19 FCC Rcd 6800, 2004 FCC Lexis 188 *17-19, n.49 (finding Verizon Wireless complaint about BellSouth's recovery of "transaction charges to recover ... porting expenses" that "are standard fees assessed for various services provided to carriers" was without merit because these charges were not recoverable through an end-user tariff). Since these activities are for the benefit of Charter, CenturyTel knows of no rational basis to suggest that the Party causing the cost and receiving the benefits should not bear the associated costs.</p> <p>Finally, CenturyTel notes that this exact</p>

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				providing long-term number portability by establishing in tariffs filed with the FCC, certain charges over a five (5) year term assessed against end users. <i>See</i> 47 C.F.R. § 52.33(a)(1)(i) & (a)(3). Rule 52.33(a)(1)(ii) also allows ILECs to assess charges on carriers that purchase switching ports as UNEs or resell the ILECs' local services. Charter does not purchase switching ports and is not reselling CenturyTel's services. In addition, the number portability "query service" charge described in 47 C.F.R. § 52.33(a)(2) may be assessed against carriers. Charter, however, is not requesting that CenturyTel perform a "query-service." No other cost recovery from carriers like Charter is authorized by the rule for LNP charges. <i>See</i> Cost Recovery Reconsideration Order, ¶ 62. Consequently, under the FCC's rules, CenturyTel cannot assess any charges, including service order charges, on Charter to process a LNP request.		issue has been brought for review by this Commission when Charter filed its complaint against CenturyTel in Case No. LC-2008-0049. In that proceeding, Commission Staff William Voight testified that carriers incur legitimate costs when processing a request to port a telephone number to another carrier. Mr. Voight also testified that there is nothing in the law that prohibits carriers from seeking to recover these legitimate costs. <i>See Complaint of Charter Fiberlink, LLC Seeking Expedited Resolution and Enforcement of Interconnection Agreement Terms Between Charter Fiberlink – Missouri, LLC and CenturyTel of Missouri, LLC</i> , Case No. LC-2008-0049, Transcript, Vol. 2. p. 311.
ART. X, OSS						
28.	Does CenturyTel have the right to monitor and audit	8.3.1, 8.3.2, 8.3.3	8.3 Unless sooner terminated or suspended in accordance with the Agreement or this Article	Where Charter uses the CenturyTel OSS (Operations Support System) databases to submit orders, request	8.3 Unless sooner terminated or suspended in accordance with the Agreement or this Article	Charter has provided no basis to limit the ability of CenturyTel to monitor and track the use of its OSS (Operations

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	Charter's access to its OSS?		<p>(including, but not limited to, Article III, Sections 2.0 and 9.0 of the Agreement and Section 11.1 below), **CLEC's access to CenturyTel OSS Information through CenturyTel OSS Services shall terminate upon the expiration or termination of the Agreement.</p> <p>8.3.1 CenturyTel shall have the right (but not the obligation) to ascertain whether **CLEC is complying with the requirements of Applicable Law and this Agreement with regard to **CLEC's access to, and use and disclosure of, CenturyTel OSS Information.</p> <p>8.3.2 Without in any way limiting any other rights CenturyTel may have under the Agreement or Applicable Law, CenturyTel may, upon CLEC's consent, monitor **CLEC's access to and use of CenturyTel OSS Information which is made available by CenturyTel to **CLEC pursuant to this Agreement, to ascertain whether **CLEC is complying with the requirements of Applicable Law and this Agreement, with regard to **CLEC's access to, and use</p>	<p>information, or other wise communicate with CenturyTel, Charter has agreed to a number of specific limitations and restrictions with respect to the use of such databases. Indeed, Section 8 of Article X, OSS, sets forth a lengthy list of limitations of use and restrictions upon Charter with respect to access, and use of, the OSS. For example, Charter has agreed to treat all OSS information as confidential, that it has no license rights in such information, that its right of access is limited in time, and that it will destroy or return all information upon expiration or termination of the Agreement. Thus, Charter has agreed to a number of very specific terms which strictly limits its use of, and access to, CenturyTel's OSS.</p> <p>Despite these existing safeguards, CenturyTel also proposes that it have the right to "audit" and "monitor" Charter's use of the OSS. However, other than an ambiguous and open-ended statement in Section 8.3.2, CenturyTel has refused to define how it would propose to "monitor" Charter. Nor has CenturyTel explained precisely what would be required of any audit of Charter's use of the OSS. For these reasons, Charter will only agree to</p>	<p>(including, but not limited to, Article III, Sections 2.0 and 9.0 of the Agreement and Section 11.1 below), **CLEC's access to CenturyTel OSS Information through CenturyTel OSS Services shall terminate upon the expiration or termination of the Agreement.</p> <p>8.3.1 CenturyTel shall have the right (but not the obligation) <u>to audit **CLEC</u> to ascertain whether **CLEC is complying with the requirements of Applicable Law and this Agreement with regard to **CLEC's access to, and use and disclosure of, CenturyTel OSS Information.</p> <p>8.3.2 Without in any way limiting any other rights CenturyTel may have under the Agreement or Applicable Law, CenturyTel <u>shall have the right (but not the obligation) to monitor **CLEC's access to and use of CenturyTel OSS</u></p>	<p>Support System) Information. CenturyTel's OSS systems and the information contained within them are confidential and remain the property of CenturyTel. The Agreement grants Charter a limited license to access and use such information solely for the purposes expressly stated in the Agreement (see Art. X, Sections 8.1-8.2), and proper monitoring by CenturyTel of the OSS system is appropriate to ensure that Charter complies with the license.</p> <p>Based upon CenturyTel's interest in protecting the confidential nature of the OSS Information and recognizing its obligations under 47 U.S.C. § 222(c), CenturyTel should have the right to audit/monitor Charter's access to its OSS systems to ensure compliance with the terms of this Agreement. This audit/monitor provision is similar to CenturyTel's right to audit Charter's records for billing purposes under Art. III, Sec. 7. Charter's refusal to agree to such audit/monitoring is commercially unreasonable and would reduce CenturyTel's ability to effectively protect its interests in proper operation, implementation and utilization of its OSS.</p> <p>In response to Charter's other criticism, the permissible scope of the audit is clearly set forth in Section 8.3.2.</p>

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			<p>and disclosure of, such CenturyTel OSS Information. The foregoing right shall include, but not be limited to, the right (but not the obligation) to electronically monitor **CLEC's access to and use of CenturyTel OSS Information which is made available by CenturyTel to **CLEC through CenturyTel OSS Facilities.</p> <p>8.3.3 Information obtained by CenturyTel pursuant to this Section 8.0 shall be treated by CenturyTel as Confidential Information of **CLEC pursuant to Section 14.0, Article III of the Agreement; provided that, CenturyTel may, upon CLEC's consent, use and disclose information obtained by CenturyTel pursuant to this Article to enforce CenturyTel's rights under the Agreement or Applicable Law.</p>	<p>CenturyTel's monitoring and auditing proposals if such action is conditioned upon mutual consent. Because CenturyTel has failed to provide a sufficient explanation of its intent with respect to monitoring and audits, the Commission should reject its proposals.</p>	<p>Information which is made available by CenturyTel to **CLEC pursuant to this Agreement, to ascertain whether **CLEC is complying with the requirements of Applicable Law and this Agreement, with regard to **CLEC's access to, and use and disclosure of, such CenturyTel OSS Information. The foregoing right shall include, but not be limited to, the right (but not the obligation) to electronically monitor **CLEC's access to and use of CenturyTel OSS Information which is made available by CenturyTel to **CLEC through CenturyTel OSS Facilities.</p> <p>8.3.3 Information obtained by CenturyTel pursuant to this Section 8.0 shall be treated by CenturyTel as Confidential Information of **CLEC pursuant to Section 14.0, Article III of the Agreement; provided that, CenturyTel <u>shall have the right</u></p>	

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					(but not the obligation) to use and disclose information obtained by CenturyTel pursuant to this Article to enforce CenturyTel's rights under the Agreement or Applicable Law.	
29.	Should the Agreement preserve CenturyTel's rights to recover from Charter certain unspecified costs of providing access to "new, upgraded, or enhanced" OSS?	15.2	[INTENTIONALLY LEFT BLANK.]	<p>Except as specifically set forth in the price list of this Agreement, CenturyTel does not have the right to assess any charges upon Charter for the recovery of any OSS costs that CenturyTel may incur.</p> <p>As noted above with respect to Issue 13, the costs incurred by each Party in performing under this Agreement are a consequence of their respective obligations to one another under Section 251 of the Communications Act, and other applicable law. Neither Party should be allowed to recover its costs or "expenses" from the other Party unless specifically authorized to do so, as evidenced by the inclusion of rates in the price list.</p> <p>Should CenturyTel conclude at some point in the future that it incurs some costs for which it is entitled to compensation, there is already a process under this Agreement for which it can seek to recover such costs. Specifically,</p>	<p>15.2 <u>CenturyTel is entitled to recover its unrecovered costs of providing access to new, upgraded or enhanced CenturyTel Operations Support Systems via the CenturyTel OSS Services, CenturyTel Pre-OSS Services, or CenturyTel OSS Facilities, or other means pursuant to rates or other charges ("OSS charges") determined by or otherwise approved by the Commission upon CenturyTel's submission in accordance with Applicable Law. Should CenturyTel incur the costs of providing access to new, upgraded or enhanced CenturyTel Operations Support Systems during the Term of this Agreement, **CLEC will be responsible for paying such OSS charges under this Agreement only if and to the extent determined by the Commission.</u></p>	<p>Consistent with the generally accepted principles of cost causation, the Commission should adopt CenturyTel's language in Section 15.2.</p> <p>This language preserves CenturyTel's right to recover its costs with respect to upgrades and enhancements to its OSS, should such upgrades and enhancements occur during the term of the Agreement. Moreover, Charter would only be required to pay such charges if CenturyTel first obtains Commission approval of the rates and the Commission then also determines that Charter should be responsible for payment of such charges. CenturyTel should not be forced to provide Charter with enhanced OSS for free. However, that is what Charter's language would allow, and should be rejected.</p>

