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PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

April 2, 2008
Jefferson City, Missouri
Volume 2

Complaint of Charter Fiberlink-Missouri,)
LLC, Seeking Expedited Resolution and)
Enforcement of Interconnection)
Agreement Terms Between Charter)
Fiberlink-Missouri, LLC, and CenturyTel)
of Missouri, LLC,)

CHERLYN D. VOSS, Presiding
REGULATORY LAW JUDGE
CONNIE MURRAY,
ROBERT M. CLAYTON, III,
LINWARD "LIN" APPLING,
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COMMISSIONERS

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1 P R O C E E D I N G S

2 JUDGE VOSS: All right. We're here for a
3 hearing today in Commission Case No. LC-2008-0049 in the
4 matter of the complaint of Charter Fiberlink-Missouri,
5 LLC, seeking expedited resolution and enforcement of
6 interconnection agreement terms between Charter
7 Fiberlink-Missouri, LLC, and CenturyTel of Missouri, LLC.

8 I'm Cheralyn Voss. I'm the Regulatory Law
9 Judge assigned to hear the case. We are going to begin by
10 taking oral entries of appearance, beginning with Charter
11 Fiberlink.

12 MR. COMLEY: Good morning, Judge. Good morning,
13 Judge Voss. I hope the microphone is working.

14 JUDGE VOSS: Sounds like it is.

15 MR. COMLEY: All right. Let the record reflect
16 the entry of appearance of Mark W. Comley, Newman, Comley
17 & Ruth, 601 Monroe Street, Suite 301, Jefferson City,
18 Missouri, on behalf of Charter Fiberlink, Missouri, LLC.

19 Also, to my right, someone I previously
20 introduced to the -- to the judge today is Mr. Kevin C.
21 Halm, Davis, Wright, Tremaine, LLC, 1919 Pennsylvania
22 Avenue N.W., Suite 200, Washington D.C, 20006. He is also
23 -- I join him in representing Charter Fiberlink of
24 Missouri, LLC.

25 JUDGE VOSS: Thank you. Okay. Now we'll go to

1 CenturyTel.

2 MR. DORITY: Thank you, Judge. Appearing on
3 behalf of Respondent, CenturyTel of Missouri, LLC, Larry
4 W. Dority with the firm Fischer & Dority, PC. Our address
5 is 101 Madison, Suite 400, Jefferson City, Missouri,
6 65101.

7 Also appearing today on behalf of the
8 Respondent, I would like to introduce to the Commission
9 Mr. Tyler Peters to my left. Mr. Peters is with the firm
10 Payne & Jones, Charter, 11000 King, P.O. Box 25625,
11 Overland Park, Kansas, 66210. Thank you.

12 JUDGE VOSS: Thank you. Commission staff?

13 MR. BAKER: Appearing on behalf of the Staff of
14 the Missouri Public Service Commission, Blane Baker, P.O.
15 Box 360, Jefferson City, Missouri, 65102.

16 JUDGE VOSS: The Office of the Public Counsel?

17 MR. POSTON: Thank you. Marc Poston, appearing
18 for the Office of Public Counsel. Mike Dandino is also
19 representing Public Counsel, but he is not able to be here
20 today. Our address is P.O. Box 2230, Jefferson City,
21 Missouri, 65102.

22 JUDGE VOSS: Are there any preliminary matters
23 the parties would like me to address before we begin? And
24 is there a reason that you're not sitting -- would you be
25 more comfortable sitting in the other seat? I wasn't sure

1 what the seating arrangements were. You guys were out
2 earlier.

3 MR. PETERS: There was just more room in the
4 back.

5 JUDGE VOSS: Okay. That's fine.

6 MR. PETERS: I gave it a try, and I wasn't able
7 to move my chair. So --

8 JUDGE VOSS: No problem.

9 MR. PETERS: We went to the back. Just like --
10 just like in college in class, go to the back of the room.

11 MR. HALM: You will be paying attention?

12 MR. PETERS: I will be paying attention. Yes.

13 JUDGE VOSS: Great. We have premarked exhibits.
14 So if the parties are ready to proceed, we'll begin with
15 opening statements, beginning with Charter.

16 OPENING STATEMENT

17 BY MR. HALM:

18 MR. HALM: Thank you, your Honor, Commissioners.
19 Before we discuss the merits of this case, I think it's
20 important to consider, just very briefly, the background
21 and context of what's going on here.

22 As you may know, Charter is a facility-based
23 provider of voice services in Missouri providing service
24 to primarily residential subscribers. They do so over
25 their own network. They don't lease unbundled network

1 elements for CenturyTel. They don't resell CenturyTel's
2 services. Indeed, they compete with CenturyTel directly
3 in a number of CenturyTel service areas.

4 And their service offers have been very
5 successful. Thousands and thousands of Missouri
6 subscribers have moved to Charter to take their telephone
7 service.

8 Most of those subscribers, when they move from
9 either CenturyTel or another telephone company to Charter,
10 they want to keep their telephone number with them. We
11 all know what number portability is. We all know why
12 that's important.

13 That's the underlying lynch pin to this case.
14 The continued provision of number portability to Missouri
15 subscribers is at issue here. Indeed, we believe number
16 functionality is critical to the continued expansion of
17 competitive service.

18 Competitors aren't able to compete directly and
19 effectively if they can't ensure new subscribers that
20 those subscribers can bring their telephone numbers with
21 them. Number porting is critical.

22 The Commission has the opportunity here to
23 ensure that number porting remains protected and remains
24 in the central component of competitive service offerings.
25 And you can do so by prohibiting CenturyTel from assessing

1 number porting charges on Century -- on Charter Fiberlink.

2 Indeed, we believe this case presents a
3 relatively simple contract question. The Commission need
4 only look to this contract and the four corners of that
5 document to answer this very simple question. Does this
6 contract authorize CenturyTel to assess number porting
7 charges on Charter? We believe the answer is clearly and
8 unequivocally no.

9 When your Honor reviews the terms of the
10 contract and reads the plain language of the contract,
11 you'll find no provision that says CenturyTel shall bill
12 and Charter shall pay for number porting. There is simply
13 nothing in the contract that authorizes or even
14 contemplates such charges.

15 Therefore, by construing the four corners of
16 this document, reading the contract on its face, your
17 Honor and this Commission can reach only one conclusion,
18 that this contract does not authorize these charges and
19 that CenturyTel's continued assessment of these charges
20 for the last five and a half years constitutes a breach of
21 the contract.

22 CenturyTel, of course, had a number of theories
23 in defense of its actions. We believe that they all fail.
24 First, let's remember that CenturyTel does not dispute the
25 fact that this contract does not specifically authorize

1 these charges. Instead, their defense relies upon several
2 theories, all of which, in our view, hold no water.

3 First, CenturyTel claims that it is providing a
4 service for which it must be compensated. And they
5 repeatedly point to their alleged costs to support this
6 claim. CenturyTel also argued that even if there's no
7 contract provision that expressly authorizes these
8 charges, the charges should be upheld because it is
9 CenturyTel's quote, policy, unquote, to assess these
10 charges.

11 These arguments seem to invoke two different
12 legal theories. First, that CenturyTel is entitled to
13 recover under a theory of quantum merit or unjust
14 enrichment. Second, that there is some sort of implied
15 contract that exists here.

16 But both of those theories fail because they
17 only apply where no contract exists. Here, obviously, we
18 have a contract. It's been presented in the record. It's
19 right there for all of us to review and consider.

20 Furthermore, it's important to consider that
21 CenturyTel is obligated under federal law under 47 USC,
22 Section 251(b)(2), in other words, 251(b)(2) of the
23 Telecom act, to provide number portability to end users.

24 In fulfilling that function, if fulfilling that
25 duty, they're not providing a service to Charter. They're

1 fulfilling their federal statutory duty to end users. And
2 although CenturyTel claims to incur costs in providing
3 number portability and responding to Charter's number
4 porting requests, they have not offered any evidence of
5 such costs. They have not offered a cost study. They
6 have not offered any working papers. They have not
7 offered any basis for the Commission or your Honor to
8 conclude that they incur costs in provision with these
9 functions.

10 Finally, it's important to remember that
11 customers often leave CenturyTel and move to Charter and
12 not as often, but frequently, leave Charter and move to
13 CenturyTel. And when they want to keep their telephone
14 number, Charter provides the very same number porting
15 functionality to CenturyTel. So this arrangement is in
16 place and allows both parties to benefit from the
17 essential number porting functionality that is required by
18 federal law. In that way, it represents a form of in-kind
19 compensation that both parties provide to one another.

20 Second -- CenturyTel's second line of defense
21 relies upon a novel or, some might say, creative theory of
22 contract interpretation. They argue that the contract
23 incorporates two additional documents, and when you read
24 all three documents together as one, there is a basis for
25 these charges.

1 Their contract interpretation argument goes
2 something like this. First, CenturyTel says that its
3 service guide is incorporated in the contract because the
4 service guide is a tariff. The service guide, you may
5 recall, is a document that CenturyTel writes, CenturyTel
6 publishes and CenturyTel requires other CLECs to follow in
7 order to purchase services or go through certain processes
8 at CenturyTel. It's a unilaterally prepared document.

9 CenturyTel also argues that its local exchange
10 tariff is incorporated into this document and that tariff
11 constitutes an applicable tariff as that term is used
12 under the contract.

13 What's wrong with these theories? Plenty.
14 First, there is no specific reference to the local
15 exchange tariff, and there is no specific reference to the
16 service guide.

17 If the Commission were to find that the service
18 guide and the tariff were incorporated into the contract,
19 they would first have to find that the contract
20 specifically identifies those documents and shows a clear
21 intent by both parties to incorporate them into the
22 contract. Nowhere in the contract is there any evidence
23 of mutual intent to incorporate those documents. And
24 there's no specific reference to either of those
25 documents.

1 Second, the service guide is not a tariff. As I
2 just noted, it has never been -- it's a unilaterally
3 prepared document that has not been reviewed or approved
4 by this Commission and which Charter nor any other CLEC
5 has had an opportunity to review proposed revisions to or
6 modify in anyway.

7 Third, the local exchange tariff does not apply
8 to Charter. It's not an applicable tariff under the terms
9 of the contract. It sets forth rates, terms and
10 conditions for local telephone service which end users
11 purchase.

12 Charter is obviously not an end user, and it
13 doesn't purchase local telephone service from CenturyTel.
14 Thus, it's clear that these documents are not and have not
15 been incorporated into the agreement so as to provide
16 CenturyTel a basis for assessing these porting charges.

17 In conclusion, in rendering a decision, we
18 believe the Commission must consider not only the specific
19 contract at issue here, but the consequences of allowing
20 one party to assess charges on another party where there's
21 no contractual basis for those charges.

22 Doing so, we believe, would open up a flood gate
23 of attempts by other carriers to begin assessing CLECs or
24 competitors charges that have no basis in the contract,
25 charges which the CLEC or the competitor never

1 contemplated or agreed to. If that occurs, we'll have a
2 -- many more intercarrier disputes similar to this one,
3 and, undoubtedly, some of those it disputes will find
4 their way to this Commission. I'm not sure that's a
5 useful and efficient use of the Commission's resources.

6 Second, allowing a carrier to impose a charge, a
7 surcharge of sorts on number porting requests simply
8 increases barriers to competition and increases costs for
9 competitors where there is no contractual basis for such
10 charges.

11 The Commission should clearly recognize that
12 allowing such charges to be assessed would constitute a
13 surcharge and inevitably increase costs for competitors.

14 We believe that it's clear that this contract
15 does not authorize CenturyTel's number porting charges.
16 And it is equally clear that CenturyTel's creative
17 theories of contract interpretation are not compelling.
18 The Commission should, therefore, rule that the number
19 porting charges are not authorized by this contract, that
20 CenturyTel's repeated assessment of these charges and
21 attempts to collect such charges under threat of
22 discontinuing porting constitutes a breach of the
23 contract.

24 And, finally, that CenturyTel must refund the
25 amounts already paid by Charter and discontinue billing

1 these charges immediately. Thank you, your Honor.

2 JUDGE VOSS: Thank you. CenturyTel?

3 OPENING STATEMENT

4 BY MR. PETERS:

5 MR. PETERS: Thank you, your Honor, and thank
6 you, Commissioners. With all due respect to Mr. Halm,
7 CenturyTel views this case in an entirely different light.
8 And we fundamentally disagree with both Charter's analysis
9 as well as its characterization of this dispute.

10 This case is not about CenturyTel being a bad
11 actor as has been alleged in the testimony that you're
12 going to be receiving in evidence during the course of
13 this hearing.

14 Rather, in our view, this case boils down to
15 Charter's attempt to avoid paying for over \$200,000 worth
16 of work and services that were performed by CenturyTel for
17 Charter at its request.

18 This dispute cannot be viewed in a vacuum. And
19 it's important that we understand and talk a little bit
20 about the historical context of the dispute. We live in a
21 free market society built in large part on the premise
22 that parties are typically allowed to assess charges to
23 each other for the performance of work requested by a
24 particular party. And I'd ask that we not forget that as
25 we go through this process and as you listen to the

1 testimony that's going to be put before you.

2 We're not standing before you today asking you
3 to find in our favor based on some new or novel concept.
4 We're simply asking to be paid for the work that we
5 performed.

6 In addition, we're not asking to be paid for
7 work and for services that are normally provided for for
8 free in this industry. It's very common within this
9 industry that administrative service order charges of the
10 type that are at issue in this case are charged for in
11 this industry.

12 There's not a barrier to competition by charging
13 for these services, and it's very common that these
14 services are charged for. It's the norm. AT&T charges
15 \$19.99 in administrative costs for manually processing
16 porting requests.

17 Quest charges a similar charge for the same
18 work. Bell South charges the same charge for the same
19 work. CenturyTel charges this administrative service
20 order charge to people and -- and competitors and CLECs
21 that request the porting of numbers.

22 Only Charter is the company -- Charter is the
23 only company that refuses to pay these charges in our
24 experience. CenturyTel has billed these charges by other
25 companies when it ports customers away from other people's

1 networks.

2 CenturyTel is not out of bounds or running afoul
3 of the law as alleged in assessing these very common
4 administrative service order charges. And I'd like to
5 talk just a little bit about the history of -- of this
6 dispute because it is a dispute that has some age.

7 And if you'll indulge me for just a moment,
8 CenturyTel acquired the Verizon property in September of
9 2002 and sometime shortly thereafter began imposing
10 service order charges to Charter associated with porting
11 requests.

12 Despite history practice, Charter refused to pay
13 and they claimed two defenses. They claimed, one, that
14 the charges were illegal. And for that, they cited the
15 Federal Cost Recovery Rule 47 CFR Section 5233, and
16 specifically a provision which allowed carriers to recover
17 certain long-term number portability costs exclusively
18 there through a five-year end user tariff.

19 So they've claimed from Day 1 that these charges
20 are illegal and precluded by virtue of the cost recovery
21 rule. They also claim, as Mr. Halm just referenced, that
22 the interconnection agreement at issue did not permit or
23 allow for the charges that were being assessed.

24 By the summer -- spring/summer time frame from
25 2004, the parties engaged in a dispute resolution process

1 that's required under -- under the interconnection -- with
2 the interconnection agreement, particularly Section 14 of
3 the party's interconnection agreement.

4 At that time, Charter paid \$68,000 and advised
5 that they were paying the charges under protest. The
6 interconnection agreement has two provisions, which you'll
7 hear testimony regarding, for disputed payments in Section
8 9 of the interconnection agreement. There's also a
9 Section 14 which references the parties dispute resolution
10 process as to how the parties are to go about resolving
11 disputes.

12 The parties agreed that's the process they would
13 follow for that specific reason. Charter denied again
14 that these charges were legal. And CenturyTel, in
15 response, asserted that the charges were not precluded by
16 the federal cost recovery rule because that's not what
17 they were charging for, i.e., charges had to fit within
18 the rule, No. 1.

19 And they also claimed the contract did, indeed,
20 allow for the charges. Now, interestingly enough, when
21 Charter paid these -- this money, the \$68,000 for charges
22 that had been incurred in 2003 and up to 2004, again, they
23 did so under dispute.

24 But what they advised was they advised us that
25 -- that they intended to get to the bottom of the issue to

1 comply with the dispute resolution process under Section
2 14 and ultimately get a resolution of the dispute. They
3 threatened us on three separate occasions that if, indeed,
4 they had not received an adequate explanation as to the
5 basis for the charge or, alternatively, a refund of their
6 money, that they would then immediately take action to
7 bring this case before this Commission to seek an
8 adjudication of, A, the legality of the charges and, B,
9 whether or not the contract allowed for them to be
10 charged.

11 But they specifically said, Give us an
12 explanation or refund our money, and failing to do that
13 within this 45-day window allowed in this Section 14
14 dispute resolution process, we will go to the Commission.
15 We will take action to undo those charges and to obtain a
16 refund.

17 What happened was the parties completed the
18 negotiation process. One of our witnesses, Guy Miller,
19 who will be testifying before you in this matter, advised
20 Charter in writing as well as verbally as to the basis of
21 the charges, where the charges could be found.

22 He -- he rebuked their illegality argument in
23 writing and again verbally and advised them at that time
24 that there would be no refund of their money, that Charter
25 was -- or excuse me -- CenturyTel was sustaining the

1 charges. And as far as we were concerned, the matter was
2 over and done.

3 What we expected to have happen was Charter, as
4 they had threatened, to bring this matter to the
5 Commission and seek to obtain a refund or undo the charges
6 or determine that the charges were illegal or not
7 authorized by the contract.

8 What happened was nothing. Charter did nothing.
9 Charter did nothing to follow through on its request that
10 it obtain a refund. It did nothing to bring this action
11 to the Commission's attention. It essentially sat on its
12 hands.

13 And while it had told us in this -- in this
14 dispute time frame that they were prospectively disputing
15 the charge, as they had a right to do, at the end of the
16 day, at least in our view, that dispute process was
17 resolved and concluded.

18 And Charter's failure to take action to escalate
19 the dispute to a new level effectively concluded the
20 dispute. The reason they're asking for their \$68,000 back
21 today is because we asked them to pay an additional amount
22 of funds for additional charges that they wracked up
23 subsequent to payment in 2004 that were incurred up to the
24 2007 time frame.

25 I would surmise that had we not asked them to

1 pay these additional bills they would not have come before
2 you seeking to invalidate these charges and asking that
3 they be declared illegal. We probably wouldn't be having
4 that dispute.

5 But, again, in our view, this dispute was not
6 escalated. It was conclusively determined. It was over.
7 And it's simply unfair for them to come back here and
8 claim that this dispute has always been open, has been
9 pending and that they've got the right to -- to take this
10 action as it relates to the recovery at least of those
11 funds.

12 Certainly, they weren't the aggrieved party at
13 the conclusion of the 2004 dispute. And it was incumbent
14 on them to escalate the dispute. It was not incumbent, as
15 Staff has suggested, for CenturyTel to come to you to take
16 some action to seek an amendment of the agreement to
17 provide for the charges when, in Charter's view, A,
18 they've been paid, and, B, Charter had taken no action to
19 -- to undo the charges.

20 CenturyTel had provided the explanation that had
21 been asked for. And, again, in their view, the matter was
22 effectively resolved. Similarly, if Charter wanted to
23 leave the dispute open or -- or intended the dispute was
24 still open, then it was incumbent on them to follow this
25 dispute resolution process in section 14 again, and go

1 through the enumerated steps that are required in order to
2 re-invoke a new dispute.

3 Again, I don't believe that they ever did that.
4 There's no evidence that they ever did that. And so what
5 ultimately happened was the charges continued to mount.
6 And ultimately, in the summer of 2007, CenturyTel, having
7 not been paid an additional \$122,000 worth of charges,
8 advised Charter that the indebtedness was owed like they
9 had done in the past and demanded payment.

10 And it was at that point that -- that Charter
11 came to the Commission and initiated this action.
12 Although CenturyTel never stopped processing LSRs under
13 Section 12 of the interconnection agreement, we believe
14 they had the right to do so due to Charter's failure to
15 pay and failure to invoke the Section 14 dispute
16 resolution process with respect to what we believe was in
17 a dispute.

18 So, again, Charter -- excuse me -- CenturyTel
19 was within its right to discontinue processing of those
20 LSRs. One other comment Mr. Halm made, CenturyTel is not
21 attempting to -- to -- to bar anyone from porting their
22 telephone numbers, nor is it attempting to avoid
23 competition and not permit that to take place.

24 CenturyTel is only being asked to be paid for
25 the work that it performed. Again, work that's what's

1 commonly charged for.

2 A couple other issues. There is this issue of
3 legality that's been raised throughout this process. And
4 it was -- again, it was touched on today. It's one of the
5 issues that we've raised in our statement of position, and
6 I think it's an issue that needs to be decided ultimately
7 by this Commission.

8 The legality of charging for the administrative
9 work that CenturyTel performs in processing LSRs is
10 demonstrated by three things. One, the fact I mentioned
11 earlier, other carriers in this industry charge for the
12 same work.

13 Two, the fact that Charter has paid these same
14 charges to other carriers. They've done so in Wisconsin.
15 This paid these charges in Wisconsin without objection.
16 It's the same charge. They don't object in Wisconsin.
17 They do object in Missouri.