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				CenturyTel can propose an amendment to the Agreement which specifically details the costs and expenses it seeks to recover, and the basis for requiring Charter to compensate CenturyTel. Under that scenario, Charter will be required to engage in negotiations to amend the Agreement to incorporate CenturyTel's proposed cost recovery scheme. For that reason, there is no need to include CenturyTel's ambiguous proposed language in the current Agreement. Accordingly, because CenturyTel has sufficient opportunity to address the potential issue of unrecovered costs through the contract amendment process, the Commission should reject its proposed language here.		
ART. XII, DIRECTORY SERVICES						
30.	What information regarding Directory close dates is CenturyTel required to provide Charter and in what manner?	2.1.2.3	2.1.2.3 <u>Directory Close Date.</u> CenturyTel shall provide **CLEC with publication schedules, including Directory close dates (and changes to those dates) for the Directories associated with the areas where Charter is providing local service. This publication information shall include the name of the directory, the close date, and, where the close date	To ensure the efficient, and timely, exchange of directory listing information between Charter, CenturyTel and the directory publisher, the parties should establish certain basic parameters concerning the timeframes by which certain must be exchanged. These basic obligations will ensure that listing information is included in the published directories, a result which benefits all of the parties involved in	<u>2.1.2.3 <u>Directory Close Date.</u> **CLEC must submit all listing information intended for publication by the applicable Directory close date. CenturyTel shall provide **CLEC with publication schedules, including Directory close dates for the Directories associated with the areas where Charter is providing local service.</u>	CenturyTel's obligation, which is consistent with its proposed language, is to provide Charter with non-discriminatory access to place listings in its directories. Charter, however, seeks to impose additional obligations upon CenturyTel that would result in CenturyTel discriminating in favor of Charter with respect to the publication of <i>Charter's directory listings</i> . With respect to liability for errors and omission in directory listings, Charter

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			<p>has changed, both the original close date and the new close date. Century Tel shall provide notification of changes in close dates in a format that specifically identifies the notification as relating to Directory publication. Where Charter has not forwarded its flat file of listing information for a Directory to Century Tel two weeks prior to the date that the listing information is due to the publisher, Century Tel will notify Charter.</p>	<p>the transaction.</p> <p>There is no reason to believe that the assumption of this basic obligation by CenturyTel will create an undue burden, or would otherwise lead to discriminatory practices on its part. The fact is, CenturyTel's position as the incumbent in this market means that it has a unique relationship with the publisher, and is in the best position to convey the requested information. For that reason, it is both reasonable and appropriate for CenturyTel to assume this responsibility to ensure the prompt, and accurate, publication of directories in the CenturyTel markets.</p>		<p>also inappropriately seeks to shift its own responsibility to CenturyTel. This shifting of responsibility has no rational basis and should be rejected by the Commission.</p> <p>Consistent with its proposed language, CenturyTel should only be required to provide Charter with advanced notification of directory close dates. These close dates are established by the directory publisher, not CenturyTel. Notifications of close dates, and changes to those dates, typically are provided months in advance and are typically accessible to all CLECs on a webpage provided to Charter by CenturyTel. When the schedule is posted or changed, CenturyTel provides electronic notification if Charter has subscribed (free of charge) to the electronic notification service. This information and access to it should be all that is necessary for Charter to place its listing within the CenturyTel directory. CenturyTel should not be required to alter its existing notification requirements to provide the granularity of information suggested by Charter. Charter can obtain this information from CenturyTel's web site when and if Charter actually requires it (including close date and formatting). CenturyTel also should not be required to monitor Charter's compliance with due dates (including "flat file" due dates)</p>

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						particularly where it is in Charter's best interests to assure that it meets such due dates. Charter should be responsible for monitoring and meeting the deadlines provided by CenturyTel's publisher.
31.	How should each Party's liability be limited with respect to information included, or not included, in Directories?	7.0, 7.1-7.3	<p>7.1 CenturyTel's liability to **CLEC or any **CLEC End User Customer for any errors or omissions in Directories published by CenturyTel and/or Publisher (including, but not limited to, any error in any End User Customer or **CLEC listing), or for any default or breach of this Article, or for any other claim otherwise arising hereunder, shall be limited to actual damages, except to the extent that such errors or omissions, default, breach, or claims arise from the CenturyTel's, or its Publisher's, negligence, gross negligence, or intentional or willful misconduct. However, notwithstanding any other provision of this Agreement, CenturyTel's liability shall not be limited in any instance in which **CLEC accurately and timely conveys to CenturyTel or its Publisher that its End User Customers desire not to be published in a directory and</p>	<p>CenturyTel should be liable for its own errors or omissions that result in subscriber listing errors in CenturyTel's published directories. The Agreement should allocate risk fairly, and in a manner that is proportionate to each Party's respective obligations and responsibilities. Specifically, where one Party acts in a manner that is deemed to be grossly negligent, or which constitutes intentional misconduct, then that Party should not be allowed to contract away its liability to end user subscribers, or to the other Party.</p> <p>Charter believes that CenturyTel should not be permitted to limit its liability to the extent that is grossly negligent, engages in intentional or willful misconduct, or otherwise contributes to the events that give rise to the action for damages. If CenturyTel's actions create a problem in the listing of a Charter subscriber, then it should be liable to the extent that such actions arise from CenturyTel's failure to ensure</p>	<p>7.0 LIMITATION OF LIABILITY: INDEMNITY <u>The following provision shall apply in addition to the Liability and Indemnity provisions set forth in Article III, Section 30.</u></p> <p>7.1 CenturyTel's liability to **CLEC or any **CLEC End User Customer for any errors or omissions in Directories published by CenturyTel and/or Publisher (including, but not limited to, any error in any End User Customer or **CLEC listing), or for any default or breach of this Article, or for any other claim otherwise arising hereunder, shall be limited to <u>amounts paid by **CLEC to CenturyTel under this Article. Except with respect to errors or omissions caused by the gross negligence or intentional misconduct of CenturyTel, CenturyTel shall have no liability to **CLEC's or it's End User Customers for any errors or omissions in any End User</u></p>	<p>CenturyTel should only have exposure to liability with respect to errors and omissions in the Charter's End User directory listings arising out of CenturyTel's gross negligence or intentional misconduct. Charter proposes that CenturyTel also should have liability arising out of CenturyTel's "negligence." Charter's position is unreasonable and should be rejected. Charter is <i>solely</i> responsible for all information required for inclusion in the CenturyTel directory.</p> <p>CenturyTel should not be held to a higher standard of conduct than that used commonly in end use terms and conditions. It is common industry practice to exclude liability entirely for directory listing errors subject only to a refund of subscriber charges. For example, this sort of limitation on liability is a well-established industry standard that is often reflected in end user tariffs, including those of Charter and CenturyTel in Missouri. See, e.g., Charter Fiberlink-Missouri, LLC P.S.C. MO. No.1, Local Exchange Tariff, Section 1.5.4 Directory Errors and</p>

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			<p>CenturyTel, or its Publisher, causes the publication of such End User Customer data or listings. **CLEC shall fully indemnify CenturyTel in accordance with the provisions of Section 7.2 below as to any errors or omissions in a **CLEC End User Customer listing for which CenturyTel is not liable under this Section. CenturyTel shall fully indemnify **CLEC in accordance with the provisions of Section 7.2 below as to any errors or omissions in a **CLEC End User Customer listing for which CenturyTel is liable under this Section.</p> <p>7.2 **CLEC agrees to indemnify, defend, and hold harmless CenturyTel, its directors, officers, employees, agents and their affiliates (collectively, the "Indemnified Parties") from all losses, claims, damages, expenses, suits, or other actions, or any liability whatsoever including, but not limited to, damages, liabilities, costs and attorneys' fees, made or asserted by any third party (including, but not limited to End User Customers) against the Indemnified Parties and arising out of any error or omission for</p>	<p>that its employees did not act in a grossly negligent manner, or engage in willful or intentional misconduct. The Agreement should, therefore, include such concepts in any provisions limiting liability of one Party.</p> <p>Where the Parties agree to limit liability for special damages, including incidental, indirect, or consequential damages, then that limitation should not include a carve-out for claims which require Charter to indemnify CenturyTel. The liability limitations provisions should apply equitably, without imposing greater obligations on one Party in favor of the other Party (as CenturyTel proposes). For that reason the Commission should adopt Charter's proposed language, to ensure the fair and equitable application of this provision.</p>	<p><u>Customer or **CLEC listing published by CenturyTel, or for the publication of any End User Customer data where such End User Customer does not desire a published listing.</u> **CLEC shall fully indemnify CenturyTel in accordance with the provisions of Section 7.2 below as to any errors or omissions in a **CLEC End User Customer listing for which CenturyTel is not liable under this section. <u>**CLEC expressly represents that it is authorized to enter into this provision on behalf of itself and its End User Customers.</u></p>	<p>Omissions. There is no good reason to expand this well-established scope of liability for directory errors to include "negligence" as proposed by Charter.</p> <p>The industry-standard limitation on liability proposed by CenturyTel also makes sense given the context. Charter alone provides its customer listings for publication. Charter is contractually prohibited from providing to CenturyTel or the third party publisher the listings of any of its customers who do not wish to have published listings. (see Art. XII, Sec. 2.1.2) Thus, if listing information for a Charter customer that requested that Charter provide non-published status was, in fact, published, such publication would <i>solely</i> be due to Charter's error or omission. Thus, Charter should not be permitted to shift any such risk to CenturyTel.</p> <p>Furthermore, CenturyTel should not be required to incur the additional costs that would be caused by additional systems and/or processes to monitor Charter's own submissions and Charter's compliance with due dates imposed by the third-party directory publisher.</p>

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			<p>which CenturyTel is not liable pursuant to Section 7.1 above. CenturyTel agrees to indemnify, defend, and hold harmless **CLEC, its directors, officers, employees, agents and their affiliates (collectively, the “Indemnified Parties”) from all losses, claims, damages, expenses, suits, or other actions, or any liability whatsoever including, but not limited to, damages, liabilities, costs and attorneys’ fees, made or asserted by any third party (including, but not limited to End User Customers) against the Indemnified Parties and arising out of any error or omission for which CenturyTel is liable pursuant to Section 7.1 above.</p> <p>7.3 To the maximum extent permitted by the applicable law, in no event shall CenturyTel or **CLEC be liable for any special, incidental, indirect, or consequential damages whatsoever including, without limitation, damages for loss of profits or any other pecuniary loss arising out of or in connection with this Article, even if such Party has been advised of the possibility of such damages,</p>		<p>7.2 **CLEC agrees to indemnify, defend, and hold harmless CenturyTel, its directors, officers, employees, agents and their affiliates (collectively, the “Indemnified Parties”) from all losses, claims, damages, expenses, suits, or other actions, or any liability whatsoever including, but not limited to, damages, liabilities, costs and attorneys’ fees, made or asserted by any third party (including, but not limited to End User Customers) against the Indemnified Parties and arising out of any error or omission for which CenturyTel is not liable pursuant to Section 7.1 above.</p>	

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			except where such damages occur as the result of a breach of confidentiality, or relate to an indemnity claim made against either Party that is covered by Section 7.2 above. Notwithstanding the foregoing, or any other provision of this Agreement, neither Party's liability shall be limited in any instance in which such Party, or its Publisher, causes the publication of End User Customer data or listings, where such End User Customer requests that such data or listings not be published in a directory.		7.3 To the maximum extent permitted by the applicable law, in no event shall CenturyTel or **CLEC be liable for any special, incidental, indirect, or consequential damages whatsoever including, without limitation, damages for loss of profits or any other pecuniary loss arising out of or in connection with this Article, even if such Party has been advised of the possibility of such damages, except where such damages occur as the result of a breach of confidentiality, <u>or relate to a CenturyTel indemnity claim.</u>	
32.	How should the Agreement define each Party's directory assistance obligations under Section 251(b)(3)?	8	8.0 DIRECTORY ASSISTANCE OBLIGATIONS To ensure that each Party's subscribers have non-discriminatory access to directory assistance listings of the other Party's subscribers, the Parties' agree to provide	Pursuant to Section 251(b)(3) of the Act, both Parties have the duty to ensure non-discriminatory access to directory listings and directory assistance databases. FCC has recognized that carriers may agree to have DA databases administered by a third party. <i>Implementation of the Local</i>	8.0 DIRECTORY ASSISTANCE OBLIGATIONS <u>Neither Party is a Directory Assistance (DA)-provider, but rather obtains DA services from a third-party vendor(s) that uses or maintains a national DA database(s) ("national database").</u>	CenturyTel's obligation is to provide Charter with non-discriminatory access to Directory Assistance ("DA"). CenturyTel is not a DA provider but does obtain DA services from a third party provider. CenturyTel's proposed language meets its obligation and recognizes the actual manner in which DA will be provided to end users. Accordingly, CenturyTel's proposed

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			<p>each other all necessary End User subscriber listing information for inclusion in each Party's relevant directory assistance listing databases, as required by Section 251(b)(3) of the Act.</p> <p>CenturyTel Obligations: CenturyTel will accept, include, and maintain, in the same manner that Century Tel treats listings of its own End Users, CLEC subscriber listings in the directory assistance databases maintained by CenturyTel or its third-party vendors. To the extent that CenturyTel's directory assistance listings are maintained in a database administered by a third party vendor, CLEC shall cooperate with CenturyTel as needed to ensure that CLEC listings are promptly loaded into such database and accessible to CenturyTel's End Users, upon request. CenturyTel will not charge CLEC for including and maintaining CLEC subscriber listings in the directory assistance databases maintained by CenturyTel, or its vendors.</p> <p>CLEC Obligations: CLEC</p>	<p><i>Competition Provisions of the Telecommunications Act of 1996</i>, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, 11 FCC Rcd 19392 at ¶ 144 (1996) "Local Competition Second Report and Order"), vacated in part, <i>People of the State of California v. FCC</i>, 124 F.3d 934 (8th Cir. 1997), rev. on other grounds, <i>AT&T Corp. v. Iowa Util. Bd.</i>, 119 S. Ct. 721 (Jan. 25, 1999).</p> <p>However, the FCC has recognized that such agreements for third party administration must still be included in interconnection agreements because entering into a side agreement for access to DA databases contravenes the FCC requirement that LECs provide DA on a nondiscriminatory basis and make such provisions related thereto available to other carriers in interconnection agreements for adoption through the mechanism of 47 U.S.C. § 252. <i>Provision of Directory Listing Information under the Communications Act of 1934, As Amended</i>, FCC 01-27, 16 FCC Rcd 2736 at ¶ 36 (2001) ("SLI/DA First Report and Order"). Therefore, CenturyTel must include rates, terms and conditions of access</p>	<p>Nevertheless, as each Party has the obligation to ensure that its End User Customers' DA listings are made available to the other Party's End User Customers, the Parties agree as follows:</p> <p><u>8.1 Each Party will promptly, upon request by the other Party, provide the requesting Party with the name of its third-party DA-provider;</u></p> <p><u>8.2 Each Party will be responsible for contracting with or otherwise making its own arrangements for services with any such third-party DA-provider, including but not limited to arrangements to provide its own End User Customers' DA listings to such third-party DA-provider for inclusion in a national database accessible to the other Party.</u></p> <p><u>8.3 Neither Party shall be required to directly provide its End User Customers' DA listings to the other Party, nor shall</u></p>	<p>language in Section 8 should be adopted.</p> <p>CenturyTel's proposed language requires each Party to comply with its DA requirements and, in doing so, provides the mechanism by which each Party can obtain access to the other Party's DA information as required by applicable law. Because CenturyTel's DA provider provides national listings, any issue of the access that Charter may have with respect to CenturyTel's information has been resolved.</p> <p>Charter's language also is inaccurate insofar as it states that CenturyTel will "accept, include, and maintain" Charter's end user listings. Rather, Charter will provide its end user listings directly to the third-party DA-provider and not to CenturyTel, a point CenturyTel and Charter have agreed upon.</p>

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			authorizes CenturyTel, and its third party vendors, to include and use CLEC's directory assistance listing information in accordance with Applicable Law, and shall provide such information to CenturyTel, or its third-party vendors, at no charge. CLEC shall provide to CenturyTel the names, addresses and telephone numbers of all End Users who wish to be listed in the directory assistance database but omitted from publication in white pages directories (i.e. non-published).	<p>to its DA database within the interconnection agreement despite use of a third-party DA database administrator.</p> <p>For that reason, the Agreement should include a statement that each Party is obligated to ensure that its subscribers can obtain subscriber list information of the other Party's subscribers, via generally available directory assistance services. Charter's proposal includes that statement reflecting both Parties' respective obligations, and also sets forth specific terms and obligations that each Party must satisfy to ensure that directory assistance listing information is available to the subscribers of the other Party.</p> <p>Although this obligation may seem obvious, it is necessary to include in this Agreement because of previous operational problems between the Parties. Specifically, when operating under other interconnection agreements there have been problems surrounding CenturyTel's failure to ensure that Charter subscriber listings are properly conveyed to CenturyTel subscribers who wished to contact Charter subscribers. This problem occurred because CenturyTel's directory assistance database</p>	<p><u>either Party be required to accept directly from the other Party such other Party's End User Customers' DA listings, for the purpose of submitting the Parties' commingled, End User Customers' DA listings to any third-party DA-provider that maintains and/or uses a national database accessible to the other Party.</u></p>	