18 And three, the fact that Commissions, including
19 this Commission, have approved payment for the rendering
20 of these types of services. I think Staff witness Voight
21 has some testimony that he's elicited or put forth before
22 this Commission wherein he advises that charging for these
23 types of charges is certainly not impermissible.

24 Similarly, this cost recovery rule that Mr. Halm
25 referenced, 47 CFR Section 5233, says that there are

1 certain things that may only be required through end user
2 tariff. I have a couple comments with regard to that.

3 The charges that are exclusively allowed to be
4 covered through an end user tariff are not the type of
5 charges that -- that are being assessed in this matter.
6 It's a different issue. Those type of charges relate to
7 the costs of the hardware, the software and everything
8 that allows you to be able to do porting within the
9 networks.

10 But -- but what we're charging for is something
11 entirely different. We're charging for the administrative
12 work that's involved every time CenturyTel employees have
13 to fulfill a porting request, which is -- which is a
14 fairly involved process as I'll describe here in a moment.

15 The FCC has made it clear that the cost that
16 carriers incur as an incidental consequence of number
17 portability are not directly related to providing number
18 portability and, accordingly, have indicated in an FCC
19 decision that these costs are permissible, they're not
20 illegal and they are capable of being recovered.

21 I want to mention just briefly the process that
22 CenturyTel goes through when it has to respond to a
23 porting request. The fact that -- that Charter may not
24 charge for these charges, frankly, is irrelevant.

25 What -- what -- what we're asking this

1 Commission to do is to -- is to -- is to award us the
2 efforts for our work. And that work involves the
3 following: Each time we receive a porting request, it
4 comes on an form known as an LSR, which is a Local Service
5 Request.

6 A representative of CenturyTel has to access the
7 CLEC web site to retrieve the pending order. It then has
8 to determine what kind of order is pending and who it
9 needs to be assigned to. The order is then collected and
10 reviewed to ensure that all selections have been completed
11 by the submitting CLEC.

12 A representative has to open the end user
13 account within the billing system. The name on the LSR
14 has to be double-checked against the account. The address
15 has to be verified. The end user's account must be
16 retrieved and checked to see if all of the access freeze
17 lines have been dealt with and to make sure that when the
18 port is completed that everything that needs to be done is
19 done properly.

20 Anything that's not properly addressed must be
21 referred back to the submitting CLEC. And then once all
22 of this information is complete, the order can then be
23 worked.

24 The order entry process then takes place. You
25 have to type in the due date, choose the local number

1 portable from the drop down code list, choose the company
2 the customer is porting to, check the billing and the
3 records check box. You have to complete the contact
4 information and enter detailed notes taken from the LSR.

5 The representative then opens the appropriate
6 CenturyTel operating company account. And then once all
7 that is done, the NANC procedures are then followed. And
8 errors have to be resolved to the extent there are any.

9 So this is a process that is involved. It is --
10 it is -- it takes time. It takes work. CenturyTel has
11 about 15 to 16 personnel that work these accounts and
12 respond to these LSRs and do that work.

13 I mention just briefly because it's within the
14 testimony, but Verizon Wireless business took the same
15 position that Charter is now taking as to this legality
16 issue in an FCC action in 2004.

17 Verizon argued that Bell South was improperly
18 attempting to assess a carrier based incurred charge when
19 it requested the porting number. Verizon, just like
20 Charter is doing in this case, asked the FCC to find that
21 such costs were only recoverable through end user charges
22 and could not be assessed against a co-carrier.

23 Ultimately, the FCC disagreed with Verizon's
24 position and said that the charges that were -- were going
25 to be charged in that case were, in fact, administrative

1 charges and would -- would not have qualified for recovery
2 through the tariff end user, L&P end user method in the
3 cost recovery rule. And the conclusion was that these
4 charges were not directly related to number portability as
5 Charter suggested and, in the final analysis, were
6 something that could, indeed, be recovered from a
7 competitor.

8 It's not a bar or a barrier to competition to
9 charge these types of charges, and the FCC has indicated
10 as much.

11 A couple other points. One -- one final point
12 on the legality issue that I think is worth mentioning.
13 This five-year cost recovery rule is a rule that -- that,
14 again, I don't believe applies for the reasons I've
15 stated.

16 But this five-year cost recovery rule expired.
17 This -- this tariff that was put in place by Verizon was
18 put in place to recover these L&P costs, long-term costs.
19 It was put in place in 1999. And similarly, accordingly,
20 that particular tariff expired in 2004.

21 And the charges that are at issue in this
22 dispute, probably 90 percent of them were -- have been
23 incurred since 2004. And the FCC has indicated that once
24 the tariff has expired, normal cost recovery mechanisms
25 are available for the recovery of any type of normal cost

1 recovery. So that tariff is expired, and the charges are
2 legal.

3 Let's talk about the -- the second issue, the
4 issue that Mr. Halm spent the most time discussing. And
5 the question is, is there a contractual -- tariff, rather,
6 basis for the charge? Again, the answer, we believe, is
7 yes.

8 And this is where we would respectfully disagree
9 with Staff witness Voight on this discreet subject. The
10 analysis, for your -- for your information, begins with
11 Section 15.2.1 of the additional services attachment.
12 That is the place within this interconnection agreement
13 that talks about how the parties agreed that they would or
14 wouldn't, you know, port numbers to each other.

15 significantly, that section says, After Party B
16 has received an authorization from the customer in
17 accordance with applicable law and sends an LSR to Party
18 A, Party A and Party B will work together to port the
19 customer number from Party A's network to Party B's
20 network.

21 Again, this requires the submission of an LSR.
22 The form calls it a Local Service Request. That's what
23 that is an acronym for. The language in Section 15 in no
24 way states or provides that no charge shall be applicable
25 to either party resulting from the submission of an LSR.

1 An LSR is a local service request, a request for
2 service. That's the mechanism that the parties agreed to
3 in order to trigger a port. Significantly, where these
4 parties that negotiated this interconnection agreement
5 have intended to prohibit each other from charging each
6 other charges, they were very good at so indicating within
7 the body of the agreement.

8 The point is charging for services of the rule.
9 Not charging is the exception to which the party went to
10 great lengths. I would refer to you to some direct
11 testimony that will come in in the direct or here later on
12 today from Guy Miller. It's on page 28 of his testimony.
13 But I'll just make quick reference to these particular
14 provisions.

15 Section 4.2 of the additional services
16 attachment states that certain direct related pricing will
17 be provided to Charter at no charge. It just very clearly
18 says at no charge. Section 4.9 states that, Verizon, or
19 CenturyTel in this case, will list Charter's contract
20 information in the customer section of the phone book at
21 no charge.

22 Section 7.3.7 of the interconnection agreement
23 states that no reciprocal charges -- or excuse me -- no
24 reciprocal compensation charges can be billed for voice
25 information service traffic.

1 And then, finally, Section 7.3.2 of the
2 interconnection attachment states that, No reciprocal
3 compensation charges can be billed for Internet provider
4 traffic.

5 You know, in our view, this contract, and as
6 indicated by Mr. Halm, must be viewed as a whole document.
7 You can't just pick the certain provisions you want to
8 rely upon.

9 Their argument is Section 4 -- 15 that I just
10 referenced, that the porting section doesn't say there's a
11 charge that can be assessed. And they want to concluded
12 the analysis right there. They say it just doesn't say
13 it. It's not in the agreement. Therefore, it can't
14 exist.

15 And I would -- I would suggest that that's not
16 the case. And where the parties intend not to charge each
17 other, they specifically said so.

18 A couple other points with regard to the LSR.
19 The party making or ordering services is the one that
20 submits the LSR. And so for purpose of an LSR sent to
21 CenturyTel, Charter effectively becomes the customer.
22 They're the party that's submitting the request.

23 And while they may be a competitor, they become
24 a customer when they're ordering an LSR and seeking to
25 port to their own network. And as I've indicated -- and I

1 don't believe there will be any testimony to the contrary.
2 When Charter submits an order for an LSR, a CenturyTel
3 employee performs the work for it.

4 A couple other contractual provisions I might
5 want to draw your attention to, again, as you view the
6 contract in its entirety, section -- these are definitions
7 within the document.

8 Section 2.78 defines service as any service
9 offered by a party under the agreement. Section 2.65
10 defines an order as an order to provide change or
11 terminate a service. Section 2.7 of the agreement defines
12 purchasing party. The party requesting or receiving a
13 service from the other party.

14 Now, the next question, may the LSR charges,
15 service order charges, be found within the party's
16 interconnection agreement? Mr. Halm says no. Charter
17 says no. They say you can't find it. It's not -- it's
18 not there.

19 I would point to Section 1.1 of the party's
20 interconnection agreement, the very first section on page
21 3 or so of the document. It says, This agreement includes
22 both the principal document itself as well as the
23 applicable tariffs of each party. So right there, the
24 drafters of this agreement intended to incorporate the
25 tariffs of each party.

1 Further, the word tariff is defined in this --
2 in this agreement in the glossary, Section 2.85. And the
3 parties agreed to this definition. That definition says,
4 The word tariff includes any applicable federal or state
5 tariff of a party as amended from time to time.

6 The definition also goes on to state that the
7 term tariff also includes any standard agreement or other
8 document as amended from time to time that sets forth the
9 generally available terms, conditions and prices under
10 which a party offers a service.

11 I submit to you that the parties to this
12 agreement, while they may not have -- have drafted this as
13 clearly, you know, as potential could be drafted you
14 viewing this document, you know, three, four, five years
15 later or longer, they did intend to and did, in fact,
16 incorporate the tariffs of each other with respect to the
17 documents that are included within the body of the
18 agreement.

19 So the -- the agreement within its four corners
20 says, We've incorporated the tariffs. We've incorporated
21 any other document that sets forth the generally available
22 terms.

23 In that regard, the interconnection agreement
24 itself also contains a pricing attachment. It can be
25 found on pages 121 to 142 within the document. The

1 pricing attachment, interestingly, set forth the hierarchy
2 of where might the charges be found. And, interestingly
3 enough, Section 1.3 of the pricing attachment says the
4 first place you look to find a charge as it relates to the
5 two of us is the parties' tariffs. It doesn't say, Look
6 within the agreement. It says look first to the tariffs.

7 And, again, that's Section 1.3 of the pricing
8 attachment. So that's the place you look to find the
9 applicable rates.

10 Now, we submit to you that because an LSR is a
11 service order, a service ordering charge should be the
12 applicable rate for the work that CenturyTel is doing and
13 the work for which CenturyTel has been billing Charter for
14 all these years.

15 Specifically, CenturyTel's general and local
16 exchange tariff, it's PSC Missouri No. 1, Section 5, Sheet
17 4, provides the charges. It says, The charges for a
18 service ordering charge which, again, is what an LSR is, a
19 service order, are \$23.48 and \$23.88, depending upon
20 whether you're in a competitive or non-competitive
21 exchange. And that's the non-recurring charge when a
22 business places its initial order.

23 And that's what these LSRs are, service orders.
24 And that's what we've been charging Charter from the
25 get-go. And that's the charge that -- that Guy Miller

1 advised Charter that we were charging them, A, and, B,
2 advised them to look to the tariff for the charge.

3 Now, I'll talk briefly about the service guide,
4 and I won't belabor the point. I believe the service
5 guide is incorporated. The parties indicated that it's a
6 document that provides, you know, the rates, et cetera.

7 When you go to the service guide, it says there
8 will be a charge assessed for an LSR. It's a service
9 ordering charge. And it sets you -- there's a link on the
10 document. You click on the link, and it takes you right
11 to the Missouri tariff where those two charges of the \$23
12 are provided.

13 There's been some concern expressed in
14 Mr. Voight's testimony that CenturyTel would simply have
15 the ability to willy-nilly change its rates, change its
16 charges which would -- which would suggest that the
17 parties didn't negotiate or agree to these particular
18 rates.

19 But that's not the case. These rates don't
20 change. The rates in themselves remain the same, and they
21 haven't changed. And these -- these tariffs have been
22 approved by this Commission.

23 One other point with regard to the tariff, and
24 then I have one other point, and I'll be concluded. The
25 characterization of the tariff as an end user tariff,

1 frankly, is irrelevant in our view. It's a local exchange
2 tariff. A local service request is the mechanism that the
3 parties agreed they would work with each other as far as
4 porting is concerned. And -- and it was the tariff that
5 was there and it was on file. And it's the place where
6 you find charges for service orders.

7 It's -- it's just a provision within the
8 document that allows you to charge for service orders. So
9 our view of the -- of the tariff as an end user tariff or
10 otherwise, we think is irrelevant.

11 Again, it was incorporated, and that's the
12 location where the parties agreed the charges are to be
13 found. Finally, and again, I won't spend a lot of time on
14 this, if, indeed, the Commission decides that the tariffs
15 are not incorporated, were not clearly incorporated such
16 that they're part and parcel of the agreement that the
17 parties entered into, I would suggest that there is a
18 location within the document itself, the ICA, that would
19 allow for these very same charges.

20 Specifically -- and this is within Guy Miller's
21 testimony, surrebuttal testimony. And I won't belabor the
22 point. But Section 15.2, again says, LSR is the
23 mechanism. LSR, though, is a defined term as well within
24 the agreement.

25 And this is -- this is -- and it's interesting,

1 actually, when you read it, but Section 2.54 is the
2 glossary section to LSR. It says, An LSR is to be used
3 for the purpose establishing, adding, changing or
4 disconnecting resold services and network elements.

5 Well, Mr. Halm's testified -- or indicated in
6 his opening statement that Charter does not resell
7 services, nor do they purchase network elements. You'd
8 say, Well, it doesn't apply.

9 Well, the fact of the matter is the parties
10 agreed that the LSR is the mechanism that we're going to
11 use every time we port. And the agreement defines LSR as
12 -- as something to be used solely for the purpose of
13 establishing, changing or disconnecting resold services or
14 network elements.

15 Well, if that's the case and if we're going to
16 be very, very, very literal as far as how we interpret
17 this document, then I would submit to you that the pricing
18 attachment for resold services and network elements does,
19 indeed, have a service order charge within the body of
20 those particular pricing attachments.

21 There is a place, I think it's page 126 of the
22 -- of the pricing attachment, that essentially says, For
23 non-recurring charges, for non-engineered initial service
24 orders, when we have a change-over of services, such as a
25 port, the end user service for change-over is \$21.62.

1 Again, it's a number that's quite close to the charge
2 that's actually been charged in this case.

3 So, again, I won't -- I won't belabor the
4 argument. Mr. Miller can speak to it better than I can.
5 But if we're going to be very literal about how we view
6 this document and use the LSR's definition, it takes you
7 to the pricing attachment. And there is a price for
8 service order charges in that instance.

9 And I would -- I would suggest -- I would
10 encourage each of you Commissioners and your Honor to ask
11 questions of these witnesses that we will present to you.
12 Guy Miller and Pam Hankins, they can speak to these
13 issues. They're very familiar with them. If you have
14 questions, I believe they'll be able to answer your
15 questions.

16 So in summary, CenturyTel did not breach this
17 agreement. CenturyTel has merely asked to be paid for its
18 work. It did -- it did charge for service order charges.
19 The money was paid. Then they discontinued payment
20 following that.

21 And we sent them a notice that said, If you
22 don't pay, we're going to have to declare you in default.
23 And they came to the Commission. But we didn't breach the
24 agreement by asking them to pay for these charges.

25 We believe there's a basis for the charge. We

1 believe certainly that these charges are legal. And
2 that's why we're here. I thank you for your attention,
3 and we look forward to putting these witnesses before you.
4 And, again, I would encourage you to speak to them. Thank
5 you.

6 JUDGE VOSS: Thank you. Commission Staff?

7 OPENING STATEMENT

8 BY MR. BAKER:

9 MR. BAKER: May it please the Commission. This
10 dispute, as you've heard, involves -- or this case
11 involves a dispute between Charter and CenturyTel
12 regarding number portability.

13 Currently, the parties are operating under an
14 interconnection agreement entered into between Charter and
15 Verizon in 2001. This agreement was assigned to
16 CenturyTel when CenturyTel acquired Verizon properties in
17 2002.

18 The agreement has never been changed, altered or
19 modified in any way since its adoption in 2001. There is
20 no provision in the agreement that provides for number
21 porting charges.

22 Section 15 of the agreement, which prescribes --
23 which describes the parties' obligations in regard to
24 number porting contains no reference to charges for
25 porting numbers.

1 CenturyTel has suggested that because the
2 agreement in other sections provides -- when there will be
3 no charge provides that no charge will be assessed that
4 this means that the -- that they can charge because
5 Section 15 does not specifically say no charge will be
6 assessed for this service.

7 However, I would argue that, in this case, there
8 is no -- there is no meeting of the minds. There was no
9 agreement. There was no negotiation for a rate for this
10 service. And I would argue that you cannot -- that
11 CenturyTel cannot unilaterally change or add to a
12 bilateral agreement regardless of whether or not Section
13 15 does or does not provide that no service -- no charge
14 will be assessed. There was not meeting of the minds, no
15 agreement on that.

16 CenturyTel attempts to justify the porting
17 charges by using its general and local exchange tariff.
18 However, the tariff cited cannot be applied for the number
19 porting charges assessed upon Charter.

20 Charter, as we've heard before, does not resell
21 CenturyTel's service. CenturyTel's general and local
22 exchange tariff governs retail telephone exchange. It
23 does not contain wholesale rates for other telephone
24 service providers.

25 Staff's overall position in this case is that

1 CenturyTel is not authorized to bill Charter for telephone
2 number porting because such a chart is not contained in
3 the interconnection agreement.

4 Moreover, the application of rates contained
5 within CenturyTel's general and local exchange tariff and
6 the service guide are not applicable and cannot justify
7 the assessment of a number porting charge.

8 The Staff recommends that the Commission rule
9 that CenturyTel has improperly billed Charter for the
10 number porting charges and rule that the parties'
11 interconnection agreement does not authorize CenturyTel to
12 charge Charter for those number porting charges.

13 The Staff also recommends that the Commission
14 prohibits CenturyTel from claiming that Charter is in
15 default of the parties' agreement for non-payment of
16 number porting charges. Thank you.

17 JUDGE VOSS: Thank you. Public Counsel?

18 MR. POSTON: Excuse me. I have no opening
19 statement. Thank you.

20 JUDGE VOSS: Thank you. Before we begin with
21 witnesses, I'll just briefly remind the parties that
22 friendly cross is not appropriate. So if you're asking
23 questions of a witness that supports your position,
24 open-ended questions are discouraged.

25 COMMISSIONER CLAYTON: Can I ask an opening

1 question of the lawyers?

2 JUDGE VOSS: Of course. With the reminder that
3 attorney comments are not evidence.

4 COMMISSIONER CLAYTON: I wanted to just ask some
5 questions of law just to make sure I'm thinking about the
6 case properly.

7 We've gone back and forth talking about tariffs,
8 interconnection agreements, and then there's been some
9 citations to state and federal authority. I guess I
10 wanted to ask the lawyers first, are we dealing with any
11 questions of fact, or are we solely dealing with questions
12 of law in this case? Anyone can answer.

13 MR. HALM: Mr. Commissioner, K.C. Halm. Excuse
14 me. K.C. Halm from Charter Fiberlink. And subject to
15 Mr. Peters input here, it seems as if most of the facts
16 are largely uncontested, and it really is a question of
17 contract interpretation.

18 I wouldn't say that every fact is undisputed. I
19 think there are some disagreements as to particular
20 issues. But I see it as, really, at the margin of this
21 dispute, and we believe it's really a question of
22 contract.

23 COMMISSIONER CLAYTON: Okay. Let me stop you
24 right there before you go too far. You -- you believe
25 that most of the facts are going to be agreed to and that

1 there may be only a few pieces that are in dispute in
2 terms of the factual evidence. Can you give me several
3 examples of differences in opinion on facts?

4 MR. HALM: Okay.

5 COMMISSIONER CLAYTON: We've got an agreement.
6 We've got tariffs. We've got FCC regs. We've got our
7 state rules and statutes. We've got all that. But
8 really, what is it -- what is in dispute here in terms of
9 facts?

10 MR. HALM: One issue that comes to mind, correct
11 me if I'm wrong, Tyler, but whether or not all of these
12 charges have been disputed. We believe that they have
13 been. I'm not sure whether or not CenturyTel contests
14 that. Excuse me.

15 COMMISSIONER CLAYTON: How would -- how would
16 that fact be relevant depending on how we rule? Assume --
17 assume -- make an assumption that we side with CenturyTel.
18 Does it make a difference in the result if only a portion
19 of the charges were contested?

20 MR. HALM: It -- yes, it may, your Honor.
21 Because if Charter properly disputed these charges as
22 required by the contracts, then arguably, it will have
23 fulfilled its duties under the contract, and the burden
24 for establishing that the charges are appropriate, excuse
25 me, would shift back to CenturyTel.

1 COMMISSIONER CLAYTON: Okay. If -- what is the
2 end result? Just assume that this case goes out to --
3 that it's done after it's here, which is making a pretty
4 big assumption, unrealistic probably. But if we were to
5 side with CenturyTel on -- on the applicable charge, then
6 those in dispute, Charter would then be required to pay,
7 presumably without any penalty; is that correct?

8 MR. HALM: That -- that would be my
9 understanding.

10 COMMISSIONER CLAYTON: And then what about the
11 charges that are -- that would not be in dispute? Are
12 there penalties or other provisions that would kick in
13 addressing those other charges in dispute? Or would it
14 all be just treated the same?

15 MR. HALM: I don't think there's any penalties
16 at issue here.

17 COMMISSIONER CLAYTON:. Okay.

18 MR. HALM: It's really a question of liabilities
19 that have been put on the books, on CenturyTel's books,
20 whether or not Charter owes that money or not and then
21 whether or not CenturyTel should be obligated to refund
22 certain amounts already paid by Charter.

23 And if I could just add one point here, there's
24 several categories of charges that are outlined in
25 Charter's testimony. By far, the vast majority of those

1 deal with these number porting issues. There's a very
2 small percentage that deal with customer records, research
3 and other issues.

4 COMMISSIONER CLAYTON: Okay. So, really, the
5 fact of whether -- if you look at bulk of the charges, the
6 porting charges, I mean, we really don't have two
7 categories here of -- of whether they're disputed or not.
8 They're all going to be treated at the end of the day.
9 So, really, that's not that big of an issue.

10 MR. HALM: We concede that.

11 COMMISSIONER CLAYTON: Okay. Any other facts in
12 dispute?

13 MR. HALM: Well, I have to say, I do have quite
14 a long list of potential questions for CenturyTel's
15 witnesses, and we can certainly walk through some of
16 these.

17 COMMISSIONER CLAYTON: No. I don't want to walk
18 through your cross-examination. I'm just trying to get an
19 idea of what's -- what's in dispute so I can hone in on
20 the portions of the cross-examination -- I mean, there's a
21 lot of information here.

22 You know, if this is purely a question of law, I
23 don't want to waste my time trying to sort through whether
24 you properly disputed something. I want to know if that's
25 relevant.

1 MR. HALM: Sure.

2 COMMISSIONER CLAYTON: Does CenturyTel agree or
3 disagree that pretty much all the facts are in agreement
4 here? I don't know who will be asking -- answering.

5 MR. PETERS: Commissioner, I believe, for the
6 most part -- I believe, for the most part, Mr. Halm's
7 statements are accurate.

8 This is primarily a legal case. Certainly, the
9 question of legality is -- is not really a fact issue. I
10 -- I believe, similarly, that the question of what the
11 contract does or doesn't permit is, likewise, not -- not
12 primarily a fact intensive inquiry.

13 There -- there is some testimony that may relate
14 to some of these issues that might help this Commission
15 understand, you know, in maybe a more meaningful way what
16 was done and why and how that relates to either the law,
17 you know, or the agreement, frankly.

18 Because there is some important testimony I
19 think that touches upon those issues. But I would concur
20 with you, Commissioner, that for the most part it's a
21 legal issue. There's one issue, though, that, you know --
22 Charter has -- has -- the way they frame their complaint
23 was effectively that CenturyTel breached the agreement by
24 charging illegal charges and charging charges that are not
25 permitted under the agreement.

1 And -- and -- but they also sought to ask for
2 this refund, something I alluded to in my -- in my opening
3 argument. We believe that -- I mean, there are some key
4 pieces of evidence. There are some letters that I
5 referenced about, you know, how that dispute concluded and
6 what kind of was the end result from that dispute.

7 You know, Charter wants to reopen that, revisit
8 that and obtain a refund of those funds that they paid,
9 you know, three, four years ago as a result of this
10 process. And I just believe that there's some -- there's
11 some fact testimony there in terms of kind of how that
12 came down.

13 The people that negotiated it and dealt with
14 that issue aren't here as witnesses. And I think there
15 might be some -- some testimony that, frankly, is -- is
16 something this Commission may have an interest in just due
17 to the way it was dealt with. But -- but that said, you
18 know --

19 COMMISSIONER CLAYTON: Thank you. Thank you.
20 Staff, any comments on facts? Are there any relevant
21 facts that this Commission is going to have to evaluate?

22 MR. BAKER: I think it's mostly a question of
23 law as well.

24 COMMISSIONER CLAYTON: Okay. Any comment?

25 MR. POSTON: No comment. I --

1 COMMISSIONER CLAYTON: Why are you here?

2 MR. POSTON: Mr. Dandino meant to be here. He's
3 ill today, and I'm filling in for him.

4 COMMISSIONER CLAYTON: Do you all even have a
5 position on this?

6 MR. POSTON: No.

7 COMMISSIONER CLAYTON: You don't want to sit
8 down here all day.

9 MR. POSTON: I love this stuff.

10 COMMISSIONER CLAYTON: I know you've got other
11 things going on up there. Every time I go up there,
12 you're working hard. Do you need to be excused? Or is
13 that something you --

14 MR. POSTON: If I need to, I -- I've talked to
15 the judge about it, about -- about stepping out.

16 COMMISSIONER CLAYTON: Got where you -- all
17 right. Okay. We hope you're spending your time wisely,
18 Mr. Poston.

19 Okay. I want to ask -- just so I can clarify,
20 in general, Staff and Charter are relying on the lack of
21 any charges for porting within the approved
22 interconnection agreement and that that is the relevant
23 document. Do you -- do each of you agree with that?

24 MR. BAKER: I would agree with that.

25 MR. HALM: Yes.

1 COMMISSIONER CLAYTON: Yes. Okay. And -- and
2 the facts -- I guess some facts that will be suggested
3 that there -- there are other interconnection agreements
4 where CenturyTel does assess charges where it is silent in
5 your agreement. I guess that's a fact that we could be
6 using in comparing. Would you all agree with that
7 position?

8 MR. HALM: Yes, your Honor.

9 COMMISSIONER CLAYTON: Okay. Now, CenturyTel's
10 position is that you do have an interconnection agreement,
11 but through either incorporate -- general incorporation
12 terms or otherwise, you are reaching back into your tariff
13 to apply these charges?

14 MR. PETERS: That's our position. Yes.

15 COMMISSIONER CLAYTON: Okay. So you can see in
16 your interconnection agreement, there's no reference to
17 these changes when in other interconnection agreements you
18 have, the charge is listed. And I think the Socket one is
19 used if I --

20 MR. PETERS: I think -- I think that's a fair
21 statement effectively, yes.

22 COMMISSIONER CLAYTON: Okay. So -- and you
23 spoke a lot up here to -- to referring back, I think by
24 incorporation to tariffs that are on file with the
25 Commission.

1 MR. PETERS: That's right.

2 COMMISSIONER CLAYTON: Aside from those general
3 references back to our tariffs, can you explain to me any
4 other, if any, legal arguments of how CenturyTel is able
5 to assess these porting charges?

6 MR. PETERS: I -- I think a couple things are --
7 maybe a response to that request. One, as you just
8 mentioned, there is the incorporation language in
9 definitions that says, go to the tariffs. The definition
10 of tariff says, See the tariffs.

11 So they do incorporate all of the tariffs that
12 were on file. And that has been our position in this case
13 consistently, that that's the place you look. You look in
14 the tariff. Look for service order charges. It's in the
15 document.

16 That's the charge that CenturyTel has taken the
17 position applies in this case. And that's what we believe
18 to be the facts. I did possibly not do as eloquent of a
19 job as Mr. Miller can do trying to articulate the back-up
20 argument that we've -- we've raised.

21 But -- but, you know, Staff and Charter, in
22 their rebuttal testimony, indicated, you know, quite
23 clearly that they did not believe that -- you take a very
24 literal read of the interconnection agreement in and of
25 itself that you can get to the tariffs that's their

1 position. They made that clear.

2 And -- and I -- while I don't agree with that
3 and my client doesn't agree with that, I will tell you
4 that if we're going to get that specific and technical and
5 we're going to get that literal in terms of how we read
6 each and every word, very, very, very clearly, then I
7 would surmise that we've got a second argument, which is
8 the back-up argument I enunciated that effectively says if
9 you're going to define LSR the way you define it and
10 you're going to agree to it, then guess what? We'll go to
11 the resell section. We'll go to the uni section and we'll
12 look up the charge for service order charge within those
13 sections.

14 And there is a charge. Again, I believe it's on
15 page 126. I don't want to misstate that. But it says on
16 page 126, non-recurring charges.

17 COMMISSIONER CLAYTON: Page 126 of what? I'm
18 sorry.

19 MR. PETERS: I apologize. I submitted the wrong
20 page. Okay. That's it. Yeah. I'm sorry, Commissioner.
21 Page 126 of the -- of the -- this is within the pricing
22 attachment.

23 COMMISSIONER CLAYTON: In the interconnection
24 agreement?

25 MR. PETERS: The interconnection agreement.

1 It's part of the interconnection agreement. It says,
2 Non-recurring charges for resale. It says down under
3 ordering and provision, non-engineered initial service
4 order change-over, \$21.62.

5 If you'll turn to -- and I don't know that you
6 have a copy of it in front of you.

7 COMMISSIONER CLAYTON: You said that section was
8 for resale?

9 MR. PETERS: Well, yeah. They're --

10 COMMISSIONER CLAYTON: Is this a resale
11 arrangement?

12 MR. PETERS: No, it -- no, it isn't.

13 COMMISSIONER CLAYTON: It isn't. So --

14 MR. PETERS: Let me -- and I apologize for not
15 making this position more clear. But the definition of
16 LSR, admittedly, was not very well written presumably.
17 But it says for an LSR, you go to -- it says an LSR may be
18 used exclusively for and it says resale or unbundled
19 network elements. That's what it says.

20 The parties also agreed in section 15 that LSR
21 is the mechanism we're going to use to port. So okay. We
22 want to figure out what LSR means. Go to the definition.
23 It says go to the resale section, go the uni section.
24 Admittedly, admittedly you know, they're not a reseller
25 and they're not buying unis. But they are buying and

1 submitting LSR orders.

2 So if we're going to get technical and literal,
3 go to the section -- it says go to the resale section and
4 go to the uni section. And -- and the question then
5 becomes is there a service order charge in either of those
6 provisions, the resell section or the uni section?

7 And the answer is yes, there is. On page 126,
8 non-engineered initial service order change-over, \$21.62.
9 And on the following page, page 127, it talks about
10 application of NCRs, non-recurring charges. It says
11 non-engineered -- this is about halfway down the page.
12 Non-engineered initial service change-over applies only to
13 basic services for services migrating from Verizon to
14 Charter.

15 Point being, you know, I -- we've not taken the
16 position in this case throughout this dispute that that's
17 our -- our initial argument or premise. We're taking the
18 position that we believe the tariffs and service guides
19 are incorporated. They chose to do so.

20 There is a place within those documents from
21 where these charges may be found, and we believe that's --
22 that's the right answer. But -- but, alternatively, if
23 you conclude that it's not the right answer, then the next
24 question, all right, if you want to get really literal, is
25 there a place within this interconnection agreement that

1 would allow for service order charges and non-recurring
2 services migrating from A to B. And the answer is there
3 is. And, you know, we have not calculated --

4 COMMISSIONER CLAYTON: And that goes back to
5 your first point, the incorporation of --

6 MR. PETERS: That's right.

7 COMMISSIONER CLAYTON: -- of the -- of the
8 language at the start that goes back to your PSC 1, sheet
9 whatever, right?

10 MR. PETERS: That's right.

11 COMMISSIONER CLAYTON: Okay. Now, that
12 language --

13 MR. HALM: Excuse me. Commissioner Clayton, may
14 I -- may I say one word about that?

15 COMMISSIONER CLAYTON: You've got one word.
16 Yeah. Go ahead quickly. I want to work through this.
17 And then I'll give you a chance to --

18 MR. HALM: Okay. That sounds as if CenturyTel
19 is asking this Commission to justify in a rational reading
20 an irrational reading of this contract.

21 And I would caution the Commission to enter into
22 that arrangement. And let me amend my statement about
23 disputed issues, disputed facts. There is a disputed
24 question about whether or not CenturyTel incurs costs in
25 doing what they do when they process a port request and

1 what those costs are.

2 COMMISSIONER CLAYTON: Is that relevant?

3 MR. HALM: Well --

4 COMMISSIONER CLAYTON: I mean, for either --
5 either of these theories, if -- if we -- if we go under
6 the interconnection agreement which is silent and side
7 with charter or if we side with CenturyTel and say, We go
8 to the interconnection agreement that references back to
9 the tariff, there's a price there.

10 I mean, if it costs them something doesn't
11 matter one way or the other?

12 MR. HALM: I would say yes, your Honor.

13 COMMISSIONER CLAYTON: Tell me why.

14 MR. HALM: Because these contracts are regulated
15 contracts. Right? This is --

16 COMMISSIONER CLAYTON: Today they are.

17 MR. HALM: Who knows what happens tomorrow.

18 But, clearly, there are principles of cost recovery and
19 rate of return issues imbedded in Section 251 of the Act
20 which, clearly, are amended in the interconnection
21 agreements.

22 So if -- one of CenturyTel's argument has been
23 beyond sort of incorporating tariffs has been, This is our
24 standard policy. Everybody else in the industry does it,
25 and we're incurring these costs. Well, if they are, in

1 fact, incurring costs, we ought to know and you ought to
2 know what those costs are and how they relate to the
3 rates.

4 The fact is they have assessed at least two
5 different rates, and now they're suggesting a third rate
6 that they would apply. There has to be some rational
7 relationship between what they're doing and what they --

8 COMMISSIONER CLAYTON: I'm not sure if I agree
9 with that. I'm not sure if I agree with cost being -- I
10 mean, basically, we've got a situation of two carriers
11 that have one agreement, and then they're referring back
12 to these tariffs.

13 But if the tariffs are in place -- a tariff's a
14 tariff. I mean, we don't have to justify the tariff at
15 this point, and we don't have to justify the
16 interconnection agreement.

17 My point is that we keep -- the discussion kind
18 of breaks off into evaluating like costs or something when
19 I don't know if that's relevant for us. I mean, at the
20 end of the day, we've got to decide is the interconnection
21 agreement valid?

22 If it is, then read it. Does it apply in your
23 favor? Does it apply in your favor in how you review it?
24 And I just don't want to get down my own path of saying,
25 Well, you know, some -- you know, telluric analysis from

1 five years ago is going to play a role in this. I don't
2 want to go down in that.

3 I've got a limited amount of space up here. And
4 I don't believe I just said that on the record. That's my
5 own problem. I just don't want to be distracted by
6 something like that.

7 And that's why I'm trying to move all of these
8 discussions with facts away, that if it's -- if it's
9 important, I want to hear about it. But, really, I'm not
10 sure if any of these things are important.

11 At the end of the day, we're interpreting a
12 contract, which is what we are specifically being -- we've
13 been given the statutory obligation to do. And -- and
14 that's what the testimony is going to support, I think.
15 So I -- I may disagree with you --

16 MR. HALM: Okay.

17 COMMISSIONER CLAYTON: -- to some extent. I
18 want to dis -- and I'll -- I apologize to my colleagues.
19 I know we don't normally ask questions here. But I want
20 to get this framed up because now it seems for me that
21 we're going to be dealing with questions of law. And now
22 we're going to go in and have non-lawyer witnesses offer
23 testimony. And -- and I'm not sure how that's going to
24 work.

25 I wanted to ask -- Mr. Peters, correct?

1 Mr. Peters, you made reference to other carriers charging
2 for this type of service. You suggested that CenturyTel
3 charges other carriers and other carriers pay CenturyTel
4 in your opening statement. And I wanted to ask, in each
5 of those instances where CenturyTel or an affiliate of
6 CenturyTel is charging and then being paid by another
7 carrier for these porting charges, in any of those
8 circumstances, are they operating under an interconnection
9 agreement such as this where it is silent as to a specific
10 charge for porting?

11 MR. PETERS: Yeah. Mr. Miller, one of our
12 witnesses, can address that answer.

13 COMMISSIONER CLAYTON: Okay. We can deal with
14 that.

15 MR. PETERS: We can deal with that issue. Yes.
16 There have been some new interconnection agreements put in
17 place. Some of these were inherited from Verizon. We
18 adopted the ones we inherited. Some of them such as this
19 one are what they are and say what they say.

20 COMMISSIONER CLAYTON: CenturyTel has had a long
21 history in Missouri. And we -- you still operate under
22 two companies. Maybe you could talk to them and simplify
23 and update and get them all under one tariff.

24 MR. PETERS: At lunch, we'll take care of that.

25 COMMISSIONER CLAYTON: Okay. Louisiana doesn't

1 return our call. Okay.

2 MR. PETERS: I'll put in a call.

3 COMMISSIONER CLAYTON: Okay. Having said that,
4 I'll stop asking my questions. Thanks for your
5 indulgement and to my colleagues for letting me do that.
6 Thanks.

7 JUDGE VOSS: I want to take a brief break before
8 we begin with our first witness. I want to take a brief
9 break before we begin with our first witness. Lot of
10 morning coffee. Let's come back at 10:30. That will give
11 us ten minutes.

12 Mr. Poston, if you need to leave for other
13 pressing business, I will understand.

14 MR. POSTON: Okay. Okay. You guys are trying
15 to get rid of me.

16 JUDGE VOSS: No. We're off the record for ten
17 minutes.

18 (Break in proceedings.)

19 JUDGE VOSS: Charter, present your witness.
20 Call your witness.

21 MR. HALM: Thank you, your Honor. Before I call
22 our sole witness, I would like to offer into the record
23 what has already been marked as Exhibit No. 1, which the
24 interconnection agreement between Charter Fiberlink and
25 CenturyTel.

1 JUDGE VOSS: And I will ask the court reporter
2 -- I know there was only one copy of that exhibit. Will
3 this be a problem for you? Do you need two copies?

4 THE COURT REPORTER: No. I only need one.

5 JUDGE VOSS: And you already have a copy; is
6 that right?

7 THE COURT REPORTER: Uh-huh.

8 JUDGE VOSS: Okay. Excellent. Are there any
9 objections to that exhibit? Hearing none, Exhibit 1, the
10 interconnection agreement, is entered.

11 (Exhibit No. 1 was offered and admitted into
12 evidence.)

13 MR. HALM: Thank you, your Honor.

14 JUDGE VOSS: Or is admitted.

15 MR. HALM: I would like to call, then, to the
16 stand Ms. Peggy Giaminetti. Have a seat right there.

17 PEGGY GIAMINETTI,
18 being first duly sworn to testify the truth, the whole
19 truth, and nothing but the truth, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HALM:

22 JUDGE VOSS: Please proceed.

23 Q (By Mr. Halm) Ms. Giaminetti, would you state
24 and spell your full name for the Commission?

25 A Peggy Lee Giaminetti, G-i-a-m-i-n-e-t-t-i.

1 Q Thank you. And are you employed by Charter
2 Communications?

3 A Yes, I am.

4 Q And what is your position with Charter?

5 A My position with Carter -- with Charter is Vice
6 President of Telephone Physical Operations and Financial
7 Planning.

8 Q And please remember to speak into the mic.
9 Okay. Can you tell us briefly what your duties and
10 responsibilities are there?

11 A In my current capacity, I'm responsible --

12 JUDGE VOSS: Stop for a minute. Will you make
13 sure the green light is on for your mic? Hit it and see
14 if it becomes more green because sometimes at the bottom
15 of the base it looks green, but --

16 MS GIAMINETTI: I don't even see a green light.

17 MR. VOIGHT: There is a green light.

18 JUDGE VOSS: Your voice was a little bit quiet,
19 so I was making sure because mine is off on occasion.
20 Please proceed.

21 A In my current capacity, I'm responsible for the
22 generation of monthly operation and financial reports as
23 pertains to Charter's telephone line of business. That
24 includes budgets and projections and participating in
25 day-to-day operations of the telephone line business.

1 I also have direct supervisory responsibility
2 for a group of individuals responsible for auditing and
3 validating the telco cost of sales invoices and generation
4 of the monthly CABS invoices.

5 Q And can you tell us in what I'll call plain
6 English sort of in very broad terms what that entails?

7 A Okay. For the reporting aspect or the
8 validation?

9 Q Well, for people that may not be in financial
10 accounting or overseeing CABS billing and those type of
11 things, just generally speaking, what are we talking about
12 here?

13 A In particular, you know, obviously, Charter
14 wants to understand the associated costs in revenues for
15 entering into the telephone line of business. So it's
16 very important for us to understand these contracts, to
17 validation -- to validate the costs on a monthly basis and
18 to make sure that they are appropriately reflected in our
19 financial statements in accordance with GAAP.

20 Q And the contracts that you're referring to, are
21 they included in the interconnection agreement?

22 A Interconnection agreement. Any carrier
23 agreements for long distance services or any other third
24 party agreements, we're responsible for working with our
25 regula -- regulatory and legal staff to make sure we have

1 the proper copies of those agreements and validate the
2 monthly charges against those agreements.

3 Q And when you say we, do you have a staff of
4 people that work with you and underneath you?

5 A Yes, I do. I have a staff of individuals who
6 are more accountants in nature and financial who are
7 responsible for preparation of monthly financial analysis
8 reports. And we also have a group of individuals who are
9 telecom professionals, many of them come out of the Bell
10 operating companies, who are responsible for the audit and
11 validation of our monthly telecom bills, both
12 interconnection related or contract specific.