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				vendors did not include Charter subscriber listing information in their databases. This problem meant that both Charter and CenturyTel subscribers could not utilize directory assistance in the manner that they desired. Further, the problem reflected a failure by CenturyTel to satisfy its directory assistance obligations under federal law, because it did not ensure that its vendors included Charter subscribers in the proper databases. To avoid this problem in the future the Parties should include Charter's proposed language, which sets forth these basic obligations in clear and unequivocal terms.		
ART. VII, 911						
33.	Should CenturyTel be required to make 911 facilities available to Charter at cost-based rates pursuant to Section 251(c)? <u>Is Charter entitled to lease CenturyTel facilities for the purpose of</u>	3.3.1	CenturyTel shall provide and maintain sufficient dedicated E911 circuits/trunks from each applicable Selective Router to the PSAP(s) of the E911 PSAP Operator, according to provisions of the applicable State authority, applicable NENA standards and documented specifications of the E911 PSAP Operator. CenturyTel will permit **CLEC to lease 911 facilities from **CLEC's network to CenturyTel's Selective	Century Tel is required to provide to Charter interconnection trunks and facilities for the provision of 911 services at TELRIC rates, at Charter's requests. In a recent order concerning the provision of facilities for 911 services, the FCC has definitively ruled on this question: "We note that the Commission currently requires LECs to provide access to 911 databases and interconnection to 911 facilities to all telecommunications carriers, pursuant to sections 251 (a) and (c) and section 271(c)(2)(B)(vii) of the	CenturyTel shall provide and maintain sufficient dedicated E911 circuits/trunks from each applicable Selective Router to the PSAP(s) of the E911 PSAP Operator, according to provisions of the applicable State authority, applicable NENA standards and documented specifications of the E911 PSAP Operator. CenturyTel will permit **CLEC to lease 911 facilities from **CLEC's network to CenturyTel's Selective Router(s) at the rates set forth in Article XI	CenturyTel operates and maintains 911 networks in its service territories pursuant to Missouri Law §§ 190.300 <i>et seq.</i> , RSMo. Under these statutes, the "public agencies" authorized to impose tax levies on the tariffed rate for basic local service and which operate the public safety answering points that CenturyTel serves are also the agencies that govern the provision of 911 emergency phone systems. Each public agency is authorized to contract with the "service suppliers" in the public agency's jurisdiction for these systems. As part of these contracts, the LECs

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	<u>connecting Charter's network to CenturyTel's 911 networks? If so, is Charter entitled to lease such facilities at TELRIC rates?</u>		Router(s) at the rates set forth in Article XI (Pricing). The rates for 911 facilities set forth in Section IV. B of Article XI (Pricing) are TELRIC-based rates as required under Section 251(c). **CLEC has the option to secure alternative 911 facilities from another Provider to provide its own facilities.	Act. We expect that this will include all the elements necessary for telecommunications carriers to provide 911/E911 solutions that are consistent with the requirements of this Order..." WC Docket No. 04-36, WC Docket No. 05-196, <i>In the Matters of IP-Enabled Services 911 Requirements for IP-Enabled Service Providers</i> , First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 para. 38 (2005) (footnote omitted). Century Tel's obligation to provide interconnection trunks and facilities for 911 services is thus unambiguous. Moreover, because Century Tel's obligations arise under sections 251(a) and (c), Century Tel is required to provide these facilities at TELRIC rates.	(Pricing). **CLEC has the option to secure alternative 911 facilities from another Provider to provide its own facilities.	collect the authorized tax levy as a per-access-line 911 surcharge, which cannot exceed statutory caps and remit these amounts to the appropriate public agency. <i>See</i> § 190.305, RSMo. Under Missouri 911 Law, a "service supplier" is defined as "any person providing exchange telephone services to any service user in this state." <i>See</i> § 190.300, RSMo. Thus, any authorized LEC providing basic local service in a Missouri exchange would qualify under this definition as a "service supplier". Indeed, the Commission's definition of "basic local telecommunications service" includes the requirement to provide "[a]ccess to local emergency services including, but not limited to, 911 service established by local authorities". <i>See</i> § 386.020, RSMo. If a certificated LEC intends to supply basic local telecommunications service to customers in Missouri exchanges, it must, at the very least, provide access to any 911 service established by local authorities <i>and</i> collect from its end users and remit to the appropriate public agency any authorized tax levy or fee required to fund such service. As to the facilities Charter needs to connect its network to CenturyTel's 911 facilities, Charter can elect to install its own facilities, purchase them from a third party, or lease them from

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						<p>CenturyTel. Under existing arrangements, Charter leases trunks under CenturyTel's wholesale tariff. In Section 3.3.1 of the Agreement, CenturyTel proposes to continue to make this option available to Charter.</p> <p>In its proposed language, Charter claims that it is <i>entitled</i> to lease facilities connecting its network to CenturyTel's 911 facilities at <i>TELRIC</i> prices. Charter cites no provision of federal or state law that requires CenturyTel to provide any 911 facilities to Charter. Charter quotes a general statement by the FCC that refers to access to "911 databases" and "interconnection to 911 facilities." But as the footnote omitted from Charter's excerpt makes clear, the FCC was referring both to requirements generally applicable to all LECs, as well as requirements exclusive to BOCs under the "competitive checklist" for long distance services, which have no application to CenturyTel. The footnote identifies 911 interconnection as an obligation only with respect to BOCs.</p> <p>Charter's claim that the facilities to connect its network to CenturyTel's selective routers constitute "interconnection trunks and facilities" to which CenturyTel must provide access under 47 U.S.C. § 251(c) at <i>TELRIC</i> rates is also in error. Under the FCC's <i>TRRO</i> order, ILECs have no</p>

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						<p>obligation to provide interconnection facilities as unbundled network elements under 47 U.S.C. § 251(c)(3). <i>In the Matter of Unbundled Access to Network Elements, Order on Remand</i>, WC Docket 04-313, FCC 04-290, 20 FCC Rcd 2533 (2005) at ¶ 138. The FCC noted (<i>id.</i> at ¶ 140) that its “finding of non-impairment . . . does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service.” The facilities in question are not for the transmission or routing of telephone exchange service or exchange access service, but are rather dedicated facilities for the delivery of 911 calls to CenturyTel’s dedicated 911 network and the public agency’s 911 operator’s PSAPs. Therefore, CenturyTel has no obligation to provide them under § 251(c)(2) and this issue is not subject to arbitration under § 252.</p> <p>In the alternative, even if the Commission determines that the facilities in question are interconnection facilities for the transmission and routing of local telephone exchange service and exchange access service that must be provided under 47 U.S.C. § 251(c)(2), such facilities must be provided at “cost-based” rates and not necessarily TELRIC rates. <i>Illinois Bell</i></p>

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						<p><i>Tel. Co. v. Box</i>, 526 F.3d 1069, 1072 (7th Cir. 2008) Thus, the Commission has the discretion to establish cost-based rates on a basis other than TELRIC for interconnection facilities.</p> <p>For these reasons, Charter is not entitled to lease CenturyTel's facilities for connections between Charter's network and CenturyTel's 911 facilities. CenturyTel's proposal to offer these facilities to Charter for lease at tariff rates, the same rates at which CenturyTel and other LECs charge and are charged for use of these systems, is cost-based and non-discriminatory. Coupled with CenturyTel's offer not to charge Charter for the use of CenturyTel's other 911 facilities, CenturyTel's proposal is indeed generous.</p>
34.	<p>RESOLVED</p> <p>What obligations does Charter have to obtain certain specific routing parameters, even though Charter traffic does not utilize, or require, such</p>	4.6.1	RESOLVED		RESOLVED	<p>SETTLED – Issue 34 is no longer in dispute. The parties have agreed to incorporate the following language in Article VII, Section 4.6.1:</p> <p>If **CLEC uses a third-party database provider, and provides Nomadic VoIP Service, as defined in Section 4.3.2 (above), **CLEC shall obtain its own routable but non-dialable ESQKs for each PSAP to which CenturyTel provides or shall provide coverage, and</p>

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	<p>parameters?</p> <p><u>Should Charter be required to obtain certain specific routing parameters in the event that it decides to use a third-party provider in the future?</u></p>					<p>shall supply these ESQKs to CenturyTel for the Selective Routers servicing each such PSAP. If warranted by traffic volume growth, or if upon request by a PSAP or other governmental or quasi-governmental entity, **CLEC shall promptly obtain the appropriate number of additional ESQKs to be allocated to each PSAP as may be appropriate under the circumstances. The term "ESQK" as used herein, shall be defined as an Emergency Services Query Key, which is used by the National Emergency Numbering Association ("NENA") as a key to identify a call instance at a VoIP Positioning Center, and which is associated with a particular selective router/emergency services number combination.</p>
35.	<p>Should both parties' liability for errors associated with the provision of 911 services be limited by contract, in a manner that is consistent with applicable law?</p> <p><u>Should CenturyTel's</u></p>	9.3 and 9.6	<p>9.3 Neither Party shall be liable for civil damages, whether in contract, tort or otherwise, to the other Party for any loss or damage caused by any act or omission of its employees, agents or contractors, in the design, development, installation, maintenance, or provision of any aspect of E911 other than an act or omission constituting negligence, gross negligence, intentional or willful misconduct. . In no event shall either Party be</p>	<p>Consistent with its position on issue 15(c), above, Charter believes that the Parties should not limit their damages in a way that would preclude one Party from obtaining meaningful relief. Specifically, Charter does not agree with CenturyTel's proposal that damages be limited to an "amount equal to the prorated allowance of the Article rate for the service or facilities provided to **CLEC for the time such interruption to service or facilities continues."</p>	<p>9.3 <u>CenturyTel</u> shall not be liable for civil damages, whether in contract, tort or otherwise, to <u>any person, corporation, or other entity</u> for any loss or damage caused by any act or omission of <u>CenturyTel</u> or its employees, agents or contractors, in the design, development, installation, maintenance, or provision of any aspect of E911 other than an act or omission constituting gross negligence, <u>wanton</u> or willful misconduct. <u>However, in no</u></p>	<p>CenturyTel's limited liability language essentially mirrors the liability language in CenturyTel of Missouri's General and Local Exchange Tariff and CenturyTel's Wholesale 911 tariff, PSC MO No. 10.</p>

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	<u>liability for 911 system errors be limited to the reasonable cost of replacement services?</u>		<p>held liable or responsible for any indirect, incidental, consequential, punitive, special, or exemplary damages associated with the provision of E911, unless caused by an act or omission of a Party constituting negligence, gross negligence intentional or willful misconduct.</p> <p>9.6 CenturyTel shall not be liable or responsible for any indirect, incidental, consequential, punitive, special, or exemplary damages associated with the provision of any aspect of E911 when there is a failure of or interruption of E911 caused by the attachment of any equipment by **CLEC to CenturyTel facilities, except to the extent caused by a CenturyTel act or omission constituting negligence, gross negligence, intentional or willful misconduct. **CLEC may, with the prior written consent of CenturyTel, which consent shall not be unreasonably withheld, attach features, devices, or equipment of other vendors to the equipment or network facilities provided by CenturyTel. Said</p>	<p>Apart from the problems associated with the ambiguity of CenturyTel's language, the proposal presents another issue. Because this Agreement contemplates primarily the exchange of traffic, without significant liabilities for leasing, resale or other services, the amount of monthly charges that the Parties are subject to is relatively small. For that reason, CenturyTel's proposal to limit direct damages to no more than an amount equal to such monthly charges could effectively preclude recovery of the amount of direct damages that arise from a significant harm or error that occurred to one Party's network, employees, or other assets. Therefore, it may be improper to limit damages in this way if such limitations precludes the aggrieved Party from recovering its actual damages.</p> <p>Further, and consistent with its position in issue 15, above, CenturyTel should not be allowed to limit its liability where its actions constitute negligence, gross negligence, intentional or willful conduct. In those circumstances CenturyTel should be held liable, to the fullest extent possible, for its actions. Moreover, the liability</p>	<p><u>event shall CenturyTel's liability to any person, corporation, or other entity for any loss or damage exceed an amount equal to the prorated allowance of the applicable rate set forth in Article XI (Pricing) for the service or facilities provided to **CLEC for the time such interruption to service or facilities continues, after notice by **CLEC to CenturyTel.</u> No allowance shall be made <u>if</u> the interruption is due to the negligence or willful act of **CLEC. In no event shall CenturyTel be held liable or responsible for any indirect, incidental, consequential, punitive, special, or exemplary damages associated with the provision of E911.</p> <p>9.6 CenturyTel shall not be liable or responsible for any indirect, incidental, consequential, punitive, special, or exemplary damages associated with the provision of any aspect of E911 when there is a failure of or interruption E911 due to the attachment of any equipment by **CLEC to CenturyTel facilities. **CLEC may, with the prior written consent of CenturyTel, which consent shall not be unreasonably withheld, attach</p>	

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			attachments, devices, or equipment must meet all applicable federal and state registration or certification standards. CenturyTel reserves the right to refuse attachments if CenturyTel determines that said attachments will degrade E911 ordered by **CLEC, CenturyTel facilities, or otherwise affect its telephone operations.	standards under this agreement must be consistent with applicable law, including but not limited to <i>R.S. Mo.</i> § 392.350.	features, devices, or equipment of other vendors to the equipment or network facilities provided by CenturyTel. Said attachments, devices, or equipment must meet all applicable federal and state registration or certification standards. CenturyTel services the right to refuse attachments if CenturyTel determines that said attachments will degrade E911 ordered by **CLEC, CenturyTel facilities, or otherwise affect its telephone operations.	
36.	Should each party be required to indemnify and hold harmless the other party except where the indemnified party has engaged in acts that constitute negligence, gross negligence, intentional or willful misconduct in connection with E911 service? <u>Should CenturyTel be</u>	9.4	Each Party (Indemnifying Party) shall indemnify and hold harmless the other Party (Indemnified Party) from any damages, claims, causes of action, or other injuries whether in contract, tort, or otherwise which may be asserted by any person, business, governmental agency, or other entity against the Indemnified Party as a result of any act or omission of the Indemnifying Party or any of its employees, directors, officers, contractors or agents, except for the Indemnified Party's acts of negligence, gross negligence or willful or wanton misconduct in connection with designing, developing, adopting, implementing, maintaining, or	Indemnity provisions under this section should be mutual, rather than simply to the benefit of CenturyTel alone. CenturyTel proposes that this provision apply unilaterally, rather than mutually, and as such seeks undue advantage under the proposed agreement. This provision should be mutual, and run to the benefit of both Parties, contrary to CenturyTel's proposal.	9.4 <u>**CLEC</u> shall indemnify and hold harmless <u>CenturyTel</u> from any damages, claims, causes of action, or other injuries whether in contract, tort, or otherwise which may be asserted by any person, business, governmental agency, or other entity against <u>CenturyTel</u> as a result of any act or omission of <u>**CLEC</u> or any of its employees, directors, officers, contractors or agents, except for <u>CenturyTel</u> acts of negligence, gross negligence or wanton or willful misconduct in connection with designing, developing, adopting, implementing, maintaining, or operating any aspect of E911 or for releasing subscriber information, including	CenturyTel's provisions are standard indemnity provisions, and therefore, should be included in the Agreement. The indemnification that CenturyTel's provisions afford is reasonable for a number of reasons. Under the Interconnection Agreement, CenturyTel is responsible for managing the Database Management System ("DBMS") and relaying subscriber information to the counties. If Charter provides CenturyTel with inaccurate subscriber information and CenturyTel releases that inaccurate information to the county, CenturyTel could face potential liability for Charter's acts or omissions. Finally, third parties such as wireless or nomadic VoIP providers may assert claims against CenturyTel that are based on Charter's acts or omissions. Thus, in each of these

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	<u>protected from 3rd party liability related to 911 system errors caused by Charter?</u>		operating any aspect of E911 or for releasing subscriber information, including nonpublished or unlisted information in connection with the provision of E911 Service.		nonpublished or unlisted information in connection with the provision of E911 Service.	instances, the potential for liability arises from Charter's actions or failure to act. Requiring Charter to indemnify CenturyTel based on the risks associated with its own actions or failure to act is entirely reasonable and appropriate.
37.	<p>Should the Agreement limit both Parties' liability related to the release of information, including nonpublished and nonlisted information, in response to a 911 call?</p> <p><u>Should CenturyTel be protected from 3rd party liability related to Charter's errors in providing subscriber information to CenturyTel?</u></p>	9.7	Neither Party shall be liable for any civil damages, whether in contract, tort, or otherwise, caused by an act or omission of the other Party in the good faith release of information not in the public record, including nonpublished or nonlisted subscriber information to Emergency Response Agencies responding to calls placed to an E911 service using such information to provide an E911 service.	CenturyTel proposes that this provision apply unilaterally, rather than mutually, and as such seeks undue advantage under the proposed agreement. Given that the circumstances described in this provision could apply to both Parties' release of information to emergency service providers, this provision should be mutual, and run to the benefit of both Parties, contrary to CenturyTel's proposal.	<u>CenturyTel</u> shall <u>not</u> be liable for any civil damages, whether in contract, tort, or otherwise, caused by an act or omission of <u>CenturyTel</u> in the good faith release of information not in the public record, including nonpublished or nonlisted subscriber information to emergency response agencies responding to calls placed to an E911 service using such information to provide an E911 Service.	This issue is related to Issue No. 36. Again, since CenturyTel is responsible for managing the DBMS and relaying subscriber information to the public agency, it must be protected from Charter's acts or omissions in providing its subscriber information to CenturyTel for the database. Missouri law does not provide telecommunications carriers like CenturyTel with any form of immunity from liability.