13 Q Okay. Thank you. Let me direct your attention
14 to what has been premarked as Exhibits 2, 3 and 4. And
15 for the record, these would be Schremp/Giaminetti direct
16 testimony, Exhibit 2. Exhibit 3, Schremp/Giaminetti
17 rebuttal system. And Exhibit 4, Schremp/Giaminetti
18 surrebuttal testimony. Do you have copies of that
19 testimony with you?

20 A Yes, I do.

21 Q Okay. Can you identify those exhibits as the
22 direct testimony, rebuttal testimony and surrebuttal
23 testimony that was filed under Ted Schremp's affidavit on
24 behalf of Charter Communications?

25 A Yes, I can.

1 Q Okay. Have you reviewed the questions and
2 answers supplied by Mr. Schremp in those exhibits?

3 A Yes, I have.

4 Q Okay. In your position with Charter, do you
5 also have experience -- I'm sorry. Do you have personal
6 knowledge of the facts and circumstances which Mr. Schremp
7 testifies to in Exhibits 2, 3 and 4?

8 A Yes. In my current capacity at Charter, as I
9 previously explained, I would have direct knowledge of
10 those agreements.

11 Q Okay. Did Mr. Schremp or you prepare this
12 testimony?

13 A It's my understanding it was prepared by Mr. --
14 with the overview, supervision and control of Mr. Schremp.

15 Q Okay. And do you have any corrections, updates
16 or revisions to the testimony?

17 A Yes. We have several revisions to note. First,
18 on page 24, line 17 through 20 of the direct testimony,
19 and on page 13, lines 20 through -- 22 through 27, page 14
20 teen, lines 1 through 6 of the surrebuttal testimony,
21 there are statements that the original interconnection
22 agreement between Charter and Verizon was established by
23 the adoption process.

24 However, after review of our files, my staff has
25 determined that the agreement was not established via

1 adoption but was instead established via the negotiation
2 process. Secondly, on page 23, line 18 of the direct
3 testimony, there is a reference to the provision of a law
4 that requires number porting. The reference on line 18,
5 251(b) Section 3 should be corrected to refer to Section
6 251(b) Section 2.

7 Q Okay. Slow down for a moment. Let everybody
8 catch up with us.

9 COMMISSIONER MURRAY: Which testimony was that?
10 Was that direct?

11 A The direct testimony.

12 COMMISSIONER MURRAY: Page 18?

13 A On page 23, line 18 of the direct testimony.

14 COMMISSIONER JARRETT: And what is the correct
15 section number?

16 A Section 251(b)(2).

17 COMMISSIONER JARRETT: Thank you.

18 Q (By Mr. Halm) Okay.

19 A Okay. So am I too fast?

20 Q Any others?

21 A One last revision. On page 10, line 4 of the
22 direct testimony, the total amount of the disputed charges
23 for processing number porting requests assessed by
24 CenturyTel is identified as \$216,677.80. I want to update
25 this number and inform the Commission that as of the

1 beginning of this week, Monday, March 30th, 2008, Charter
2 calculates the total amount of the improper porting
3 charges as \$226,286.38.

4 Q Thank you.

5 A Okay.

6 Q Ms. Giaminnetti, is it your intention to adopt
7 Mr. Schremp's pre-filed written testimony as your own?

8 A Yes, it is.

9 Q And, finally, if I were to ask you the questions
10 that are set out in Exhibits 2, 3 and 4 today, would your
11 answers be the same with the exception of the corrections
12 you've made today?

13 A Yes, they would.

14 MR. HALM: Your Honor, I'd offer Exhibits 2, 3
15 and 4 into the record and offer the witness for
16 cross-examination.

17 JUDGE VOSS: Are there any objections to the
18 admission of Exhibits 2, 3 and 4?

19 MR. PETERS: No objection.

20 JUDGE VOSS: Hearing none, Exhibits 2, 3 and 4
21 are admitted.

22 (Exhibit Nos. 2, 3 and 4 were offered and
23 admitted into evidence.)

24 MR. HALM: Thank you, your Honor.

25 JUDGE VOSS: And I have cross-exam first by the

1 Office of Public Counsel.

2 MR. POSTON: Thank you.

3 CROSS-EXAMINATION

4 BY MR. POSTON:

5 Q Good morning.

6 A Good morning.

7 Q My only question is, I guess there -- there's
8 two outcomes here. Either the Commission will find in
9 favor of CenturyTel or in favor of Charter. And could you
10 just tell me briefly what would be the consumer
11 implications from either result?

12 A Consumer implications, I guess ultimately, you
13 know, Charter is responsible for providing the service in
14 a manner that it's, you know, profitable to our
15 operations.

16 Certainly, my responsibility is taking a look at
17 what our associated costs are, both budgeting those costs.
18 These are costs that we have not budgeted. Ultimately, it
19 raises the cost of providing the services that Charter
20 provides. Whether or not that would be passed on to the
21 subscriber, I wouldn't be in a position to respond to.

22 MR. POSTON: Thank you. That's all.

23 JUDGE VOSS: Okay. Staff.

24 CROSS-EXAMINATION

25 BY MR. BAKER:

1 Q How long have you worked for Charter?

2 A Since November of 2005.

3 Q 2005?

4 A Yes.

5 Q So you -- you weren't -- you weren't working for
6 Charter when this interconnection agreement was
7 originally --

8 A No, I was not.

9 Q Okay. But you are familiar with the
10 interconnection agreement?

11 A I have reviewed the interconnection agreement.

12 Q Okay. And that agreement does not provide for
13 charges for porting numbers?

14 A That is Charter's position, that there is no
15 provision or a charge or reference to porting of numbers,
16 a charge for the porting of numbers.

17 Q And Charter, Verizon -- Charter, Verizon did not
18 charge each other for porting numbers?

19 A No, they did not.

20 Q And the initial interconnection agreement has
21 never been changed?

22 A That's my understanding. No, it has not.

23 Q Section 15 of the agreement, we've discussed.
24 It describes the parties' obligations regarding number
25 porting.

1 A (Witness nods head.)

2 Q Is that a yes or no? I'm sorry.

3 A I -- that's my understanding. I'd have to refer
4 to it.

5 Q Okay. It was in 2002 that CenturyTel first
6 began -- began charging Charter for number porting,
7 correct?

8 A Actually, I -- it's my understanding -- in
9 looking back through the history of the dispute,
10 initially, CenturyTel tell did not charge Charter for
11 porting.

12 As a matter of fact, it was almost nine months
13 after we began sending LSR orders that they began to
14 assess a service order processing charge. So it was in
15 2003 when we saw the initial charges.

16 Q Now -- and that was \$19.78 per number ported?

17 A That's correct.

18 Q And that charge recently changed to \$23.44?

19 A That or another charge. Yes. So they -- the
20 previous charge was the switch port charge under ordering
21 a uni that was being assessed for three and a half years,
22 approximately July of last year.

23 We were informed that that rate should change to
24 the rate which I guess is in the -- the tariff, which
25 could be one of two rates based upon where the orders were

1 processed.

2 Q Charter disputed these charges?

3 A Yes, we have.

4 Q And in June of 2004, though, Charter paid around

5 \$68,000 to CenturyTel for the charges?

6 A That's correct.

7 Q Charter claimed that payment was made under

8 duress?

9 A That's correct.

10 Q Charter does not resell CenturyTel telephone

11 service?

12 A No, we do not.

13 Q Porting the number is basically a way for a

14 customer to keep his or her telephone number?

15 A That's correct.

16 Q And for that to occur, the two telephone

17 companies have to work together?

18 A That's correct.

19 Q One company can't do -- can't do it all

20 themselves?

21 A No. It cannot have another one.

22 Q CenturyTel has a web site for Charter or any

23 other company to use when requesting a number to be

24 ported?

25 A That is my understanding. And I know -- again,

1 I personally don't have the personnel that process these
2 orders. But, yes, those orders are processed
3 electronically, my understanding, but I don't have
4 specific knowledge as to the direct process that occurs.

5 MR. HALM: Okay. That's all the questions I
6 have. Thanks.

7 JUDGE VOSS: CenturyTel?

8 CROSS-EXAMINATION

9 BY MR. PETERS:

10 Q Good morning, ma'am.

11 A Good morning.

12 MR. PETERS: May I approach the witness? I'm
13 giving her a copy of Exhibit No. 1.

14 Q (By Mr. Peters) Ms. Giaminetti, I've handed you
15 what has previously been marked and admitted into evidence
16 as Exhibit No. 1. I would ask if you could please turn
17 your attention to page 78 of that document, Exhibit 1,
18 please.

19 A Okay.

20 Q Are you there?

21 A Uh-huh.

22 Q Okay. If you would, turn your attention
23 specifically to provision -- Section 15.2.1 and read that
24 provision to yourself, if you would, please.

25 A Okay. Okay. All right.

1 Q Okay. Have you done so?

2 A Yes, I have.

3 Q All right. Are you familiar with that

4 provision, ma'am?

5 A I have read the provision previously, yes.

6 Q Okay. And as I indicated earlier in my opening

7 statement, in Section 15.2.1, the mechanism for triggering

8 of a porting order is through the submission of an LSR.

9 Isn't that, indeed, correct?

10 A That's correct.

11 Q And that's what the agreement says. It's the

12 mechanism the parties agreed they would use, true?

13 A That's correct.

14 Q Okay. All right. And you would agree that --

15 well, let me ask you this: Are you familiar with LSR

16 forms in your -- in your business?

17 A I've seen the LSR forms.

18 Q Okay. Charter uses them as well, don't they?

19 A That's my understanding. Yes.

20 Q Okay. And do you agree that LSR is an acronym

21 for Local Service Request?

22 A Yes.

23 Q Okay. And would you, likewise, agree that an

24 LSR is, indeed, a request for service?

25 A Request for transfer of service. Yes.

1 Q Okay. Are you familiar with the actual process
2 that CenturyTel goes through in response to a Charter LSR
3 that relates to a request to port?

4 A Other than reading through the rebuttal
5 testimonies or the direct testimonies.

6 Q Okay. So you're not, other than what you've
7 read; is that true?

8 A That's correct.

9 Q All right. And let me ask you this: Have you,
10 indeed, read the testimony that was proffered by
11 Mr. Miller and Ms. Hankins in this matter?

12 A Yes, I did.

13 Q Okay. During the course of my opening
14 statement, I specifically made reference and advised that
15 the Commissioners of kind of a detailed process that's
16 gone through by CenturyTel personnel when, indeed, a
17 Charter porting request is -- is sent.

18 You don't have any basis, do you, ma'am, to
19 disagree with the extent of the process that I described
20 in my opening statement, do you?

21 A I really have no basis to disagree.

22 Q So I just want to make sure we're clear. You
23 don't -- you don't have any knowledge or facts to suggest
24 that -- that the statements I made during the course of my
25 opening argument and, specifically, that are contained in

1 Mr. Miller's direct testimony on page 12 where he
2 describes that process in detail, you don't have any facts
3 to suggest that that process that we have described is
4 inaccurate, do you?

5 MR. HALM: Objection, your Honor.

6 JUDGE VOSS: Do you want to frame which part
7 you're objecting to?

8 MR. HALM: Compound question.

9 MR. PETERS: I'll rephrase.

10 MR. HALM: The question has been asked and been
11 answered as well.

12 JUDGE VOSS: And it sounds like you're asking
13 the witness to verify as fact the comments you made in
14 your opening statement.

15 MR. PETERS: And I -- an I can clarify this, and
16 I'll do so.

17 Q (By Mr. Peters) I just want to make a very
18 simple point. Within Mr. Miller's testimony on page 12,
19 he describes the detailed process that CenturyTel follows
20 in responding to a port request. And you've indicated
21 you've, indeed, read that testimony, correct?

22 A Yes, I have.

23 Q All right. And my point that I want to make,
24 ma'am, is you don't have any basis as Charter's witness to
25 suggest or advise this Commission that the process as it's

1 been described in Mr. Miller's testimony and as I
2 mentioned in my opening statement is inaccurate or false,
3 do you?

4 A I really couldn't validate that. So I have no
5 inside information as to how CenturyTel processes those
6 orders, so all I can presume is the information of
7 Mr. Miller's direct testimony is correct. But --

8 Q Okay. You certainly don't have any facts to --
9 to provide this Commission, to tell this Commission that
10 the level of involvement of work that's been described is
11 not true, do you?

12 A I couldn't say yes or no.

13 Q Well, are you aware specifically of any
14 information as you sit here --

15 A No, I am not aware of any specifically.

16 Q -- that suggests -- okay. And just for the
17 court reporter's benefit, and I'll try to avoid doing this
18 as well, it's important that we not speak at the same
19 time. So if you'll allow me to finish my question --

20 A Okay.

21 Q -- I'll try to allow you to finish your answer
22 before each one of us speaks. I just want to make sure,
23 though, that you don't have any facts that suggest that
24 the process is anything other than described?

25 MR. HALM: Objection, your Honor.

1 Q (By Mr. Peters) True?

2 MR. HALM: Objection. Asked and answered
3 repeatedly.

4 MR. PETERS: Well --

5 JUDGE VOSS: I believe it has been asked and
6 answered. I think the record will reflect that.

7 Q (By Mr. Peters) Okay. You don't have any
8 knowledge, do you, ma'am, that CenturyTel's process for
9 responding to porting requests has changed in any material
10 way since CenturyTel started porting to Charter back in
11 2002, 2003?

12 MR. HALM: Objection your Honor. I'm not sure
13 this is relevant to the scope of her testimony. You're
14 asking her about issues that she hasn't testified to.

15 MR. PETERS: This is cross-examination. I think
16 I should be free to ask her if she has knowledge that the
17 process has changed.

18 MR. HALM: Has she testified as to CenturyTel's
19 processes? Has she -- I don't think she has.

20 JUDGE VOSS: Well, if she has knowledge of the
21 process at CenturyTel, I don't think it's outside the
22 realm of reason for her to answer those questions based on
23 any knowledge she actually has.

24 MR. PETERS: Okay. So -- the objection was
25 overruled?

1 JUDGE VOSS: Well, pending a -- a demonstration
2 of relevancy.

3 MR. PETERS: Well, we've established a moment --
4 a moment ago that the -- that she doesn't have any facts
5 to suggest that the process is anything other than as it
6 was described to be in Mr. Miller's testimony.

7 My question simply is -- I would like to know
8 whether she has any knowledge that that process as
9 described has changed in any way since CenturyTel has
10 started initially processing the orders.

11 MR. HALM: Your Honor?

12 JUDGE VOSS: Yes. Please address.

13 MR. HALM: The witness is here to talk about her
14 testimony. And I think within that testimony, she talks
15 about Charter's operations, Charter's policies. And I
16 think she's certainly ready to answer questions about
17 Charter processes, Charter policies, Charter operations.

18 Again, nothing in our testimony speaks to
19 CenturyTel's processes. And there's no statement in the
20 testimony that rebuts the point made in Mr. Miller's
21 initial testimony. This seems to be an undisputed fact
22 that Commissioner Clayton was pointed to earlier.

23 JUDGE VOSS: That was the question of relevance
24 that I had based on the fact that she said she doesn't
25 have any reason to dispute what's in the testimony but has

1 no knowledge of it. How could her knowledge of the change
2 be relevant?

3 MR. PETERS: I think that's fair enough, and
4 I'll move on.

5 JUDGE VOSS: Thank you.

6 Q (By Mr. Peters) You've indicated that you were
7 not employed by Charter until sometime in 2005, correct?

8 A That's correct.

9 Q All right. Based on having read the testimony
10 that's been offered by you and proffered by CenturyTel,
11 you're aware, certainly, that -- that CenturyTel has been
12 making these charges since at least, according to your
13 earlier testimony, sometime in the 2003 time frame,
14 correct?

15 A Correct.

16 Q All right. And you know don't deny, do you,
17 ma'am, that by having made those charges CenturyTel was
18 indicating at least to Charter that they expected to be
19 paid for its work, do you?

20 A Certainly, they continued to charge those fees
21 every time a local service order request was -- was made
22 by Charter.

23 Q All right. And -- and following this payment
24 that occurred, the \$68,000 amount in the summer of '04,
25 you don't dispute, do you, ma'am, that Charter has not

1 paid any of those charges? Is that true?

2 A We have not paid any charges other than the
3 \$68,000 that was paid under protest.

4 Q Okay. And just -- just, again, for the record
5 to clarify, I want to make sure I understand Charter's
6 position in this case. You're asking this Commission to
7 find in your favor, that is, Charter's favor that
8 CenturyTel should be paid nothing whatsoever for
9 processing these LSRs for porting requests; is that true?

10 A That's correct.

11 Q And in addition to -- to not paying the current
12 bill, you are asking this Commission to reimburse Charter
13 for the payment made in 2004, correct?

14 A Correct.

15 Q All right. And you would agree with me, ma'am,
16 that Charter took no action until filing of this complaint
17 in 2007 to seek the refund of the \$68,000 payment made in
18 2004 up and until this 2007 complaint, correct?

19 A It's my understanding that the \$68,000 that was
20 paid in 2004 was paid upon duress, and both parties
21 entered into a formal dispute process thereafter where
22 there was several meetings that continued.

23 And, certainly, this entire time frame that
24 Charter has continued to dispute monthly all of the
25 charges that we've been billed. So from our point of

1 view, we have never agreed to these charges, and the
2 dispute is still outstanding.

3 Q You weren't present when the 2004 dispute took
4 place, were you, ma'am?

5 A No, I was not.

6 Q You didn't personally engage in the Section 14
7 dispute resolution process required by the interconnection
8 agreement, did you?

9 A I did not.

10 Q All right. But you've reviewed the testimony
11 with regard to those issues, have you not?

12 A Yes, I have.

13 Q Okay. Are you familiar with any of the
14 correspondence that was transmitted back and forth between
15 Charter and CenturyTel as it relates to that 2004 dispute?

16 A I have read the letter that is one of the
17 schedules that's attached that deals with the dispute that
18 I believe I did have a copy of it here. But I have
19 reviewed the letter and the correspondence from Charter
20 that detailed the correspondence to date that had
21 transpired.

22 MR. PETERS: Okay. May I approach the witness,
23 your Honor? Mark that. Ms. Reporter, what was the number
24 of that document?

25 THE COURT REPORTER: 11.

1 MR. PETERS: Thank you.

2 Q (By Mr. Peters) Ms. Giaminetti, I've handed you
3 what's been marked as Exhibit No. 11.

4 MR. PETERS: Is that correct?

5 THE COURT REPORTER: (Court reporter nods head.)

6 Q (By Mr. Peters) I'll represent to you, ma'am,
7 that it's a letter dated August 3rd, 2004, sent by your
8 counsel, Mr. Halm, to Guy Miller at CenturyTel. Have you
9 ever had an opportunity to review this document before?

10 A Were you supposed to provide me with a copy of
11 this letter?

12 Q I'm sorry. I thought she handed you a copy.
13 That is my last copy. My oversight.

14 JUDGE VOSS: Can you clarify with the court
15 reporter, is this Exhibit 10 or 11?

16 THE COURT REPORTER: 11.

17 JUDGE VOSS: Okay.

18 Q (By Mr. Peters) All right. You now have
19 Exhibit 11 before you?

20 A Yes.

21 Q All right. Have you ever seen this document
22 before?

23 A I have not.

24 Q All right. I'd like to you turn your attention,
25 if you could, please -- and feel free to read the document

1 in its entirety if you believe it's necessary. But I'd
2 like to focus on the very, very last paragraph of the
3 correspondence on page 2. Could you turn that to page 2
4 for us, please?

5 A Okay.

6 Q Take a moment. And if you'd just read into the
7 record, out loud, if you would, please, that final
8 paragraph that begins with "to that end."

9 MR. HALM: Objection, your Honor. I'm not --

10 JUDGE VOSS: Go ahead, please.

11 MR. HALM: I'm not sure a proper foundation has
12 been laid here. And Ms. Giaminetti said she has never
13 seen this letter. We won't object to entering it into the
14 record, but, certainly, the letter speaks for itself.
15 Asking her to testify to something she's never seen before
16 is not part of her testimony.

17 MR. PETERS: Well, I just would like to ask the
18 witness a couple of questions about the conduct that took
19 place as it relates to this letter and following the
20 letter.

21 JUDGE VOSS: Why don't you let the witness have
22 a chance to read the letter and then potentially ask your
23 questions.

24 Q (By Mr. Peters) Okay. Please, if you would,
25 take a moment and review the correspondence.

1 MR. HALM: Your Honor?

2 JUDGE VOSS: Uh-huh.

3 MR. HALM: My objection has been overruled?

4 JUDGE VOSS: She is reading the letter as
5 opposed to reading it into the record. And then as he
6 asks the question based on that letter, additional
7 objections can be made.

8 But, originally, she was going to read the
9 letter into the record, which he's not going to have --

10 MR. HALM: Right. Thank you.

11 JUDGE VOSS: While the witness is reading the
12 letter, do you want to offer it since counsel said they
13 don't object to the letter itself being offered into
14 evidence?

15 MR. PETERS: Certainly, I would like to offer
16 it.

17 JUDGE VOSS: Are there any objections to the
18 admission of the letter? Okay. Hearing none, Exhibit 11
19 is admitted.

20 (Exhibit No. 11 was offered and admitted into
21 evidence.)