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38.	<p>Should CenturyTel be permitted to limit its liability for so-called “nonregulated” telephone services in connection with 911 services – even where that term is not defined under the Agreement?</p> <p><u>Should CenturyTel be liable for incorrectly routed 911 service, when such incorrect routing is not CenturyTel's fault?</u></p>	9.8	<p>It is the obligation of **CLEC to answer, and transmit to the appropriate CenturyTel Selective Router all E911 telephone calls that originate from **CLEC's End User Customers.</p>	<p>A basic purpose of any interconnection agreement under Sections 251 and 252 of the Telecommunications Act is to establish definitively the rights and obligations of the parties with respect to interconnection. The rights and obligations of the parties under this agreement must therefore be clear and unambiguous to accomplish the purposes of Sections 251 and 252. Century Tel's proposal undermines these purposes because Century Tel's reference to “non-regulated services” is not in any way meaningfully defined. This will invite disputes between the parties as to the meaning of this term. This is especially problematic because Century Tel seeks to limit its liability with respect to vital 911 services in connection with its undefined term. The Commission should refuse to inject such uncertainty into a critical aspect of the interconnection agreement between the parties.</p>	<p><u>CenturyTel shall have no liability whatsoever to any person arising from its provision of, or failure to provide, E911 to any subscriber to a nonregulated telephone service (e.g., shared tenant service).</u> It is the obligation of **CLEC to answer, <u>respond to, transfer, terminate, dispatch, or arrange to dispatch emergency services or otherwise handle</u> all E911 telephone calls that originate from <u>telephones within</u> **CLEC's service area. <u>Neither **CLEC nor CenturyTel shall have any responsibility for E911 calls that carry foreign dial tone, whether they originate within or outside of **CLEC service area.</u></p>	<p>CenturyTel's proposed language addresses situations where Charter is, for example, selling its services to a nomadic VoIP provider or to a shared tenant provider. In addition, CenturyTel is also concerned that certain EAS traffic or improperly numbered traffic (i.e. “foreign dial tone”) may not be correctly routed to the PSAP, due to no fault of CenturyTel. CenturyTel should not be liable for these 911 routing situations. Charter's proposed language does not address CenturyTel's concern and merely restates only part of Charter's obligations under this agreement. Thus, adoption of CenturyTel's language is entirely reasonable.</p>

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39.	Should CenturyTel be entitled to assess certain additional 911-related fees and assessments upon Charter?	Art. XI, § IV, Pricing	<p>A. Intentionally Left Blank.</p> <p>B. 911 Facilities from the Provider's owned or leased network to CenturyTel's Selective Router (if provided by CenturyTel)</p> <p>911 Facilities from Provider network to CenturyTel Selective Router</p> <p>Special Access Circuits Cost based rates / (MRC) and (NRC)</p> <p>C. Intentionally Left Blank.</p>	<p>As to the respective responsibilities of Charter and CenturyTel in the provision of 911 network facilities, Charter is responsible for establishing appropriate trunks and facilities from its network to the CenturyTel selective router serving the Public Safety Answering Points (PSAP) in the relevant service area. CenturyTel, in turn, is responsible for establishing trunks and facilities from its selective router to the appropriate PSAP. Therefore, because that functionality is CenturyTel's responsibility, CenturyTel may not assess Charter monthly recurring, or nonrecurring, charges for the trunks that may be provisioned over such facilities.</p> <p>Furthermore, CenturyTel is not entitled to recover from Charter every cost that may arise in the provision of its 911 service. Existing cost recovery mechanisms allow CenturyTel to recover such costs from the PSAPs, and its own end users, where appropriate. Therefore, Charter should not be required to pay CenturyTel for the miscellaneous charges proposed by CenturyTel.</p>	<p><u>A. The following trunk charges will be paid to CenturyTel for each E911 PSAP to which the Provider connects.</u></p> <p><u>911 Trunk Charge</u> <u>Monthly Recurring \$85.00 per trunk</u> <u>Nonrecurring Channel (Each)</u> <u>\$170.00 per trunk</u></p> <p>B. 911 Facilities from the Provider's owned or leased network to CenturyTel's Selective Router (if provided by CenturyTel)</p> <p>911 Facilities from Provider network to CenturyTel Selective Router</p> <p>Special Access Circuits <u>Per State Access Tariff</u> <u>PSC Mo. No.2 / (MRC) and (NRC)</u></p> <p>C. <u>Automatic Location Identification</u> <u>Monthly</u> <u>Nonrecurring</u> <u>(ALI) Database</u></p>	<p>CenturyTel agrees with Charter that Charter is responsible for establishing appropriate trunks and facilities from its network to the CenturyTel selective router serving the Public Safety Answering Points ("PSAP") in the relevant service area. And those are exactly the charges proposed by CenturyTel. The facility charges have been addressed in Issue 33. The only other charges that would apply to Charter are the monthly recurring charges for each trunk that is established by Charter at the CenturyTel selective router for each PSAP served. CenturyTel notes that in Missouri all costs for the trunks and facilities from its selective router to the appropriate PSAP are recovered from the entity operating the PSAP. Therefore, no charges to Charter have been proposed for this portion of the 911 network. Charter has already established and utilizes CenturyTel's E911 Gateway connection. Therefore, none of the additional charges would apply to Charter today. CenturyTel has included charges that may apply if a new CLEC adopted Charter's agreement. The only additional charge that could apply to Charter is if Charter requests an additional complete copy of the Master Street Address Guide ("MSAG"). The initial MSAG is provided at no charge. In this instance, Charter should pay CenturyTel</p>

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					<u>Recurring</u> <u>i. Per Article VII 3.4.5 –</u> <u>If **CLEC uses</u> <u>CenturyTel's E911</u> <u>gateway No Charge</u> <u>\$ 380.00</u> <u>ii. If **CLEC does not</u> <u>utilize CenturyTel's E911</u> <u>Gateway</u> <u>a. Database</u> <u>Administration, per</u> <u>database \$</u> <u>380.00 \$--</u> <u>b. Database Monthly</u> <u>Nonrecurring</u> <u>Recurring</u> <u>1) each non-</u> <u>CENTURYTEL</u> <u>subscriber record for</u> <u>which CENTURYTEL</u> <u>will verify via the</u> <u>MSAG .04</u> <u>.35</u> <u>iii. Third Party FRAD</u> <u>Connectivity</u> <u>Third Party Frame</u> <u>Relay Access Device</u> <u>(FRAD) Connectivity</u> <u>provides for retrieval of</u> <u>ALI Database</u>	miscellaneous charges related to the costs arising from CenturyTel's provision of 911 service in order for CenturyTel to recover its costs of providing such services in Missouri.

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					<u>Information for wireless and competitive Local Providers using a non-CenturyTel Third Party Database Provider over a Non-Call Associated Signaling (NCAS) solution.</u> <u>1) FRAD Access 63.44</u> <u> --</u> <u>2) Steerable ALI Software</u> <u>71.42 1000.00</u> <u>iv. Selective Routing Port Charges for Connecting Companies</u> <u>1) Selective Router Port Connection,</u> <u>per trunk 47.19</u> <u>150.00</u> <u>2) CMRS/VOIP Additive,</u> <u>per</u> <u>wireless or</u> <u>nomadic VOIP</u> <u>service trunk</u> <u>82.54 --</u> <u>D. Additional file copy of the MSAG</u> <u>-- \$250.00</u>	

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40.	Should the Pricing Article include Service Order rates and terms? (This issue is related to issue 27, above.)	Art. II, § 2.70	2.70 [Intentionally omitted]	<p>Charter agrees that this issue relates directly to Issue 21, and should be decided in tandem with that issue.</p> <p>As explained in Charter's position statement for Issue 21, neither Party should be permitted to assess charges upon requests from the other Party to fulfill a subscriber's number porting requests. Such charges are prohibited under the FCC's cost recovery rule, and amount to a tax on competition, in that they require the competitor to pay such charges to the incumbent for every subscriber that chooses to leave the incumbent and obtain service from the competitor. CenturyTel's proposed "service order" charges are essentially charges for responding to number port requests from Charter. This is evident by CenturyTel language describing the distinction between "simple" and complex" service orders: the amount of <i>numbers</i> that are ported is the key distinction in CenturyTel's language. Therefore, these so-called service order charges are nothing more than charges for porting numbers to Charter. Such charges amount to a barrier to entry in to the local voice market, and violate basic principles of competitive neutrality surrounding the recovery of costs associated with</p>	<p>2.70 <u>Initial Service Order</u></p> <p><u>An order submitted by **CLEC to CenturyTel initially ordering a port or other service required by this Agreement.</u></p> <p>[NOTE: This dispute also encompasses whether to include the following language in Article XI (Pricing):]</p> <p>Article XI (Pricing), § III(B):</p> <p><u>Initial Service Order</u> <u>Simple</u> <u>\$ 14.02</u> <u>Complex</u> <u>\$ 65.77</u></p> <p><u>Subsequent Service Order \$ 7.53</u></p> <p><u>Manual Ordering Charge \$ 12.17</u></p> <p><u>"Initial Service Order" (ISO) applies to every Local Service Request (LSR).</u></p> <p><u>A "Simple" ISO charge applies to every LSR submitted that contains 1 –</u></p>	<p>Aspects of this issue relate directly to Issue 27. Thus, Issue 27 and Issue 40 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel.</p> <p>The definition of Initial Service Order ("ISO") and corresponding rates should be included in the Agreement. Consistent with Issue 27, <i>supra</i>, the Commission should reject Charter's effort to strike the definition of Initial Service Order from Art. II and the service order charges from the Pricing Article based on a purported inapplicability of ISO charges to porting requests.</p> <p>CenturyTel notes that it has provided all cost support demonstrating the appropriateness of CenturyTel's rates to Charter. In light of Charter's failure to question such rates in its Petition, Charter has agreed that such rates are appropriate assuming that the Commission, as it should so assume, concludes that ISOs are applicable in all instances of a service request made by Charter, including, but not limited to, requests to port an end user's telephone number.</p>

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				<p>number porting.</p> <p>Further, CenturyTel's characterization of Charter's position with respect to the propriety of these charges is simply not correct. CenturyTel's statement that Charter's "failure to question" CenturyTel's proposed charges somehow constitutes "Charter's agreement" is absurd. CenturyTel bears the burden of proving that any charges it seeks to impose are lawful, just, reasonable, and consistent with the public's interest in a vibrant competitive voice market. Therefore, CenturyTel (not Charter) must bear the burden of proof that it's proposed charges meet those standards.</p>	<p><u>9 numbers.</u></p> <p><u>A "Complex" ISO charge applies to every LSR submitted that contains in excess of 10 or more numbers.</u></p> <p><u>"Subsequent Service Order" applies to any modification to an existing LSR.</u></p> <p><u>"Manual Ordering Charge" applies in addition to the ISO charge for every LSR that is submitted manually where an electronic interface for such LSR is available.</u></p>	
41.	<p>How should specific Tariffs be incorporated into the Agreement?</p> <p>(This issue is related to Issue 3.)</p>	<p>Art. II, Section 2.79, 2.86, 2.89, 2.97, and 2.113</p> <p>Art. III, Section ns</p>	<p><u>Articles I-III – General Terms and Conditions</u></p> <p><u>2.79 IntraLATA Toll Traffic</u></p> <p>Telecommunications traffic between two locations within one LATA where one of the locations lies outside of the CenturyTel Local Calling Area as defined in Section(s) 3 and 4 of CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff,</p>	<p>As explained in Charter's position statement in Issue 3(b), the Parties should incorporate only those specific tariff provisions that they intend to be operative under this Agreement. The Commission should not approve an Agreement that simply purports to incorporate any "applicable" tariff, or which purports to incorporate an identified tariff, without specific reference to the applicable sections of that tariff. Broad, overarching statements of incorporation of extraneous documents will inevitably lead to</p>	<p>ARTICLE II - DEFINITIONS</p> <p>2.79 IntraLATA Toll Traffic</p> <p>Telecommunications traffic between two locations within one LATA where one of the locations lies outside of the CenturyTel Local Calling Area as defined in CenturyTel of Missouri, LLC, PSC No. 1, General and Exchange Tariff, on file with the Missouri Public Service Commission. Optional EAS Traffic is included in</p>	<p>CenturyTel notes that this issue relates directly to Issue 3 discussed above. Thus, Issue 3 and Issue 41 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel.</p> <p>There are two aspects to this issue. First, and contrary to Issue 3 where the Parties agreed that tariffs must be specifically referenced where and as necessary, Charter proposes to modify this otherwise agreed-upon language to state that such tariffs apply only to the extent that "<i>specific rates or terms set</i></p>

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		30.3.3 .9 and 30.3.3 .13 Art. V, Section 4.2.1. 1, 4.2.1. 3, and 4.2.2. 3 Art. XI, Sec. I(C) Art. XII, Sec. 2.1.2. 2	on file with the Commission. Optional EAS Traffic is included in IntraLATA Toll Traffic. 2.86 Local Calling Area (LCA) Local Calling Area (LCA) traffic is traffic originates and terminates in the local exchange area, and any mandatory Extended Area Service (EAS) exchanges, as defined in Section(s) 3 and 4 of CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff, on file with the Missouri Public Service Commission. 2.89 Local Traffic For purposes of Article V of this Agreement, Local Traffic is traffic (excluding CMRS traffic) that is originated and terminated within the CenturyTel Local Calling Area, or mandatory Extended Area Service (EAS) area, as defined in Section(s) 3 and 4 of CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff, on file with the Missouri Public	interpretive disputes as to which tariffs are in fact “applicable” in any given circumstance, or which specific sections of an identified tariff are applicable. Such disputes may lead to conflicts between the parties that that can be resolved only with burdensome litigation. CenturyTel’s contention that Charter’s proposal creates ambiguity is simply not correct. In fact, identifying specific sections of a tariff that is incorporated by reference will reduce ambiguity in the contract because it will clearly establish what portions of these tariffs the parties intend to incorporate by reference. This approach provides greater specificity, and clarity, to the contract, and therefore ensures uniform interpretation of the terms in the future. Moreover, CenturyTel’s statement of the effect of Charter’s proposal is misleading. Charter does not agree with CenturyTel’s statement that “[i]f a service is ordered pursuant to a tariff by either Party, the tariff’s terms and conditions should apply.” The only question is <i>which</i> terms and conditions should apply. CenturyTel would have this Commission believe that it is	IntraLATA Toll Traffic. 2.86 Local Calling Area (LCA) Local Calling Area (LCA) traffic is traffic that originates and terminates in the local exchange area, and any mandatory Extended Area Service (EAS) exchanges, as defined in the CenturyTel of Missouri, LLC, PSC No. 1, General and Exchange Tariff, on file with the Missouri Public Service Commission. 2.89 Local Traffic For purposes of Article V of this Agreement, Local Traffic is traffic (excluding CMRS traffic) that is originated and terminated within the CenturyTel Local Calling Area, or mandatory Extended Area Service (EAS) area, as defined in the CenturyTel of Missouri, LLC, PSC No. 1, General and Exchange Tariff, on file with the Missouri Public Service Commission.	<i>forth</i> ” in the tariffs are incorporated into the Agreement. Charter’s proposed change should be rejected by the Commission. Charter’s proposal creates ambiguity in instances where a service is offered pursuant to the terms of a tariff as opposed to pursuant to the terms and conditions of the Agreement. Specifically, Charter’s proposal suggests that no tariff sections apply to Charter’s ordering of a service unless specific tariff section references are cited in the Agreement. If a service is ordered pursuant to a tariff by either Party, the tariff’s terms and conditions should apply. Second, Charter’s proposal to incorporate references to specific sections of an applicable Tariff is problematic and unnecessary, and would introduce potential ambiguity and inconsistencies into the Agreement. CenturyTel agreed to incorporate the specific names of the referenced tariffs as demanded by Charter. However, because the Agreement at issue in this arbitration is one agreement arising out of a multi-state negotiation, CenturyTel expended considerable time researching and confirming the specific names of the tariffs applicable to 14 CenturyTel local exchange carriers located across the three (3) states that are involved. Despite this agreement, Charter now

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			<p>Service Commission. Local Traffic does not include optional local calling (i.e., optional rate packages that permit the end-user to choose a Local Calling Area beyond the basic exchange serving area for an additional fee), referred to hereafter as “optional EAS”. Local Traffic includes Information Access Traffic to the extent that the end user and the ISP are physically located in the same CenturyTel Local Calling Area. Local Traffic includes Interconnected VoIP Service Traffic to the extent that the originating end user and the terminating end user are physically located in the same CenturyTel Local Calling Area.</p> <p>2.97 <u>“Meet Point Billing (MPB)” or “Meet Point Billing Arrangement”</u></p> <p>Refers to an arrangement whereby two LECs jointly provide the transport element of a Switched Access Service to one of the LEC's End Office Switches, with each LEC receiving an appropriate share of the transport element revenues as defined in Section(s) 2.7 of CenturyTel of Missouri, LLC,</p>	<p>impossible, or impractical, to identify such specific terms at this point in time. But a review of the existing tariff incorporation references reveals that this task is neither impossible, nor impractical. In fact, it is a task that Charter has already performed and proposed to CenturyTel. Therefore, CenturyTel claims of impossibility are unavailing.</p> <p>Finally, CenturyTel's claims that specifically incorporating a tariff section will somehow violate the Filed Rate Doctrine are not compelling. This assertion represents an attempt to obscure the simple and straight forward proposal offered by Charter on this issue. There is no evidence that Charter expects CenturyTel to provide a tariffed service, when so ordered by Charter, to Charter at a rate other than the tariffed rate.</p> <p>Accordingly, and consistent with its position concerning the definition of a tariff (in Issue 3 above), the agreement should include specific language to reflect the incorporation of only those tariff provisions that are specifically and expressly identified in the Agreement.</p>	<p>Local Traffic does not include optional local calling (i.e., optional rate packages that permit the end-user to choose a Local Calling Area beyond the basic exchange serving area for an additional fee), referred to hereafter as “optional EAS”. Local Traffic includes Information Access Traffic to the extent that the end user and the ISP are physically located in the same CenturyTel Local Calling Area. Local Traffic includes <u>IP-Enabled Traffic</u> to the extent that the originating end user and the terminating end user are physically located in the same CenturyTel Local Calling Area.</p> <p>2.97 <u>“Meet Point Billing (MPB)” or “Meet Point Billing Arrangement”</u></p> <p>Refers to an arrangement whereby two LECs jointly provide the transport element of a Switched Access Service to one of the LEC's End Office Switches, with each LEC receiving an appropriate share of the transport element revenues as defined in the CenturyTel of Missouri, LLC, PSC Mo. No. 2, Facilities for Intrastate Access,</p>	<p>requests that <i>specific section references within such tariffs</i> be incorporated into the Agreement. That request is impractical and should be rejected. CenturyTel cannot be required to once again research its tariff provisions for Charter nor should CenturyTel be required to modify and seek an amendment to the Agreement if, in the future, tariff section numbering changes based on tariff reorganizations and other changes are made. Charter's proposal ignores the fact that tariff provisions are subject to change independent of the process(es) that govern changes or amendments to the interconnection agreement. Thus, such changes to a tariff could render obsolete references to specific tariff sections incorporated into the Agreement, introducing unintended ambiguity into the Agreement.</p> <p>The more efficient manner to incorporate or reference such terms is by referencing the <i>entirety</i> of the stand-alone tariff, not its individual sections. CenturyTel already has agreed to identify the specific tariffs referencing and incorporating the specific tariff in the Agreement. The Commission should adopt CenturyTel's proposed language.</p>