22 COMMISSIONER CLAYTON: Judge, while we're
23 waiting, can I just can ask counsel -- and I know there
24 are no objections. Just can you -- could you -- what's
25 the relevance of this letter in the -- in the dispute we

1 have?

2 MR. PETERS: Certainly. I alluded to this
3 earlier in response to some of your specific questions,
4 Commissioner Clayton. We're at a bit of a disadvantage
5 that Mr. Schremp is not here. But I think it's germane to
6 this dispute what happened at the conclusion of that
7 dispute resolution process in 2004.

8 And while this witness may not have been
9 employed by the company at the time, she's the only
10 Charter witness that I've got the opportunity to ask some
11 questions of as it relates to kind of how this dispute
12 concluded.

13 COMMISSIONER CLAYTON: Okay. I got that part,
14 but how is that relevant to whether the interconnection
15 agreement applies or doesn't apply or is interpreted?

16 MR. PETERS: Well, I believe it's relevant as to
17 the \$68,000 issue.

18 COMMISSIONER CLAYTON: The payment that they
19 have made.

20 MR. PETERS: Yes. And their request for a
21 refund. And as it relates to the parties, I suppose the
22 course of operation from the date of that payment and the
23 conclusion of this resolution forward as to how they dealt
24 with each other.

25 COMMISSIONER CLAYTON: So if -- if -- is -- is

1 CenturyTel arguing that Charter is not complying with the
2 dispute resolution provisions of the interconnection
3 agreement?

4 MR. PETERS: That's correct.

5 COMMISSIONER CLAYTON: That is correct. Okay.
6 And is that an issue -- is that an issue in this case that
7 is tee'd up for decision?

8 MR. PETERS: (Mr. Peters nods head.)

9 COMMISSIONER CLAYTON: Okay. Thank you.

10 MR. HALM: Your Honor, very briefly, it is an
11 issue stated in CenturyTel's statement of position.
12 However, in Mr. Miller's -- CenturyTel witness,
13 Mr. Miller's rebuttal testimony, I believe, he claimed
14 that CenturyTel would no longer pursue this question and
15 that it was really a waste of the Commission's time to
16 consider discussion of these issues.

17 MR. PETERS: This is probably a point that
18 should deserve some clarification on our point. We
19 initially -- we've taken the position and we maintain in
20 our position that we don't believe that the dispute
21 resolution process, Section 14, was followed after the
22 conclusion of this page.

23 And that was one of the reasons why my client
24 said, We believe you're in default. You haven't paid the
25 amount that we don't believe you've properly disputed.

1 And accordingly, that's the basis upon which we're asking
2 you to pay the balance that's now accrued \$122,000.

3 Okay? So our point was, we don't believe they
4 followed the dispute resolution process, even in filing
5 this complaint and coming to this Commission to request
6 the relief that they request.

7 In other words, there's a process. We don't
8 believe it was followed. Nevertheless, they filed this
9 case. And while we initially did file a motion to dismiss
10 arguing in our brief that we don't believe that the
11 Commission had jurisdiction to decide these issues, at the
12 end of the day, these issues need to be decided.

13 And so we thought while we're going to -- we are
14 going to concede the point that we're going to allow you
15 to decide this issue in this case and these very issues,
16 we still believe that procedurally, there was some defects
17 and deficiencies in how we got here and why we're here.

18 We're willing to waive the point and ask you to
19 decide these issues because it's time that they be
20 decided. They should have been decided four years ago
21 when they paid this -- this payment presumably under
22 protest. But they never did.

23 So -- but I think it's germane --

24 COMMISSIONER CLAYTON: I got it. Sorry to
25 interrupt.

1 MR. PETERS: It's all right because I think it
2 -- it shores up the point I'm trying to make, and I might
3 be able to make it quicker.

4 JUDGE VOSS: Now that the witness has had a
5 chance to read the letter, keeping in mind the letter --

6 COMMISSIONER CLAYTON: That answers my question.

7 JUDGE VOSS: Keeping in mind -- okay. Keeping
8 in mind if the letter speaks for itself, let the letter
9 speak for itself.

10 MR. PETERS: Sure. And, certainly, the letter
11 does speak for itself. But I just -- I want to understand
12 Charter's position in this regard and make a point. Do
13 you have objection, Counsel, to her just reading the final
14 paragraph? Or do you mind if I do?

15 MR. HALM: Well, do you want to understand
16 Charter's position, or do you want to make a point?

17 MR. PETERS: Both.

18 MR. HALM: I certainly understand you may want
19 to ask some questions, but I don't think you're here to --

20 MR. PETERS: Well, and I want to make a point
21 through this witness as to what transpired following the
22 transmission of this letter.

23 MR. HALM: Okay. And so you've asked for --

24 MR. PETERS: I've asked her to read it. And if
25 you have a problem with that, I'll --

1 MR. HALM: Read what?

2 MR. PETERS: The final paragraph in this letter,
3 Exhibit 11.

4 MR. HALM: Again, the document speaks for
5 itself. But we won't object.

6 Q (By Mr. Peters) Would you mind reading into the
7 record the final paragraph of this letter, please?

8 A "To that end, Carter expects CenturyTel to
9 provide a detailed justification and explanation for the
10 disputed charges or a statement that it will agree to
11 refund such charges immediately. Absent an explanation or
12 appropriate refund, Carter will initiate an action for
13 relief 45 days from the date, July 26th, of my last
14 letter."

15 Q All right. Thank you, ma'am. I appreciate
16 that. Just -- just so we're -- we're on the same page
17 here, Charter asked for a detail justification of the
18 charges. Isn't that accurate?

19 A According to this letter.

20 Q Okay. Or a statement that CenturyTel would
21 refund the charges immediately. That was another thing
22 they asked for, correct?

23 A Correct.

24 Q And it says, Absent an explanation or refund,
25 Charter will initiate an action for relief 45 days from

1 the date of my last letter. Isn't that what the letter
2 says?

3 A Yes.

4 Q All right. And this letter was sent by the
5 attorney representing Charter at the time, Mr. Halm,
6 correct?

7 A Yes. Correct.

8 Q Now, to your knowledge, was a refund provided?

9 A No.

10 Q Okay. To your knowledge, was an explanation of
11 the charges provided?

12 A I am not aware of an explanation that was
13 provided.

14 Q All right. I don't want to belabor the point,
15 but -- mark that. Ms. Giaminetti, I've handed you what's
16 been marked by the reporter as Exhibit 12.

17 MR. PETERS: Is that correct?

18 THE COURT REPORTER: (Court reporter nods head.)

19 Q (By Mr. Peters) Again, this letter will speak
20 for itself as well, but this is a letter from Guy Miller
21 of CenturyTel to K.C. Halm dated September 2nd, 2004.

22 I'll just ask you, ma'am, have you ever had an
23 opportunity to review this correspondence?

24 A No, I have not.

25 Q Okay. I believe it was attached as an exhibit

1 to Mr. Miller's surrebuttal testimony. You had indicated
2 you reviewed the surrebuttal testimony. You just don't
3 remember reading this letter?

4 A I did read the testimony, but I don't recall
5 seeing this attachment.

6 Q All right. Well, are you -- so you're -- you're
7 not -- you're not aware that a response was given from
8 CenturyTel regarding its statement of position?

9 A This is the first I've actually reviewed the
10 letter.

11 Q You're not familiar with CenturyTel's statement
12 of position?

13 A Other than reading the direct testimony, I'm
14 not.

15 Q Okay.

16 MR. HALM: And I -- may I ask a clarifying
17 question? By statement of position, you mean the formal
18 filing we made in this case, or are you saying --

19 MR. PETERS: No. I'm referring back to the
20 request in your letter for an explanation for the disputed
21 charges.

22 MR. HALM: Okay.

23 Q (By Mr. Peters) I'm sorry. I might not have
24 been clear. I'm just -- I'm just trying to understand
25 something. We've looked at Exhibit 11, which was

1 Charter's request for either a justification of its --
2 CenturyTel's position or the refund of its money.

3 A (Witness nods head.)

4 Q And -- and as Charter's witness, I'm trying to
5 find out what you know about that, if anything, from
6 having read the testimony. Fair enough?

7 A Fair.

8 Q Okay. And you -- we've established that the --
9 the money wasn't refunded, correct?

10 A Correct.

11 Q And I've asked you and I've handed you Exhibit
12 11, excuse me, Exhibit 12, which was a letter that was
13 written CenturyTel with regard to its explanation for the
14 disputed charges. And my question is, you're not familiar
15 with -- with Exhibit 12, correct?

16 A I have not read the letter. That's correct.

17 Q All right. And as you -- as you sit here before
18 this Commission, you don't know what Charter's -- or
19 excuse me -- CenturyTel's statement of position was as
20 expressed back in 2004?

21 A That's correct.

22 Q Okay.

23 JUDGE VOSS: Let me ask a question. This is
24 Exhibit 12. You said this is an attachment to another
25 exhibit?

1 MR. PETERS: It is. It is. It's an exhibit
2 that is attached to --

3 JUDGE VOSS: I think you said the surrebuttal
4 testimony.

5 MR. PETERS: Yes. The surrebuttal testimony,
6 Exhibit 7. It's the same letter.

7 JUDGE VOSS: Then we don't really need to mark
8 it as an exhibit. It's already in the record.

9 MR. PETERS: Okay. Fair enough.

10 Q (By Mr. Peters) All right. So if, indeed,
11 CenturyTel gave an explanation of its position in response
12 to for Mr. Halm's letter, you don't know what it was.
13 Fair enough?

14 A That's correct.

15 Q All right. And are you familiar with what
16 action, if any, Charter took in response to having
17 received this letter?

18 MR. HALM: Objection, your Honor. Was this
19 question already asked and already answered? Did Ms.
20 Giaminetti testify that disputes were made every month,
21 that a respected dispute was issued?

22 JUDGE VOSS: I believe she said that they never
23 paid. I'm not sure that there was ever any statement --
24 might be more quick for the record to directly answer the
25 question.

1 MR. HALM: Well --

2 JUDGE VOSS: If you don't have any other
3 objections. Could you restate your question?

4 Q (By Mr. Peters) Certainly. Following this --
5 this letter of September 2nd and -- and following
6 telephone conference that took place the following day,
7 are you -- by the way, are you familiar with that
8 conference call?

9 A I am not.

10 Q Okay. Are you -- you said you -- that,
11 certainly, CenturyTel didn't refund the money, true?

12 A That's correct.

13 Q Are you aware that Mr. Miller advised Charter on
14 a conference call following September 2nd that they were
15 not going to refund the money?

16 A I have no direct knowledge.

17 MR. HALM: Objection, your Honor. Does this
18 assume facts in evidence? I think it does. Facts not in
19 evidence. Thank you.

20 JUDGE VOSS: I would have to concur there. If
21 the letter speaks for itself, it's already an attachment
22 in the record.

23 MR. PETERS: Sure. But the letter preceded a
24 conference call that happened on the following day. You
25 know, I think the disadvantage that we have here -- and I

1 -- I apologize to the extent that this is a little
2 disjointed. But I had every reason to believe until
3 Friday that Mr. Schremp was going to be here and might be
4 able to testify about matters about which he had personal
5 knowledge and -- and may have had some involvement with.

6 And -- and, you know, I'm -- I'm trying to deal
7 with the fact that we've now got a witness that wasn't
8 there and wasn't familiar with the process, and it's just
9 making -- making trying to get some of these facts that I
10 believed Mr. Schremp could have talked about before you.
11 But nevertheless -- let's just do it this way.

12 Q (By Mr. Peters) Charter, despite what it said
13 in Exhibit 11, its letter from Mr. Halm, did not initiate
14 an action for relief 45 days from the date of -- of his
15 last letter, July 26th; isn't that true?

16 A My understanding, in talking with Charter
17 personnel as to what transpired after the fact is that we
18 did initiate the formal dispute process and there were
19 continual communications on both sides, both CenturyTel
20 and Charter's behalf.

21 During this process, we continued to form -- to
22 file formal disputes, short pay. And for whatever
23 reasons, negotiations or communications on both sides
24 ceased. But we always still felt that there was a formal
25 dispute in process.

1 Q Okay. But to answer my question, Charter did
2 not -- within 45 days after -- after the fact that they
3 were advised that they weren't going to get a refund, they
4 did not initiate an action at that time for the refund of
5 the money, did they?

6 MR. HALM: Your Honor, may I -- may I -- I may
7 not need to object because I think we'll stipulate to that
8 fact.

9 MR. PETERS: I'll ask that --

10 JUDGE VOSS: It's already asked and answered.

11 Q (By Mr. Peters) Okay. Let's turn your
12 attention back to Exhibit 1, ma'am, if I could. That's
13 the interconnection agreement. And back to page 78 of
14 that document, if you -- if you would, please.

15 You read -- you read that testimony or -- or
16 excuse me. You read that provision a moment ago in
17 response to some of my questions, did you not?

18 A Yes, I did.

19 Q And would you agree with me at least, ma'am,
20 that that provision does not state expressly that there
21 will be no charge for an LSR?

22 A It doesn't explicitly state there will be no
23 charge or a charge.

24 Q But it certainly doesn't state there will be no
25 charge, correct?

1 A It does not comment that there will be no
2 charge.

3 Q Thank you. I'd like you to turn to
4 Mr. Schremp/Giaminetti testimony, direct testimony, which
5 was probably Exhibit No. 2, if I correctly recall. Do you
6 have that before you?

7 A Yes.

8 Q Okay. Would you turn to page 25 of Exhibit 2
9 for me for a moment? And tell me if you're there.

10 A Yes, I am.

11 Q All right. And I don't have the line number in
12 front of me, and I apologize for that, but do you see a
13 provision on page 25 of Exhibit 2 wherein you and/or
14 Mr. Schremp make the comment that the express terms of
15 agreement provide portability, quote, without charge? Do
16 you see that in the testimony?

17 MR. HALM: I believe you're referring to line
18 15.

19 MR. PETERS: Thank you, Counsel.

20 A Yes.

21 Q (By Mr. Peters) All right. Would you read line
22 15 into the record just so that we're all on the same
23 page?

24 A "Provision of number portability without charge.
25 Such a result would have been consensical and contrary to

1 standard and usual business practice."

2 Q I better back up. Would you read lines 13, 14
3 and 15 to put it in context?

4 A Okay.

5 MR. HALM: How about lines 12 through 15.

6 Q (By Mr. Peters) 12 through 15.

7 A It would have been irrational for Charter to
8 have agreed to incorporate a service guide that included
9 such language because doing so would have completely
10 undermined and negated the express terms of the agreement
11 that provide for the provision of number portability
12 without charge. Such a result would have been
13 non-sensical and contrary to standard and usual business
14 practice.

15 Q Okay. Thank you. So we've just looked at
16 Section 15 of the agreement that does not, admittedly,
17 indicate that there will be no charge for porting. Are
18 you aware of any other provisions within this ICA document
19 that expressly provide that number portability is to be
20 provided without charge?

21 A There is no rate in the rate sheet for LSR
22 charge.

23 Q That's not my question. My question is, are you
24 aware of a provision within the ICA agreement that
25 expressly provides that there will be no charge for

1 porting LSRs?

2 A I'm not aware that it stipulates there will be a
3 charge or no charge either way.

4 Q But there is no provision, is there, ma'am, that
5 says there will be no charge expressly, correct?

6 A Not to my knowledge.

7 Q Thank you. And you said you're familiar in your
8 practice with the company -- with various interconnection
9 agreements that Charter has entered into; is that correct?

10 A That's correct.

11 Q And are you familiar with the practice that
12 Charter has utilized wherein it expressly states in
13 various interconnection agreements that there will be no
14 charge when, indeed, that's their intent that there will
15 be no charge? Are you familiar with that?

16 A I -- I don't understand the question.

17 Q Let me rephrase the question. You're familiar
18 with the fact, are you not, ma'am, that -- that various
19 interconnection agreements that Charter has sometimes
20 often contain provisions that expressly state there will
21 be no charge for a service? Are you familiar with that?

22 A I guess I'm not familiar that other agreements
23 say specifically there will be no charge.

24 Q Have you read an interconnection agreement that
25 specifically expressly states there is to be no charge for

1 a performance of a service?

2 A I have not read that.

3 Q Let's turn your attention, if I could, again,
4 back to Exhibit No. 1. Turn to page 45 of the
5 interconnection agreement, if you would. Specifically,
6 Section 4.2. And I'll read you the first line. But it's
7 the section listing information.

8 It says, Charter shall provide to Verizon on a
9 regularly scheduled basis at no charge and in the format
10 required. And then it continues on listing information.
11 Have I correctly read from that provision?

12 A Yes, you have.

13 Q And that would be an example of a provision in
14 an interconnection agreement that you've now indicated
15 was, indeed, negotiated by Charter where they expressly
16 provided that there was to be no charge for that service,
17 correct?

18 A Correct.

19 Q Let's turn to page 47 in the document, if we
20 could. And I direct your attention to Section 4.9, which
21 is a section called Service Information Pages. And about
22 halfway down that paragraph, it says, At Charter's
23 request, Verizon shall include at no charge in the
24 customer guide for comparable section of the applicable
25 directory, Charter's critical contact information to

1 Charter's installation, repair and customer service as
2 provided by Charter. Have I correctly read from that
3 provision, ma'am?

4 A Yes, you have.

5 Q And that would again be another example in a
6 document negotiated by Charter where they expressly
7 indicated that there was to be no charge by Verizon to
8 Charter for including certain information in the -- in a
9 guide, true?

10 A That's correct.

11 Q Okay. So we've seen two example at least, and I
12 think there are more, where Charter has expressly
13 negotiated a statement that there is to be no charge for a
14 service to be performed, correct?

15 A Correct.

16 Q All right. And, again, back to section 15,
17 language specifically expressly indicating that there was
18 to be no charge for those services did not appear,
19 correct?

20 A That's correct.

21 Q Okay. Thank you. In your experience, Charter
22 knows how to put language in an agreement that -- that
23 indicates there is to be no charge, doesn't it?

24 MR. HALM: Your Honor, objection. That's
25 outside of the scope of her testimony.

1 Q (By Mr. Peters) Well, we've seen two examples
2 of it. I'm just asking the question. Charter knows how
3 to draft an agreement that says there is to be no charge.
4 Would you agree with that?

5 MR. HALM: Your Honor, objection again. She's
6 -- she has testified that her responsibility includes
7 contract administration, which is very different from
8 contract drafting and development. She is not an
9 attorney. I think she said that. I think Mr. --

10 JUDGE VOSS: I'll sustain that objection.

11 MR. PETERS: I'll move on.

12 Q (By Mr. Peters) Ma'am, it's been Charter's
13 position in this case through the testimony that you've
14 proffered as your own that the charges that CenturyTel has
15 been assessing on Charter are illegal or not permitted by
16 this FCC cost recovery rule. Are you familiar with that
17 testimony?

18 A Yes, I am.

19 Q All right. Do you have any personal knowledge
20 or understanding of that law or -- or -- let me ask you
21 that question first.

22 A I have no personal knowledge other than what has
23 been provided to me by counsel.

24 Q Okay. Have you ever read that law?

25 A I have read sections of the FCC 2002 law.

1 Q Okay. Do you feel -- do you feel qualified to
2 comment on what the law does or doesn't permit?

3 A Not in my capacity. I do not.

4 Q Okay. All right. To your knowledge, does
5 Charter or has Charter made it a practice in its business
6 to pay charges that it knows to be illegal or improper
7 based on reasons of legality?

8 A Certainly, we would not pay charges we would
9 think were illegal.

10 Q All right. So stated another way, if Charter
11 believed charges to be illegal, not allowed to be charged
12 under the law, Charter doesn't make it its practice to pay
13 those charges. Is that a fair statement?

14 A Correct.

15 Q Okay.

16 COMMISSIONER MURRAY: The witness is going to
17 have to answer yes or no. Not -- the court reporter can't
18 pick up your shaking your head.

19 A Okay.

20 Q (By Mr. Peters) All right. There's been some
21 testimony, and you've indicated you read Mr. Miller's
22 direct testimony, correct?

23 A Yes.

24 Q All right. And there's been some testimony in
25 Mr. Miller's direct testimony to which you all rebutted

1 and responded that Charter is, indeed, paying
2 administrative charges associated with porting requests in
3 Wisconsin to different companies. Are you familiar with
4 that?

5 A I am familiar. I don't recall that being in the
6 direct testimony, but I am familiar with some charges.

7 Q I believe it was. And, in fact, according to
8 records that have been produced in other cases, Charter is
9 paying Mount Vernon Telephone a charge of \$20 for
10 administrative work responding to porting requests; is it
11 not?

12 MR. HALM: Objection, your Honor. That assumes
13 facts not in evidence.

14 MR. PETERS: Well, I believe -- I believe the
15 testimony of Mr. Miller recites those charges and those
16 companies.

17 MR. HALM: Okay. Can you point us to where in
18 the rebuttal or surrebuttal testimony that Mr. Schremp and
19 Ms. Giaminetti speak to this issue?

20 MR. PETERS: I don't know that they spoke to it.
21 But -- but CenturyTel, certainly, spoke to it.

22 MR. HALM: And you will be moving Mr. Miller's
23 testimony into evidence?

24 MR. PETERS: We will be, yes.

25 MR. HALM: It is not evidence now. She has no

1 knowledge of this.