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			<p>PSC No. 2, Facilities for Intrastate Access, on file with the Missouri Public Service Commission, and in Section 5.2 of CenturyTel Operating Companies Interstate Access Tariff FCC No. 3.</p> <p>2.113(A) <u>Percentage Local Use (PLU)</u></p> <p>A percentage calculated by dividing the number of minutes of Local Traffic by the total number of minutes. The resulting factor is used to determine the portion of Local Traffic minutes exchanged via Local Interconnection Trunks. PLU is developed from the measurement of calls in which the calling and called parties are located within a given Local Calling Area or mandatory EAS area as defined in Section(s) 3 and 4 of CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff, on file with the Missouri Public Service Commission.</p>		<p>Intrastate Access Service Tariff on file with the Missouri Public Service Commission, PSC Mo. No. 2; and the CenturyTel Operating Companies Interstate Access Tariff No <u>2</u> or 3.</p> <p>2.113(A) <u>Percentage Local Use (PLU)</u></p> <p>A percentage calculated by dividing the number of minutes of Local Traffic by the total number of minutes. The resulting factor is used to determine the portion of Local Traffic minutes exchanged via Local Interconnection Trunks. PLU is developed from the measurement of calls in which the calling and called parties are located within a given Local Calling Area or mandatory EAS area as defined in the CenturyTel of Missouri, LLC, PSC No. 1, General and Exchange Tariff, on file with the Missouri Public Service Commission.</p>	

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			<p>30.3.3.8 Liability arising under any applicable Tariff specifically identified herein;</p> <p>30.3.3.9 Liability arising under any indemnification provision contained in this Agreement or any separate agreement or in Section(s) (I) of the 911 portion of CenturyTel of Missouri, LLC, PSC No. 10, Wholesale Tariff, on file with the Missouri Public Service Commission related to provisioning of 911/E911 services;</p> <p>30.3.3.13 Liability arising under any indemnification provision contained in this Agreement, a separate agreement or in Section(s) (G) of the Directory Services portion of the CenturyTel of Missouri, LLC, PSC No. 10, Wholesale Tariff, on file with the Missouri Public Service Commission related to provisioning of Directory Listing or Directory Assistance Services.</p>		<p>ARTICLE III GENERAL TERMS AND CONDITIONS</p> <p>30.3.3.8 Liability arising under any applicable Tariff</p> <p>30.3.3.9 Liability arising under any indemnification provision contained in this Agreement or any separate agreement or in <u>the applicable provisions of the</u> CenturyTel of Missouri, LLC, PSC No. 10, Wholesale Tariff, on file with the Missouri Public Service Commission related to provisioning of 911/E911 services;</p> <p>30.3.3.13 Liability arising under any indemnification provision contained in a separate agreement or <u>the applicable provisions of</u> the CenturyTel of Missouri, LLC, PSC MO. No. 10, Wholesale Tariff, on file with the Missouri Public Service Commission related to provisioning of Directory Listing or Directory Assistance Services.</p>	

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September 2, 2008

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			<p><u>Article V - Interconnection</u></p> <p>4.2.1.1 “Local Traffic,” for purposes of intercarrier compensation, is Telecommunications traffic originated by a End User Customer of one Party in an exchange on that Party’s network and terminated to a End User Customer of the other Party on that other Party’s network located within the same exchange or other non-optional extended local calling area associated with the originating customer’s exchange as defined by Sections 3 and 4 CenturyTel of Missouri, LLC, PSC No. 2, General and Local Exchange Tariff. Local Traffic does not include: (1) any ISP-Bound Traffic; (2) traffic that does not originate and terminate within the same CenturyTel local calling area as such local calling area is defined by CenturyTel’s applicable local exchange tariff; (3) Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; (4) optional extended local calling area traffic; (5) special access,</p>		<p>ARTICLE V: INTERCONNECTION AND TRANSPORT AND TERMINATION OF TRAFFIC</p> <p>4.2.1.1 “Local Traffic,” for purposes of intercarrier compensation, is Telecommunications traffic originated by a End User Customer of one Party in an exchange on that Party’s network and terminated to an End User Customer of the other Party on that other Party’s network located within the same exchange or other non-optional extended local calling area associated with the originating customer’s exchange as defined in the <u>CenturyTel of Missouri, LLC, PSC No. 2, General Exchange Tariff</u>. Local Traffic does not include: (1) any ISP-Bound Traffic; (2) traffic that does not originate and terminate within the same CenturyTel local calling area as such local calling area is defined by CenturyTel’s applicable local exchange tariff; (3) Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; (4)</p>	

Charter ICA Terms and Issue Formulations in Bold
CenturyTel ICA Terms and Issue Formulations in Double-Underlined
Agreed to Terms and Issue Formulations in Normal Text

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			<p>private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; or, (6) Tandem Transit Traffic.</p> <p>4.2.1.3 Interconnected VoIP Service Traffic originated by a End User Customer of one Party in an exchange on that Party's network and terminated to a End User Customer of the other Party on that other Party's network located within the same exchange or other non-optional extended local calling area associated with the originating customer's exchange as defined by Sections 3 and 4 CenturyTel of Missouri, LLC, PSC No. 2, General and Local Exchange Tariff CenturyTel's applicable local exchange tariff shall be included in Local Traffic. IP-Enabled Voice Traffic directed to a terminating End User physically located outside the originating End User's local calling area will be considered toll traffic and subject to access charges.</p> <p>4.6.4.4.2 Transit of IntraLATA Toll Traffic: A per-minute-of-use rate will be charged to the originating Party, as contained in</p>		<p>optional extended local calling area traffic; (5) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; or, (6) Tandem Transit Traffic.</p> <p><u>4.2.1.3 IP-Enabled Voice Traffic</u> originated by a End User Customer of one Party in an exchange on that Party's network and terminated to a End User Customer of the other Party on that other Party's network located within the same exchange or other non-optional extended local calling area associated with the originating customer's exchange, as defined in CenturyTel of Missouri, LLC, PSC No. 2 General and Local Exchange Tariff on file with the Missouri Public Service Commission shall be included in Local Traffic. IP-Enabled Voice Traffic directed to a terminating End User physically located outside the originating End User's local calling area will be considered toll traffic and subject to access charges.</p> <p>4.6.4.4.2 Transit of IntraLATA Toll Traffic: A per-minute-of-use rate will be charged to the originating Party, as contained in</p>	

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			<p>Section 4.6 of CenturyTel of Missouri, LLC, PSC No. 2, Facilities for Intrastate Access.</p> <p><u>Article XI Pricing</u></p> <p>B. 911 Facilities from the Provider's owned or leased network to CenturyTel's Selective Router (if provided by CenturyTel)</p> <p>911 Facilities from Provider network to CenturyTel Selective Router</p> <p>Special Access Circuits</p> <p>Monthly Recurring</p> <p>Per Facilities For Intrastate Access Tariff, PSC No.2 Section 5.7</p> <p>Nonrecurring</p> <p>For Facilities For Intrastate Access Tariff, PSC No. 2 Section 5.7</p>		<p>CenturyTel of Missouri, LLC's Intrastate Access tariff, PSC Mo. No. 2.</p> <p>ARTICLE XI: PRICING</p> <p>B. 911 Facilities from the Provider's owned or leased network to CenturyTel's Selective Router (if provided by CenturyTel).</p> <p>911 Facilities from Provider network to CenturyTel Selective Router</p> <p>Special Access Circuits</p> <p>Monthly Recurring</p> <p><u>Per State Access Tariff, Facilities for Intrastate Access Tariff, PSC No. 2,</u></p> <p>Nonrecurring</p> <p><u>Per State Access Tariff, Facilities for Intrastate Access Tariff, PSC No. 2,</u></p>	

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			<p>V. DIRECTORY SERVICES RATES AND CHARGES</p> <p>Directory Listings</p> <p>Tariff Items (e.g., additional listings, foreign listings, enhanced listings): Rates set forth in CenturyTel of MO PSC No. 1 General and Local Exchange Tariff, Section(s) 9.C.1</p> <p><u>Article XII</u></p> <p>2.1.2.2 <u>Non-Primary</u> or <u>Additional Listings</u>. Where a **CLEC retail End User Customer requires enhanced, foreign or other listings in addition to the Primary Listings to appear in the CenturyTel Directories, CenturyTel will provide such listings pursuant to CenturyTel's tariffed rates found in Section 5.7 of CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff on file with the Public Service Commission of Missouri.</p>		<p>V. DIRECTORY SERVICES RATES AND CHARGES</p> <p>Directory Listings</p> <p>Tariff Items (e.g., additional listings, foreign listings, enhanced listings): <u>Pursuant to</u> CenturyTel of Missouri, LLC, PSC Mo. No. 1 General and Local Exchange Tariff</p> <p>ARTICLE XII: DIRECTORY SERVICES</p> <p>2.1.2.2 <u>Non-Primary</u> or <u>Additional Listings</u>. Where a **CLEC retail End User Customer requires enhanced, foreign or other listings in addition to the Primary Listings to appear in the CenturyTel Directories, CenturyTel will provide such listings pursuant to CenturyTel's tariffed rates <u>and terms found in</u> CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff on file with the Missouri Public Service Commission.</p>	