2 JUDGE VOSS: I think he was asking her if she
3 did have knowledge of it.

4 MR. PETERS: Yeah. I asked her if she knew.

5 JUDGE VOSS: I believe the witness can answer
6 the question to the best of her knowledge.

7 Q (By Mr. Peters) Do you -- do you know that
8 CenturyTel is paying Mount Vernon Telephone a charge of
9 \$20 for responding it porting requests that it's
10 assessing?

11 A I'm not sure if I'm aware of that specific
12 agreement. I do know there is an agreement in Wisconsin
13 that we are -- have agreed to pay a service order charge.

14 Q To Mount Vernon, correct?

15 A I'm not sure.

16 Q And, also, to Concord Telephone?

17 A I'm not sure of the specifics.

18 Q And also to Wood County Telephone?

19 A I'm not --

20 MR. HALM: Assuming a lot of evidence --
21 assuming facts that are not yet in evidence.

22 JUDGE VOSS: Attorney's comments are not --
23 attorney's comments are not considered to be evidence. So
24 just because he's saying it doesn't make it evidence.

25 Q (By Mr. Peters) Okay. Well, let -- let's go

1 with your knowledge first, and then we'll come back. So
2 you are aware that Charter pays certain companies in
3 Wisconsin charges associated with processing porting
4 requests? You do have knowledge of that, correct?

5 A Yes, I do.

6 Q Okay. And -- and just to be clear, you're not
7 aware that Charter objects to those charges that are
8 assessed in Wisconsin to those carriers that are assessing
9 the charges on the grounds that their charges are illegal,
10 are you?

11 A No. We are not -- we are not objecting that
12 they're illegal.

13 Q Okay.

14 A If the terms are contained in the
15 interconnection agreements that we have agreed to, we are
16 paying those charges.

17 Q Okay. Have you ever told those carriers that
18 despite the terms that may be negotiated or contained
19 within agreements that, nevertheless, you believe that the
20 FCC cost recovery rule precludes the charging for those
21 administrative types of services?

22 A I was not responsible for negotiating those
23 contracts, so I have no direct knowledge.

24 Q So you have no knowledge of that?

25 A No.

1 Q Okay. But -- but, again, to be clear, you're
2 telling this Commission in Missouri that you believe the
3 charges for processing porting requests that are assessed
4 in this matter are illegal --

5 A Based on.

6 Q -- i.e., prohibited by the federal cost recovery
7 rule; is that right?

8 A That is our understanding --

9 Q Okay.

10 A -- as counsel presented the information to us.
11 Yes.

12 Q And, again, to your understanding, that same
13 argument is not being made in Wisconsin that those -- that
14 those charges associated with porting requests are
15 illegal?

16 A Not to my knowledge.

17 Q Thank you. Turn to page 24 of Exhibit 2 of
18 Mr. Schremp's direct testimony. Do you have that exhibit
19 before you, ma'am?

20 A Yes, I do.

21 Q Bear with me one moment. I'll move on. I'm
22 going to move on. I apologize. I -- I thought that I had
23 this page number written down correctly. I recall from
24 having read the direct testimony of Mr. Schremp, and I
25 believe it was the direct, that there was a statement that

1 no charges are assessed between carriers who port. Are
2 you familiar with that testimony having been proffered?

3 MR. HALM: I'm sorry. Can you point us to a
4 line reference, a page reference?

5 MR. PETERS: I had written down it was Schremp
6 testimony at page 24. And I just didn't see it. So I was
7 thinking maybe it was in a different copy.

8 JUDGE VOSS: Would it be the bottom of 23 to the
9 top of 24?

10 MR. PETERS: Well, I think I found it. Sorry.
11 My quote that I wrote down isn't exactly the quote that
12 appears in the document, but let's get this right.

13 Q (By Mr. Peters) Page 24, line 10. There's a
14 question precedes it. It says -- the question reads, Is
15 the fact that you don't have an agreement for porting with
16 other companies the reason that there are no charges
17 assessed?

18 And the answer on line 10 was, Not at all. The
19 reason no charges are assessed between carriers who port
20 is that they're not allowed to do so under federal law.
21 Okay. Now, have I correctly read from page 24?

22 A Yes.

23 Q Okay. And you make the comment in the testimony
24 that the reason no charges are assessed between carriers
25 who port is that they're not allowed by federal law to do

1 so. But that's -- that's what we -- what we've just
2 determined a moment ago, at least in Wisconsin, makes that
3 statement untrue, does it not?

4 A I can't address as to federal law because I'm
5 not an attorney. All I can address is to the agreement
6 we did enter into in Wisconsin.

7 Q But the statement, The reason no charges are
8 assessed between carriers who port, we've seen, based on
9 your testimony earlier, that there are charges being
10 assessed in Wisconsin, correct?

11 A Correct.

12 Q Okay. So it's not accurate to say that no
13 charges are assessed between carriers who port. Isn't
14 that true?

15 A That's correct.

16 Q Okay. Charges are assessed, correct?

17 A In some cases, if we have entered into an
18 agreement where the charges are specifically done.

19 Q Sure. Sure. So they are. AT&T charges --
20 charges for L&P, do they not? Are you familiar with that?

21 A No. Not to my knowledge. We are not charged by
22 AT&T.

23 Q Are you familiar with their web site that
24 indicates that, indeed, they do charge?

25 A I am not.

1 Q Okay. Okay. All right.

2 A We are currently not charged by any other RBOC
3 reporting.

4 Q All right. A couple other questions, and then
5 we'll wrap this up, ma'am. And this line of questioning
6 will probably precede your employment with the company,
7 but I want to ask you a few questions.

8 MR. PETERS: May I approach? Is it 13?

9 THE COURT REPORTER: 12.

10 JUDGE VOSS: It will be 12.

11 MR. PETERS: Oh, that is right. Thank you.

12 MR. HALM: Just for clarification, I think this
13 was also attached to as Exhibit 2 to Mr. -- to
14 Mr. Miller's surrebuttal testimony.

15 MR. PETERS: It was. It was. Appreciate that,
16 Counsel. This was attached as Exhibit 2 to the
17 surrebuttal testimony proffered by Guy Miller in this
18 case, so there's no need to renumber the document. We'll
19 just call it the document formerly marked as Exhibit 12.

20 MR. DORITY: Excuse me, Mr. Peters. I think
21 that was marked HC. So to the extent to which you're
22 going to go delve into it, you may want to visit with
23 counsel about whether or not we need to go in-camera.

24 MR. PETERS: You know more about that than I do.
25 Do you have any thoughts? This is just a --

1 MR. DORITY: Judge, can we go off the record for
2 a moment?

3 JUDGE VOSS: Yes. Take a break to determine
4 whether we need to go in-camera.

5 (Break in proceedings.)

6 JUDGE VOSS: Okay. We are going back on the
7 record. The parties have determined that the information
8 we're about to cross-examine on is highly confidential, so
9 we are going to go in-camera.

10 MR. PETERS: Thank you, Judge.

11 REPORTER'S NOTE: At this point, an in-camera session was
12 held, which is contained in Vol. 2, pages 115 through 125.

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1 MR. PETERS: If I could just have one moment to
2 confer with counsel? Be right back. I don't believe I
3 have any further questions of the witness. But just for
4 matters of housekeeping, I want to make sure I didn't
5 forget to admit an exhibit. Exhibit 11, isn't that the
6 only document that was not contained within pre-filed
7 testimony?

8 JUDGE VOSS: It was offered and admitted.

9 MR. PETERS: And it was. Okay. So just to make
10 sure we've got everything offered. All right. No further
11 questions at this time. Thank you.

12 MS. GIAMINETTI: Thank you.

13 JUDGE VOSS: I think we're ready for questions
14 from the Bench. Commissioner Murray, do you have any
15 questions?

16 COMMISSIONER MURRAY: Yes, I do.

17 CROSS-EXAMINATION OF PEGGY GIAMINETTI

18 BY COMMISSIONER MURRAY:

19 Q Good morning.

20 A Good morning.

21 Q Mr. Voight's testimony indicated that there was
22 only one issue for us to decide, the local number -- the
23 disputed charges concerning local number portability. And
24 is it your testimony that you are still disputing the
25 other -- I believe it was three other charges that were

1 shown in the testimony?

2 A There are two charges associated with records
3 search and non-pub -- non-listed services. The reason why
4 we're disputing those is because CenturyTel was not able
5 to perform those services. And so the reasons for the
6 dispute is for non-performance.

7 Q So those are still -- still disputed?

8 A Those are small dollars compared to the real
9 dispute, which is the porting charges.

10 Q Thank you. And I wanted to ask, why are you
11 adopting Mr. Schremp's testimony? He was scheduled to be
12 here today, was he not?

13 A I'm not sure what scheduling conflict -- he was
14 unable to attend the meeting, so I'm not sure what
15 prompted that scheduling conflict.

16 Q Now, do you hold a similar position to
17 Mr. Schremp?

18 A I reported in to Mr. Schremp for a period of
19 time.

20 Q For a period of time. What -- what period of
21 time?

22 A Up until the past couple of months. Mr. Schremp
23 assumed a much larger role within the company, and now I'm
24 reporting directly in to a VP in the operational side of
25 Charter.

1 Q All right. Would you turn with me to the direct
2 testimony of Mr. Schremp, the executive summary? I
3 need --

4 A Okay.

5 MR. DORITY: Your Honor, I'm sorry to interrupt.
6 Commissioner, we cannot hear you. We wonder if your mic's
7 on.

8 COMMISSIONER MURRAY: It is on. Maybe I'm -- is
9 that better?

10 MR. DORITY: That's better. Thank you.

11 COMMISSIONER MURRAY: Thank you.

12 Q (By Commissioner Murray) Are you there to the
13 executive summary?

14 A Yes.

15 Q This is in Mr. Schremp's direct testimony. He
16 indicates -- or the executive summary indicates that
17 Mr. Schremp will testify that, one, number portability or
18 porting is a vital functionality essential to Charter's
19 ability to compete for telephone service subscribers and
20 for telephone service subscribers to exercise consumer
21 choice in Missouri.

22 Now, are you familiar enough with the number
23 portability issue that -- that you are able to testify to
24 that?

25 A Yes, ma'am.

1 Q And then No. 2, he will testify that to compete
2 in Missouri, Charter relies upon other telephone companies
3 to fulfill their obligations to port subscriber telephone
4 numbers to Charter when requested.

5 Now, are you familiar with Charter's reliance
6 upon other telephone companies to port?

7 A Yes, I am.

8 Q And does Charter pay any other telephone
9 companies in Missouri for the provisioning of the number
10 porting?

11 A No, we do not.

12 Q Then the third thing that Mr. Schremp was to
13 testify on was that Charter has always operated in a
14 manner that assumes the current interconnection agreement
15 with CenturyTel requires both parties to provide number
16 porting when telephone customers so request and that each
17 company has the obligation to provide such number porting
18 without charge to the other party.

19 Are you familiar with the way that Charter has
20 always operated in terms of its interconnection agreement
21 with CenturyTel?

22 A I feel I'm familiar, yes.

23 Q And then the next thing, No. 4, he was going to
24 testify that Charter has properly disputed all of the
25 improper charges assessed by CenturyTel in Missouri. And

1 when you were asked questions earlier, I got the
2 impression that perhaps you were not quite familiar with
3 the manners -- all of the manners in which that Charter
4 may have disputed the improper charges. Are you --

5 A These -- the staff is responsible for disputing
6 these charges on a monthly basis report in to me, so I'm
7 very familiar with the dispute process that we have with
8 CenturyTel and how we dispute the charges on a monthly
9 basis.

10 Q And are you familiar with the -- the original
11 dispute resolution process in '04?

12 A Other than I've read it to prepare for this.
13 You know, I was not -- I was not at the company. Neither
14 was Mr. Schremp at that time, as I recall.

15 Q So who would know or be able to answer the
16 question why did Charter not come to the Commission with
17 the complaint following the 45 days after the request to
18 have CenturyTel provide an explanation?

19 A Certainly, I would think either our outside
20 counselor our internal counsel at the time who is still
21 employed by Charter.

22 Q Who is not here today; is that right?

23 A That's correct.

24 Q So we have the -- Charter has no witnesses here
25 today, to your knowledge, that would be able to shed any

1 light on why following that dispute resolution process
2 there was no further formal action on Charter's part?

3 A That's correct. Other than it is my
4 understanding in talking with Charter personnel that was
5 there at the time that they really felt we were still
6 within this formal dispute process. And there had been
7 consistent meetings between both parties, which then
8 stopped on both sides.

9 MR. PETERS: I'd object to that last response
10 based on hearsay.

11 JUDGE VOSS: Could you read back the question?
12 I didn't hear it. You're objecting to the response
13 itself?

14 MR. PETERS: Yes. I believe the response
15 included hearsay not within the witness's personal
16 knowledge.

17 A It was with direct communications with our
18 internal regulatory person who is responsible for this and
19 who was employed by Charter at the time.

20 JUDGE VOSS: You're saying -- I'm going to have
21 to strike your response. Thanks.

22 Q (By Commissioner Murray) And the letter that
23 you were shown -- and I don't remember whether that was
24 marked as an exhibit or not, but it was a letter from --
25 it was a letter to Mr. Guy Miller from K.C. Halm. Do you

1 still have that?

2 A This September 2nd letter?

3 Q That's correct. No. I'm sorry. That was an
4 August 3rd, 2004 letter.

5 JUDGE VOSS: I think it was Exhibit 11.

6 Q (By Commissioner Murray) Exhibit 11.

7 A Okay.

8 Q And the last sentence there that -- that
9 indicated absent an explanation or appropriate refund,
10 Charter will initiate an action for relief 45 days from
11 the date, July 26th, of my last letter. You have no
12 knowledge of why that did not occur?

13 A I have no knowledge.

14 Q I'm sorry. I'm going to be a little slow here
15 because my questions are all spread out in various --
16 various places. Mr. Schremp's testimony, direct
17 testimony, indicated that Charter does not assess any
18 charge upon CenturyTel for the provision of local number
19 portability; is that correct?

20 A That's correct.

21 Q And do you know why Charter does not?

22 A Charter does not assess a porting charge on any
23 co-carrier or ILEC and feels -- really feels it's our
24 obligation to perform this task. And we do not charge for
25 that service.

1 Q The obligation under what? What gives you the
2 obligation?

3 A It was our understanding in -- and I'm not an
4 attorney, but from -- in discussions with counsel that
5 that was a legal obligation.

6 Q And as I read the testimony, I did not see any
7 citation to any -- it kept referring to federal law or the
8 FCC, but I didn't see any citations. So this is just a
9 note to the attorneys that if there is such a citation, I
10 certainly hope it will be in the briefs.

11 MR. HALM: Absolutely, your Honor.

12 Q (By Commissioner Clayton) And on page 10 of --
13 of Mr. Schremp's testimony, you made a change or you
14 actually made an update to the total disputed amount of
15 charges as of March 30th?

16 A That's correct.

17 Q Does that amount include the amount that was
18 paid under protest?

19 A Yes, it does.

20 Q Then on page 24 of the direct testimony, there
21 is one specific location at lines 10 and 11 where it was
22 stated that the carriers are not allowed to make these
23 charges under federal law with no reference to which
24 federal law. And I don't think I had any question
25 remaining from that page.

1 In the rebuttal testimony of Mr. Schremp on page
2 17, there was a concern expressed from lines 9 through 20
3 regarding CenturyTel's practice of crediting Charter for
4 payments made by CenturyTel's own end users.

5 Can you explain that? I -- I -- first, I don't
6 understand whether it's relevant to this proceeding and
7 just exactly what Mr. Schremp was trying to point out
8 there as a concern.

9 A Well, I think our relevance to this proceeding
10 is because these end user payments and also end user
11 charges continue to be assessed to Charter on a monthly
12 basis in the areas of the charges. We continually have to
13 dispute those charges in the case of payments that are
14 made to Charter's customers.

15 So it's my understanding how this occurs is when
16 a -- a CenturyTel end user is ported to -- over to
17 Charter, for a period of time, if they submit a subsequent
18 payment to CenturyTel, which should be applied to their
19 CenturyTel bill, somehow on their billing system, it has
20 this designated as Charter.

21 And they actually apply that credit or that
22 payment onto our bill. We notify them that we have
23 received an incorrect payment. Many times, those payments
24 are subsequently reversed.

25 But according to our records, we still have over

1 \$10,000 in payments that were credited to our account that
2 should be applied to Missouri end users, which have never
3 been effectively moved over and credited to their
4 accounts. This continues to occur on a monthly basis.

5 Q And you say you notify CenturyTel monthly of
6 those charges?

7 A Yes, we do. And it's our understanding that
8 they -- then they do move the charges. But it's almost
9 impossible for us to -- because of the amount of charges
10 and how the credits and payments show up on the bill, it's
11 almost impossible for us to go back and validate which
12 ones have been moved and which ones haven't.

13 Q All right. The interconnection agreement has
14 attached to it a pricing attachment; is that correct?

15 A That's correct.

16 Q And is it your understanding that when
17 CenturyTel first began billing for the provision of the
18 number porting that they did so under the pricing
19 attachment?

20 A For the period up until July of '07, what they
21 were charging us was the \$19.78 fee, and it was referenced
22 previously on our bill as a uni switch port charge.

23 Q Which would -- would that have fit in the
24 pricing attachment?

25 A It's my understanding it is -- I have seen it.

1 It is on the pricing attachment.

2 MR. HALM: If I may, your Honor, I believe the
3 reference is to page 136 of the interconnection agreement.

4 A That's correct.

5 Q (By Commissioner Murray) All right. That would
6 -- would that be the --

7 A The --

8 Q Exchange basic subsequent port feature? Is
9 that --

10 A It's my understanding -- yes. It's the \$19.78
11 charge that appears as a non-recurring charge under the
12 unbundled port portion of the non-recurring charge.

13 Q All right. And then at what point in time did
14 the change occur from the \$19.78 charge to the \$23 and, I
15 believe, 44 cent charge?

16 A Sometime in about the July 2007 time frame. And
17 I believe that's referenced in Mrs. Hankins' direct
18 testimony, also.

19 At that time, they informed us that that was the
20 incorrect charge and the charge should be a charge that's
21 contained in the tariff, which could be one of two
22 charges, which are roughly 23 or \$24.

23 Q And what was the response of Charter to that
24 notification?

25 A We do not feel that the tariff is for end users.

1 And we -- as a co-carrier, again, or kind of our argument
2 was that the tariff is -- whether it's in the tariff or
3 not, that's for end users, and the fees should not be
4 applicable to Charter.

5 Q I have some questions about the interconnection
6 agreement, but I don't particularly think they're
7 appropriate for a non-lawyer. So I think that's all
8 questions I have. Thank you.

9 MS. GIAMINETTI: Thank you.

10 JUDGE VOSS: Commissioner Jarrett?

11 COMMISSIONER JARRETT: Thank you, Judge.

12 CROSS-EXAMINATION

13 BY COMMISSIONER JARRETT:

14 Q Good morning.

15 A Good morning.

16 Q Or I guess it's afternoon now. I want to just
17 make sure I have the time line in my head correctly. Was
18 it your testimony that the interconnection agreement was
19 assigned over from Verizon to CenturyTel in approximately
20 September of 2002?

21 A I believe that's the correct time frame. Yes.

22 Q Okay. And then when did CenturyTel start
23 charging this service charge?

24 A Somewhere in 2003, approximately nine months
25 after the assignment of the agreement.

1 Q Okay. And was Charter submitting these LSRs in
2 that nine-month time frame?

3 A Yes, we were.

4 Q Do you know about how many you submitted?

5 A I don't -- I don't have that information.

6 Q Would it be over a hundred?

7 A I would say yes.

8 Q Okay. And did -- did CenturyTel process --
9 process those without any charge?

10 A Yes, they did.

11 Q And then you say about nine months after --
12 after the assignment of the -- of the ICA, CenturyTel did
13 start charging the 19.78 fee per LSR?

14 A Correct.

15 Q Okay. And when did Charter first dispute those
16 charges?

17 A We formally disputed them from -- initially and
18 never paid any of the charges.

19 Q Okay. And then you say in July 2007 CenturyTel
20 informed you that they were changing the amount of the
21 charge?

22 A They informed us that they had been charging the
23 incorrect rate, that it should not have been the 19.78,
24 but this new rate, which was contained within the tariff.

25 Q Do you recall there were some questions

1 regarding what Charter paid in Wisconsin regarding service
2 charges? Do you remember -- remember that --

3 A Correct.

4 Q -- exchange?

5 A Yes.

6 Q And it's my understanding that Charter --
7 Charter does, in fact, pay service charges for porting in
8 Wisconsin?

9 A We do pay charges if they -- and they are
10 outlined in the interconnection agreement that we have
11 adopted. So if the fees are specified with pricing in the
12 agreement, we do not dispute those type of charges.

13 Q Okay. And -- and that's in Wisconsin. Are
14 there any other states where Charter has agreement?

15 A There may be some other situations where if the
16 -- if we have entered into an agreement where those fees
17 are specified that we have. But it's predominantly the
18 exception and not the rule.

19 Q Okay. About how many -- how many other
20 companies in Missouri does Charter deal with other than
21 CenturyTel regarding number porting?

22 A I think it's -- I believe CenturyTel is the only
23 company we deal with, to my knowledge. I may be
24 incorrect.

25 Q As far as porting?

1 A Correct.

2 Q You --

3 A I'm not -- I'm not certain on that issue.

4 Q Okay. So -- all right. How many states does
5 Charter do business in for telephone?

6 A I believe it's 18.

7 COMMISSIONER JARRETT: Thank you. I don't have
8 any further questions. Thanks for your testimony.

9 MS. GIAMINETTI: Thank you.

10 JUDGE VOSS: We haven't heard from the Chairman,
11 but I know that Commissioner Clayton did not have any
12 questions. Would we like to go to redirect, or would we
13 like to do redirect after lunch? It's about 12:15. I
14 guess it would depend on the volume of redirect.

15 MR. HALM: I have two or three questions at the
16 most.

17 JUDGE VOSS: Then let's proceed with redirect.

18 MR. PETERS: Yeah. Let's finish this witness.
19 That would be great.

20 JUDGE VOSS: Of course, I have heard three or
21 four before. Now, actually, I was just reminded since
22 everyone moved forward. Is there any recross based on
23 questions from the Bench? Thank you. Sorry for my
24 oversight. Please proceed with redirect.

25 REDIRECT EXAMINATION

1 BY MR. HALM:

2 Q Ms. Giaminetti, Mr. Peters, CenturyTel's
3 counsel, asked you questions about the dispute resolution
4 process that occurred in 2004 and what specific actions
5 Charter took after that process.

6 Could you explain precisely what it is Charter
7 did on a month-to-month basis in terms of respective
8 notice?

9 A Okay. Charter has consistently disputed these
10 charges. On a monthly basis we're required to, through a
11 very detailed process, manually input all of the detailed
12 disputes into CenturyTel's web portal, which we have done.

13 There may have been brief periods of time where
14 there had been some lapses due to personnel requirements
15 in the time it takes to actually file those disputes. But
16 it's my understanding, under our agreement, there is no
17 time period for which these disputes have to be filed.

18 And at this point, they have all been filed.
19 But during this entire time frame, we continued to dispute
20 this entire class of charges.

21 Q And do you have a copy of the interconnection
22 agreement there with you?

23 A Yes, I do.

24 Q On page 11, at the top of the page, which is
25 part of Section 9.3, I wondered if you could just read the

1 second sentence of Section 9.3 which actually begins on
2 the second line, page 11.

3 A Okay. Starting with billing? Is that what
4 you --

5 Q No. The next sentence.

6 A Note the specific details? Is what you're --

7 Q No. The sentence that begins "A." It's at the
8 end of the clause that you just referred to.

9 A Okay. A party may also dispute prospectively
10 with a single notice a class of charges that it disputes.

11 Q So -- so the prospective dispute that you just
12 referred to, is it your understanding that that dispute
13 was made pursuant to this provision of the agreement?

14 A That's correct.

15 Q Okay. And you also said that Charter has
16 disputed these on a monthly basis. There may have been a
17 couple months where they weren't rendered 30 days after
18 the invoice.

19 A That's correct.

20 Q Are you aware of any provision in the contract
21 that says they must be rendered in 30 days or any other
22 time period after the date of the invoice?

23 A No, I am not.

24 Q Okay. And you referred to the personnel that
25 you rely on to help you do this. Have you looked at what

1 the operational costs to Charter are of disputing
2 CenturyTel's bills every month?

3 MR. PETERS: I'm going to object to the form of
4 the question. I believe it's outside the scope of cross
5 or any question by the Commission.

6 JUDGE VOSS: Could you restate the question and
7 direct who its in response to? Or what earlier
8 examination it was in response to.

9 MR. HALM: I'll withdraw the question.

10 JUDGE VOSS: Okay. Thank you.

11 MR. HALM: I have no other questions, your
12 Honor.

13 JUDGE VOSS: Okay.

14 COMMISSIONER MURRAY: Your Honor, I'm -- I'm
15 sorry, but I did notice that I forgot to ask one question
16 I need the answer to. I apologize.

17 RECROSS EXAMINATION

18 BY COMMISSIONER MURRAY:

19 Q Can you tell me, what is the ratio of customers
20 that port from Charter to CenturyTel versus those that
21 port from CenturyTel to Charter?

22 A I really don't have that ratio.

23 Q Do you have any idea? Is it -- is it a -- an
24 equal amount, close to equal number, or is it a very
25 weighted number from one to the other?

1 A My feeling would be there would be many more
2 customers parting -- porting from CenturyTel to Charter
3 than vice versa just simply by the amount of customers
4 that they have versus the amount of customers Charter
5 would have.

6 COMMISSIONER MURRAY: Thank you.

7 JUDGE VOSS: Is there any -- did you have
8 anything else, Commissioner Jarrett?

9 COMMISSIONER JARRETT: No.

10 JUDGE VOSS: Are there any additional recross
11 based on questions from the Bench? Any additional
12 redirect? Hearing none, this witness is excused, and we
13 will be back at 1:15.

14 MR. COMLEY: Your Honor, can -- your Honor, can
15 you clarify, is the witness excused fully for the hearing,
16 or will she be expected to be recalled?

17 JUDGE VOSS: I don't have any reason to believe
18 she'll be re-called. Is she available, or is she planning
19 to catch a flight?

20 MS. GIAMINETTI: I was planning on driving back
21 home, but, you know, I can --

22 JUDGE VOSS: I don't have any reason to believe
23 she should be re-called. I think she can be excused.

24 MR. COMLEY: Thank you.

25 JUDGE VOSS: And this -- we'll go in

1 intermission until 1:15.

2 (Break in proceedings.)

3 JUDGE VOSS: Okay. We are back on the record.

4 And I believe it is time for CenturyTel to call their
5 first witness. Is that correct? Or is it Charter?

6 MR. PETERS: Thank you. At this time, I'd call
7 -- I'd call Guy Miller to the stand, please.

8 JUDGE VOSS: Mr. Miller?

9 GUY MILLER,
10 being first duly sworn to testify the truth, the whole
11 truth, and nothing but the truth, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. PETERS:

14 JUDGE VOSS: Please proceed.

15 Q (By Mr. Peters) Thank you. Good afternoon.

16 Would you please state and spell your entire name?

17 A My name is Guy Elmer Miller, III, M-i-l-l-e-r.

18 Q Okay.

19 A First name, Guy, G-u-y.

20 Q All right. Thank you, Mr. Miller. By whom are
21 you currently employed?

22 A CenturyTel Service Group, LLC.

23 Q All right. In what capacity?

24 A I was the Director of Care Relations Policy.

25 Q All right. Can you tell this Commission, if you

1 would, please, a little bit what that job entails or
2 involves?

3 A Currently, the job of care relations policy is
4 to develop policy, positions and interpretations for the
5 company based upon my knowledge and experience of dealing
6 with applicable telecom regulation and interconnection
7 agreements and other types of agreements.

8 Previously, during the time of this original
9 dispute as well as the 2002 issues, I actually ran the
10 entire care relations organization and had responsibility
11 for the field team as well at that time.

12 Q Okay. Did you cause to be filed in this
13 proceeding direct testimony?

14 A I did.

15 Q And rebuttal testimony?

16 A Yes.

17 Q And how about surrebuttal testimony?

18 A Yes, I did.

19 Q All right. Mr. Miller, I've handed you three
20 exhibits. The first exhibit has been marked Exhibit No.
21 5. Is that a copy of your direct -- or your pre-filed
22 direct testimony?

23 A Yes, it is.

24 Q All right. I've also handed you what's been
25 marked as Exhibit No. 6. Is that a copy of your pre-filed

1 rebuttal testimony?

2 A Yes, it is.

3 Q All right. Finally, I've handed you a document
4 marked as Exhibit 7-HC. Is that a copy of your pre-filed
5 surrebuttal testimony in this matter?

6 A Yes, it is.

7 Q Do you have any changes, additions or
8 corrections to this testimony that you've proffered in
9 this case?

10 A I am not aware of any. No.

11 Q And if I asked you the same questions contained
12 in your collective prefiled testimony, would your answers
13 to those questions be the same?

14 A Yes.

15 Q Okay. And are those answers true and correct to
16 the best of your knowledge, information and belief?

17 A Yes, they are.

18 MR. PETERS: All right. Thank you, Mr. Miller.
19 Your Honor, I'd offer Exhibits 5, 6 and 7 and tender the
20 witness for cross-examination at this time.

21 JUDGE VOSS: And for clarification, 7 is 7-HC;
22 is that correct?

23 MR. PETERS: I believe that's what I referred to
24 it as, yes.

25 JUDGE VOSS: I just was double-checking. Are

1 there any objections to the admission of those exhibits?
2 Hearing none, Exhibits 7 -- or 6, 7 -- I can't talk. 5, 6
3 and 7-HC are admitted into the record.

4 (Exhibit Nos. 5, 6 7 and 7-HC were offered and
5 admitted into evidence.)

6 MR. PETERS: Thank you.

7 JUDGE VOSS: And we'll begin with
8 cross-examination from Staff.

9 CROSS-EXAMINATION

10 BY MR. BAKER:

11 Q Good afternoon.

12 A Good afternoon.

13 Q CenturyTel acquired Verizon property around
14 September of 2000, correct?

15 A I believe it actually closed on the 31st of
16 August, yes.

17 Q And the interconnection agreement that was in
18 place between Charter and Verizon was assigned to
19 CenturyTel?

20 A We assumed it with the acquisition. Yes.

21 Q And you're familiar with this interconnection
22 agreement?

23 A Yes, I am.

24 Q The initial interconnection agreement expired in
25 late 2002; is that correct?

1 A Without a copy in front of me, I'll take your
2 word on it.

3 Q And the initial interconnection agreement has
4 never been changed?

5 A No.

6 Q And the interconnection agreement does not
7 provide for charges to be assessed for porting numbers?

8 A I would not agree with that statement. I
9 believe it does.

10 Q Do you have a copy of it?

11 A I'm sure you could give me one.

12 MR. BAKER: Can I -- may I approach?

13 JUDGE VOSS: Please.

14 A Thank you.

15 MR. DORITY: Excuse me, Counsel. If you need a
16 copy to refer to, I could provide him one. Would that
17 help?

18 MR. BAKER: That would help. That would be very
19 helpful.

20 MR. DORITY: May I approach?

21 MR. BAKER: I'll get mine back.

22 A Thank you.

23 Q (By Mr. Baker) Okay. I'd like you to point me
24 to the section in the interconnection agreement which
25 specifically provides for a charge of \$23.44 for porting

1 numbers.

2 A Well, Section 15.4.1 talks about in the event
3 that they wish to serve a customer, they shall make L&P
4 available -- I'm sorry. That's I&P. Pardon me. Hang on.
5 I turned right to it, but I turned to one that was very
6 similar.

7 Okay. 15.2.1. After Party B has received
8 authorization from the customer in accordance with
9 applicable law and sends an LSR to Party A -- and then I
10 turn to the pricing attachment on page 121, which says,
11 Except -- 1.2, except to state in two or three below,
12 charges for services shall be as stated in Section 1.

13 1.3, Charges for service shall be the charge for
14 the service stated and parties providing applicable
15 tariffs. And I do note, Counselor, that service is a
16 defined term, so that's why I believe that L&P is a
17 service and 1.3 does apply and points me right to a
18 charge.

19 Q But Section 15 of the agreement does not
20 specifically provide for a charge?

21 A Section 15 or no other section other than the
22 pricing attachment has specific charges, no.

23 MR. BAKER: That's all the questions I have at
24 this time.

25 JUDGE VOSS: Thank you. Charter?

1 MR. HALM: Please excuse me. I'm fighting a
2 cough here, and I hope that it will not come up during our
3 questions.

4 CROSS-EXAMINATION

5 BY MR. HALM:

6 Q How are you today, Mr. Miller?

7 A Good, Mr. Halm. How are you?

8 Q Good. Thank you. I think you talked about your
9 position within the company and what your responsibilities
10 are generally in response to Mr. Peters questions.

11 Can you explain in a little more detail what
12 your role is with respect to other carriers in the
13 industry?

14 A Are you asking, Mr. Halm, today or at the time
15 of the dispute or just generically every time?

16 Q Today.

17 A Today?

18 Q Today.

19 A My role is primarily to assist the remainder of
20 the care relations team in developing policies, positions,
21 interpretations of applicable regulation and of contract
22 terms, agreements. And, also, I am the author of all of
23 the agreement terms currently used by CenturyTel.

24 And I do provide supporting assistance to all
25 care relations personnel during negotiation, during

1 disputes.

2 Q Okay. You are the author of all current
3 CenturyTel agreements?

4 A I'm the primary internal author of the
5 interconnection agreements which have been held internally
6 by CenturyTel for the past several years, yes.

7 Q And those are interconnection agreements that
8 are then entered into with other carriers within Missouri
9 and elsewhere?

10 A That would be correct.

11 Q Right. Okay. So if we've got questions about
12 contract language, you're the person to speak with?

13 A I do perform that role for the company.

14 Q Okay.

15 A I am not the only person. Of course, we also
16 use attorneys --

17 Q Okay.

18 A -- which I am not.

19 Q Okay. You just mentioned that disputes arise
20 from time to time in your role that you have some role in
21 administering those disputes and presenting CenturyTel's
22 position?

23 A I have a role sometimes in that, yes.

24 Q Right. The type of dispute we're talking about
25 today, a contract dispute concerning the application of

1 rates or charges, does CenturyTel have those types of
2 disputes often?

3 A I don't know how to define the term often,
4 Mr. Halm. We have had disputes like that. Yes.

5 Q Once a year for the last five years? More than
6 once a year?

7 A I don't keep records of them.

8 Q What's your general sense?

9 MR. PETERS: Objection. Relevance.

10 JUDGE VOSS: Do you want to address -- do you
11 believe -- what's the relevance of that question?

12 MR. HALM: The relevance is to establish, first
13 of all, Mr. Miller's qualified as to the knowledge of
14 dispute process generally, and, secondly, whether or not
15 CenturyTel has other types of disputes which may merit
16 consideration by this Commission.

17 JUDGE VOSS: That pertains to the dispute
18 process in interconnection agreements?

19 MR. HALM: No. Just generally. I'll withdraw
20 the question.

21 JUDGE VOSS: Okay.

22 Q (By Mr. Halm) With respect to your role as a
23 contract drafter, you noted that you're not a lawyer?

24 A That's correct.

25 Q What is -- what is your highest level of

1 education?

2 A I have a Bachelor's degree from the University.

3 Q Okay.

4 A And I have post graduate work without a degree.

5 Q Okay. You have not sat for the bar in Missouri
6 or any other state?

7 A No, I have not.

8 Q Okay. Do you render legal advice within the
9 company?

10 A I do not render legal advice. I'm not an
11 attorney.

12 Q Okay. I'd like to start with some of your
13 statements in your surrebuttal testimony Exhibit 7. Do
14 you have a copy with you?

15 A I do.

16 MR. HALM: And for clarification here, this was
17 identified as Exhibit 7-HC. But I think the only thing
18 that's HC are the two schedules; is that correct?

19 JUDGE VOSS: I believe that's correct. Yes.

20 MR. HALM: Okay. So unless we're asking
21 questions about those schedules, we don't need to go
22 in-camera.

23 JUDGE VOSS: I don't believe so. If -- if --
24 CenturyTel believes any questions are heading toward any
25 confidential information, are being addressed, I'm sure

1 they'll pipe up and let me know.

2 Q (By Mr. Halm) Okay. Early on in your
3 surrebuttal testimony, you make the argument that
4 CenturyTel is providing a service here, incurring a cost
5 and that CenturyTel should be compensated for that
6 service.

7 And then on page 2 of your surrebuttal on lines
8 12 through 15, generally, you testify that the Commission
9 should assume that the parties have an understanding when
10 they enter into any given business transaction. Do you
11 see that reference?

12 A Yes.

13 Q What understanding would that be?

14 A The understanding referred to back in line 13 is
15 that when a competitor performs work for another
16 competitor, it intends to be paid. That's a common
17 understanding in telecom law or telecom regulations, as I
18 have read it as a non-attorney.

19 Q Right. Which -- which regulation or law are you
20 referring to?

21 A Well, Mr. Halm, I -- again, without being able
22 to access the Internet, go into, look at all regulations,
23 et cetera, et cetera, et cetera, I am generally familiar
24 with things such as the -- the Telecom Act and the First
25 Report and Order on that under which the FCC made many

1 references to competitors paying for services, paying for
2 work done, doing so at certain types of rates.

3 Q Okay.

4 A I find that replete within regulation as I
5 continue to look at it on a daily basis.

6 Q Right. But the only one you can think of right
7 now is the First Report and Order; is that right?

8 A Well, I mean, I -- you just asked for an
9 example.

10 Q I'm not asking you to do research. I'm asking
11 you to tell me --

12 A No. I can name others probably. Give me a
13 little thought. There's the Report and Order that came
14 out on directory listings. It gives rates in there and
15 talks about that. Directory assistance.

16 There's numerous orders and regulations that
17 I've reviewed in my career that speak to that. Those are
18 a few examples.

19 Q Right. So the premise of those orders is that
20 when a competitor performs work for another competitor, it
21 intends to be paid?

22 A Yes.

23 Q And that the parties have an understanding when
24 they enter into any given business transaction? That's
25 what those legal documents stand for?

1 A In my opinion, the common starting part is that
2 when you perform work, you expect to be paid unless you
3 agree differently.

4 Q Okay. And that's generally CenturyTel's
5 experience in other commercial transactions; is that
6 right?

7 A I would -- yes. I would say that's a correct
8 statement.

9 Q Right. Does CenturyTel normally have contracts
10 that set forth these rates and terms for those types of
11 understandings you were just describing?

12 A In some case.

13 Q But --

14 A But not all.

15 Q Okay. So there's certain unwritten contracts
16 that you have with other carriers?

17 A I wouldn't call it unwritten contracts, as you
18 refer to it, Mr. Halm. I mean, there's also work
19 performed pursuant to tariffs. There's work performed --
20 services that are done pursuant to the terms that are
21 found in the service guide and the references therein.

22 Q Okay.

23 A There are commercial contracts.

24 Q Commercial contracts.

25 A Yeah.

1 Q I'm thinking of a document with terms on it,
2 right, signed by both parties?

3 A There are contracts. There are tariffs. There
4 are price sheets. There's the service guide. And in some
5 cases, there is applicable regulation at the state level
6 which dictates how we charge one another.

7 Q Okay.

8 A I'm not familiar necessarily with examples here
9 in Missouri, but I am in my current state of residence.

10 Q Okay. So there are written contracts. There
11 are tariffs. Some people believe a tariff is a regulatory
12 term. Do you agree with that characterization?

13 A I think that's fair enough.

14 Q Right. Right.

15 A Yes.

16 Q There are price sheets, as you said?

17 A Uh-huh.

18 Q There's a service guide. There's a whole number
19 of different documents that set forth these obligations?

20 A Yes.

21 Q Okay. Are there any specific instances that you
22 know of that CenturyTel contracts with another party and
23 doesn't put down the terms for that contract in an actual
24 document?

25 MR. PETERS: I'd object to the from of the

1 question. Vague and ambiguous.

2 JUDGE VOSS: Did you want to try to restate the
3 question?

4 MR. HALM: Yes.

5 Q (By Mr. Halm) Are you aware of any contracts
6 that CenturyTel has with any other carrier or other
7 commercial entity that is not written down and provided
8 for in a document?

9 MR. PETERS: Same objection. I don't -- I don't
10 understand the question. I think it's vague and
11 confusing. Are you aware of any other contracts that
12 are --

13 MR. HALM: I'll try again.

14 JUDGE VOSS: Yeah. I think I understand it, but
15 maybe I don't.

16 MR. HALM: I have confidence in you, Judge.

17 JUDGE VOSS: More than I do.

18 Q (By Mr. Halm) Do you have any unwritten
19 agreements with carriers where you do something or they do
20 something and you charge them or they charge you?

21 A Stipulating that when you talk about written
22 agreements you're referring to a lot of different things
23 that I just discussed such as tariffs, service guide,
24 price sheets, I cannot think of any examples that we would
25 not have an unwritten agreement.

1 Q Thank you. Another point that you make in your
2 testimony is that a service is being performed for
3 Charter?

4 A That's correct.

5 Q All right. Do you agree that CenturyTel has a
6 duty to provide local number portability either for end
7 user customers or to other carriers?

8 A I agree that all carriers, all local exchange
9 carriers, if I may be clear, have a duty under 251(b) to
10 write portability.

11 Q Okay. Who is that duty owed to?

12 A Do you have a copy of the regulation that I can
13 refer to?

14 Q No, I don't. You don't know?

15 A I believe the duty is to provide portability to
16 other carriers.

17 Q Okay. Okay. And I don't want to mince legal
18 statutes with you. Who benefits from that?

19 A In my opinion, there's two beneficiaries.
20 Obviously, the one you're searching for, the end user has
21 a benefit of being able to keep their number. But so does
22 the carrier who is acquiring that customer, receiving the
23 revenue from that customer. They are very much a
24 beneficiary.

25 Q Okay. So even if you have a statutory duty to

1 provide number portability to Charter, you're still
2 providing service and you're still entitled to payment?
3 Is that your company's position?

4 A When you submit an order to us for any purpose,
5 including this one, we are providing a service for you.
6 We are doing work for you, and we deserve to be paid for
7 doing that work.

8 Q Okay. You have other duties under federal law,
9 right, under Section 251(b) that you just referred to?

10 A There are many duties under federal law. One
11 that comes to mind is dialing parity. Are you familiar
12 with that?

13 A I am familiar with that.

14 Q All right. So you have a duty to provide
15 dialing parity to other telephone companies out there,
16 correct?

17 A Yes.

18 Q Do you charge other telephone companies for
19 providing dialing parity pursuant to your obligation under
20 Section 251(b)?

21 A I'm not sure that that's a question that can be
22 answered just outright, Counselor.

23 Q Why not?

24 A Because to -- to the extent that -- in order to
25 provide dialing parity to your client or any other

1 carrier, that carrier must be providing service within our
2 territory. Therefore, must enter into some type of an
3 interexchange, traffic exchange or interconnection
4 agreement with our company.

5 And there are rates and charges pursuant to
6 doing that, which your client and other companies would
7 pay us for. So to the extent that they do that, yes,
8 we're being compensated somehow, some way for providing
9 dialing parity.

10 Now, can I point to a specific? It's
11 encompassed within that.

12 Q Okay. But you think -- excuse me. You think
13 some of your contracts specifically set forth the
14 competitor's obligation to compensate you for providing
15 dialing parity?

16 A I didn't say that.

17 Q Well, you said you believed that CenturyTel is
18 being compensated for providing dialing parity. How are
19 they being compensated?

20 MR. PETERS: Objection. Asked and answered.

21 MR. HALM: I'm not sure what the answer is
22 if --

23 JUDGE VOSS: I believe he answered the question
24 to -- more -- in more detailed explanation of a portion of
25 the answer. But I think he give a rather detailed answer

1 to that question.

2 Q (By Mr. Halm) Okay. With respect to the issue
3 of performing a service for which CenturyTel must be
4 compensated, there's been some discussion about the rate
5 that was applied to Charter. Were you here earlier for
6 that discussion?

7 A Yes, I was.

8 Q All right. When you assessed the \$19.78 rate,
9 was CenturyTel being compensated for its costs?

10 MR. PETERS: Was what?

11 A I don't believe that's at issue in this. We
12 were being -- we assessed a rate to you, incorrectly, as
13 you know, since you and I had the conversation in 2004. A
14 rate that we -- who assigned it at that time up correctly
15 believed was the rate that should be charged to the
16 porting order.

17 It had nothing to do with our costs, per se. It
18 was the rate that was assessed to Charter that the person
19 who put it on the -- the pricing schedule believed was the
20 right rate for the work that was performed.

21 Q You have since acknowledged that that was in
22 error?

23 A Yes.

24 Q Right. It has nothing do with your costs? Your
25 costs may be below \$19. They may be above \$19. We don't

1 know?

2 A The cost may below, may be below -- above. That
3 rate was the rate that was assessed pursuant to the
4 agreement. Incorrectly, though, at that time.

5 Q Right. And I -- and I'm interested in -- you've
6 also said that the rate was assessed incorrectly that
7 CenturyTel has decided not to back bill for the difference
8 between the \$19 rate in the contract and the \$23 rate
9 that's in the tariff?

10 A I believe that is what I told you in 2004 as you
11 were the Charter negotiator in our dispute, yes, that a
12 CenturyTel employee unfamiliar with interconnection, with
13 competitive law saw port in the pricing attachment and
14 thought that was the charge for porting orders, assessed
15 it.

16 Of course, we in Care Relations that new better
17 didn't know that. And when you and I had the negotiation
18 in 2004, I do remember telling you that because we made
19 the error, we would not attempt to charge you in reverse
20 -- charge your client in reverse to recover the difference
21 between that and what we believe the rates should be.

22 Q Right. That was the summer of 2004?

23 A It was summer, going into September of 2004.
24 Yes.

25 Q The \$23 rate was assessed when?

1 A I don't have personal knowledge of that. But I
2 heard it said this morning that it was assessed in mid
3 2007.

4 Q Have you -- have you read Ms. Hankins'
5 testimony?

6 A Yes, I have. But I didn't commit it to memory.

7 Q She makes that point?

8 A Yes.

9 Q You didn't begin assessing this rate until July
10 of 2007 --

11 A That's correct.

12 Q -- right? Why did the company wait three years
13 to assess a rate that it believed it had a contractual
14 right to assess?

15 A Human error. Oversight.

16 Q Okay.

17 A I told the company what the correct rate was in
18 2004.

19 Q Okay.

20 A But through human error, they failed to
21 implement that until -- Care Relations is not the billing
22 department. And at that time, we did not even get billing
23 summaries or anything.

24 Now, that has since changed, and it's changed
25 recently. And we now are much more involved in reviewing,

1 auditing and looking at competitor bills to ensure that
2 they are correct. But at the time in 2004 and afterwards,
3 we did not have that role. And we were not aware that the
4 change had not been made that had been requested.

5 Q Okay. The error was in the billing department?

6 A I don't know specifically where the error was.

7 Q Okay. All right. Now that the \$23 rate is
8 being assessed, is CenturyTel -- if Charter were to pay
9 that rate, would CenturyTel be compensated for the
10 services that you believe you're performing for Charter?

11 A I don't think that's a yes or no answer because
12 it presumes knowledge of costs which are not at issue
13 here. And I can't tell you that we would be compensated
14 for our costs at that rate.

15 Q Okay.

16 A It is merely a rate that we believe is pursuant
17 to this agreement that was negotiated and agreed to by the
18 parties regardless of costs.

19 Q Okay. So as far as you know, there's no
20 relation to your costs and the \$23 rate or the \$19 rate?

21 A I don't believe that's at issue here. So I
22 haven't studied that question.

23 Q Well, without having studied it, from what you
24 know, having read the testimony, having been involved in
25 this dispute for a long time, having stated at several

1 different points in your direct and surrebuttal testimony
2 that CenturyTel incurs costs --

3 A Yes.

4 Q -- are you aware of any relationship direct
5 between yourself and the two rates that have been
6 assessed?

7 A My general sense is pursuant to what we are
8 allowed to recover today that we were probably not
9 recovering our costs of what we would be charging you.

10 Q Okay. Mr. Voight has testified about contract
11 amendment between CenturyTel and Socket which sets forth
12 specific rates for number porting. Have you read
13 Mr. Voight's testimony?

14 A Yes, I did.

15 Q All right. The rate being assessed there, I
16 think, is \$3.90 or 92 cents.

17 A It's somewhere in that vicinity.

18 Q Right. Are you compensated by Socket paying you
19 \$3.92 for processing LSRs for porting?

20 A No. Not in my opinion.

21 Q No. Well, why did you agree to that rate? Why
22 did you --

23 A We didn't agree to that rate. It was an
24 arbitrated rate that was imposed upon us.

25 Q Do you have any reason to believe that your

1 costs with respect to responding to LSRs differ from one
2 carrier to another?

3 A Can you clarify the question for me?

4 Q Right. You receive LSRs from Charter, from
5 Socket, presumably from other telephone companies,
6 correct?

7 A Correct.

8 Q All right. And you respond to those LSRs
9 presumably with the same process --

10 A Correct.

11 Q -- right? Do your costs differ when you respond
12 to an LSR from Charter to those that you incur when you
13 respond to an LSR from Socket?

14 A Stipulating that the order is correct and can be
15 processed without errors, changes and so forth, the cost
16 would be the same for a like order.

17 Q I just want to wrap up the cost question and
18 make sure we get this on the record. On several different
19 points in your testimony, your surrebuttal at page 3,
20 lines 13 through 16 and your direct testimony at page 10,
21 lines 5 to 10, you testify that CenturyTel incurs costs in
22 processing number porting requests from Charter; is that
23 correct?

24 A Yes.

25 Q Has CenturyTel performed a cost study to

1 determine precisely what its costs are?

2 MR. PETERS: Well, can I interpose an objection
3 to that question on the grounds of relevance. I don't --
4 I don't believe that costs are really an issue in this
5 case and germane necessarily to that issue as being asked,
6 I think it's inaccurate and far afield.

7 The issue has to be decided -- the question I
8 think you're asked to decide is whether or not the
9 agreement is agreed to, the interconnection agreement
10 which prompts the tariff and is the rate that ought to be
11 charged in this case.

12 JUDGE VOSS: I think some cost issues were
13 raised. You even addressed them in your opening statement
14 that there were costs that should be compensated for. Can
15 you restate the question?

16 MR. HALM: Yes.

17 Q (By Mr. Halm) Have you ever performed -- has
18 CenturyTel ever performed a cost study to determine what
19 its costs are for responding to number porting requests?

20 MR. PETERS: Same -- same objection. It's
21 irrelevant to the issues in this case.

22 JUDGE VOSS: Now, I don't know that the
23 existence of a cost study is relevant. I think the fact
24 that there are costs are relevant.

25 MR. HALM: Okay. Certainly, Mr. Miller has

1 testified that there are costs. We don't know what those
2 costs are. We've asked CenturyTel to tell us what those
3 costs are, and they haven't been able to tell us.

4 JUDGE VOSS: As I recall, you withdrew your
5 Motion to Compel that information. Are you trying to
6 compel it now?

7 MR. HALM: No. I -- I'm just trying to ask
8 whether or not they know what their costs are.

9 JUDGE VOSS: I'll overrule the objection to the
10 limited ability you have to answer details without going
11 into the interconnection agreement. There's going to be
12 another objection as I think the parties argue that that
13 was confidential information as to the details. So the
14 witness can answer the question to the best of its ability
15 with the understanding that if there's something that's
16 confidential, if you start asking for specific numbers,
17 there might be some additional objections.

18 MR. HALM: I won't be asking for any specific
19 numbers.

20 A Can you ask the question again?

21 Q (By Mr. Halm) Yes. Do you know whether or not
22 CenturyTel has ever performed a cost study to determine
23 what its costs are in responding to LSRs for porting?

24 A Stipulating that I am not a cost person and,
25 therefore, am not qualified to say whether or not

1 something done meets the criteria of a cost study, I
2 don't. I'm aware that CenturyTel has undertaken analysis
3 to understand its costs in relationship to porting.

4 Q Okay. When was that analysis undertaken?

5 A We have looked at costs at various points in
6 time and are doing so right now to the best of my
7 knowledge.

8 Q Not aware of a specific cost study or document
9 that identifies your specific costs; is that right?

10 A There has never been a requirement from a
11 Commission to do a specific cost study on this issue.

12 Q Okay. Thank you. You have also -- excuse me --
13 made the point that other LECs in the industry, other
14 incumbent LECs in the industry, assess similar charges on
15 Charter and other carriers.

16 Presumably, you make that point to -- for the
17 implicit notion that if other carriers are doing it, it
18 must be all right if CenturyTel is doing it. Do you
19 recall that portion of your testimony?

20 A I do.

21 Q You specifically identified Verizon as one of
22 the incumbent LECs that assesses these charges --

23 A Yes.

24 Q -- right? Verizon recently told the FCC that
25 they do not assess these service order charges on number

1 porting requests. Do you see that statement?

2 A I saw that statement in Mr. Schremp's testimony.

3 Q Right. Have you seen the document in which

4 Verizon made that statement?

5 A I have.

6 Q All right. We provided it to your counsel last
7 week?

8 A (Witness nods head.)

9 MR. HALM: Okay. I have an exhibit here, if
10 you'll give me a moment. That -- are they right here?
11 Verizon answer. Oh, here it is. Please distribute those.
12 May I approach, your Honor?

13 JUDGE VOSS: Yes.

14 MR. HALM: Do you boys need a copy? Your Honor
15 do you want a copy?

16 JUDGE VOSS: Yes, please. If there's an extra,
17 I'd like to have one for the Chairman to preserve. Thank
18 you.

19 Q (By Mr. Halm) You have seen this document
20 before, Mr. Miller?

21 A I have recently seen it, yes.

22 Q You understand that this is a formal answer
23 filed by Verizon at the FCC in another dispute?

24 A I understand that it is a current dispute in
25 February of 2008 that Verizon filed this, yes.

1 Q Right. Okay. Can you turn to page 8, paragraph
2 14 of this document?

3 JUDGE VOSS: Are we marking this as an exhibit.

4 MR. HALM: Yes, please. I think this is finally
5 actually Exhibit 12.

6 Q (By Mr. Halm) Do you see the paragraph and page
7 reference there?

8 A Yes, I do.

9 Q Could you read those two sentences that
10 constitute paragraph 14?

11 A Ordinarily, when a carrier submits an LSR for
12 purposes of ordering a service or facility from Verizon,
13 there is a charge associated with processing the LSR in
14 addition to whatever charge are imposed to the service.
15 In the case of L&P only LSRs however, Verizon does not
16 impose a charge either for its role in the L&P process or
17 for processing the LSR. See it, 27.

18 Q You've testified that Verizon does impose these
19 charges, that they do so with respect to CenturyTel's CLEC
20 affiliates?

21 A I testified that they have done so. Yes.

22 Q Right. Do you have a reason to believe that
23 Verizon is misleading the FCC at this point?

24 A No. I have every reason to believe that this is
25 Verizon in February of 2008 and doesn't speak to anything

1 prior to that. They could have very easily just changed
2 it right now.

3 Q Okay.

4 A I don't know if Verizon has stopped assessing
5 for the CLEC operation. I know that they have charged
6 them pursuant to what the CLEC people have told me.

7 Q Okay.

8 A This doesn't speak to anything before February
9 2008. It's present tense.

10 Q But be willing to file an affidavit in the FCC
11 proceeding to that effect?

12 A I'm not a party to the FCC proceeding.

13 MR. PETERS: I'm going to object to that
14 question. It's irrelevant.

15 JUDGE VOSS: Sustained. I think that's
16 irrelevant.

17 Q (By Mr. Halm) Okay. With respect to other
18 incumbent LECs that assess these charges on your CLEC
19 affiliates, do they do so pursuant that interconnection
20 agreements?

21 A Presumably. I haven't gone and looked for every
22 single one of them.

23 Q But you would expect that if they're assessing
24 these charges and CenturyTel's CLEC affiliate is paying
25 these charges, they're set out somewhere in a contract?

1 A I presume there's some understanding somewhere.

2 Q Okay. A written understanding or an unwritten
3 understanding?

4 A It's not for me to say, Counselor. I'm not
5 pursuant -- I mean, I'm not privileged to all the
6 agreements between other parties.

7 Q On page 20 of your direct testimony --

8 MR. HALM: Your Honor, I have an extra copy of
9 that Verizon document.

10 JUDGE VOSS: I think I do have enough.

11 MR. HALM: Okay.

12 JUDGE VOSS: Mr. Comley gave me a copy. Thank
13 you.

14 MR. HALM: All right.

15 JUDGE VOSS: Could you restate that page in the
16 direct testimony? I'm just --

17 MR. HALM: Yes, your Honor. Direct testimony,
18 page 20, lines 22 and 23.

19 Q (By Mr. Halm) And the sentence that begins on
20 line 22 says, Additionally, depending on the State, AT&T,
21 Bell South charges between 20 -- \$20.21 and \$35.15 for
22 subsequent order modifications. Is that the same thing as
23 the charge for processing number porting requests?

24 A That was my understanding based upon what I
25 read. Yes.

1 Q Okay. So when AT&T, Bell South says subsequent
2 order modifications, what they mean is responding to a
3 number porting request?

4 A I wrote this testimony based upon my review of
5 their template documentation that I found online. And it
6 did refer to that.

7 Q It seems to be a pretty specific term. I
8 presume that that term was in that template agreement
9 rather than subsequent order modification, you didn't come
10 up with that?

11 A Actually, Counselor, if I may clarify, please?

12 Q Please.

13 A If you read the full context of this paragraph,
14 it says, AT&T levies a charge of up to \$19.99 for
15 processing the LSRs associated with L&P. So for the
16 submission of an LSR to do the processing work, they
17 charge 19.99 or something depending upon the state in this
18 particular thing.

19 The subsequent order modification is when the
20 porting carrier submits a change in midstream and they
21 charge an additional \$20.21 or \$35.15 above and beyond the
22 19.99 or whatever they initially charged because it
23 requires further work because you stop them in midstream,
24 asking them to change or re-do something.

25 That was the -- what I found in their template.

1 Initial charge to do the processing of a porting order and
2 a subsequent order charge if the porting carrier made a
3 change in midstream and asked them to do some kind of
4 work, some kind of change. That is what this testimony
5 refers to.

6 Q Great. So subsequent order modification is not
7 the same thing as responding to a porting request?

8 A It is responding to a change of a porting
9 request.

10 Q Which is a different concept?

11 A Making a change in an order. Yes.

12 Q Okay.

13 A In this case, they're levying two charges, not
14 just one.

15 Q On page 19 of your direct testimony, lines 3 and
16 4, again, this is the portion of your testimony where
17 you're talking about what other carriers in the industry
18 do?

19 A Uh-huh.

20 Q Can you read for us the sentence that begins at
21 the end of Line 2?

22 A The sentence that starts "in agreeing?"

23 Q Right.

24 A In agreeing with Consolidated, the arbitrator
25 stated each party is entitled to impose a just and

1 reasonable charge to the other party for porting a
2 customer to that party. Costs. The arbitrator also
3 agrees that the cost causer should bear the cost of LSRs.

4 MR. HALM: Thank you. May I approach, your
5 Honor?

6 JUDGE VOSS: Yes, you may.

7 MR. HALM: I'd like to mark this as Exhibit 13.
8 Is that where we are?

9 JUDGE VOSS: Yes. Did you want to offer Exhibit
10 12?

11 MR. HALM: Yes, your Honor.

12 JUDGE VOSS: are there any objections to the
13 admission of Exhibit 12? Hearing none, it's admitted.

14 (Exhibit No. 12 was offered and admitted into
15 evidence.)

16 MR. HALM: Thank you, your Honor.

17 Q (By Mr. Halm) Now, I've got to locate my copy.
18 Thank you. Mr. Miller, have you had a chance to review
19 this document that I've just handed you which has been
20 marked Exhibit 13?

21 A Yes, I have.

22 Q Is this the same docket which you refer to on
23 that portion of your testimony that we just cited?

24 A Yes, it is.

25 Q Yes, it is. Have you seen this order from the

1 Texas PUC before?

2 A Yes, I have.

3 Q Yes, you have. Can you read for us the second
4 paragraph beginning with the words "The Commission finds?"

5 A The Commission finds that Consolidated had the
6 burden and the opportunity to introduce an LSR cost study
7 into evidence in this proceeding. They failed to do so.
8 Given the lack of an evidentiary record in this
9 arbitration upon which to establish a cost-based LSR rate,
10 the Commission adopts a 0.00 LSR rate for the term of the
11 instant interconnection agreement.

12 The Commission also forecloses the opportunity
13 for submission of an LSR cost study in this arbitration.
14 Accordingly, the Commission adopts the following text for
15 Attachment 8, Section 2.5. ILECs and CLECs shall each be
16 entitled to collect a non-recurring service order charge
17 for each local service request, LSR, submitted to the
18 other party. The LSR shall be 0.00.

19 Q The porting charge is at issue in that case, as
20 far as your understanding, the same type of porting charge
21 that's at issue in this case?

22 A I don't know if the porting charges are the same
23 that are at issue. It's certainly about porting, yes.

24 Q But your charges are not about porting, are
25 they?

1 A Our charges are administrative service order
2 charges. That's what's at issue in this proceeding.

3 Q Okay. What's at issue in the Texas proceeding
4 is charges for number porting; is that right?

5 A It says that they shall be entitled to collect a
6 non-recurring service order charge for every LSR
7 submitted. The difference, of course, is this is an
8 arbitration.

9 Q And the Texas Commission found because there was
10 no cost study entered into evidence, there was no basis to
11 find that Consolidated had a right to oppose this charge.
12 Do you agree?

13 A I --

14 MR. PETERS: Objection. I'm going to object to
15 the question for two reasons. First of all, counsel
16 hasn't provided the witness with a copy.

17 JUDGE VOSS: Can you speak your microphone? I'm
18 sorry. I'm having trouble hearing you.

19 MR. PETERS: Counsel hasn't provided the witness
20 with a full and complete copy of the decision from which
21 this final order emanated. And I think, for purposes of
22 completeness, it would be fair to the witness to allow him
23 to review the actual opinion itself in order to respond to
24 specific questions about an order adopting an order.
25 Without going into great detail, there's a story here, and

1 I'll --

2 COMMISSIONER CLAYTON: He needs to speak into
3 the microphone.

4 JUDGE VOSS: Yeah. Is it on?

5 MR. PETERS: The light's on. Can you hear me?

6 JUDGE VOSS: Yeah. Now I can hear you. I'm
7 sorry.

8 MR. PETERS: I -- I think -- I think it's unfair
9 to ask the witness to comment on an order approving an
10 award without having the decision available for the
11 witness's review. But I can probably clean that up on
12 redirect if necessary.

13 JUDGE VOSS: Might want to clarify with the
14 witness whether he's familiar with that underlying order
15 sufficiently to answer any such questions.

16 Q (By Mr. Halm) Mr. Miller, are you familiar with
17 the underlying order?

18 A I know a general background about it. I don't
19 have a copy of the order in front of me.

20 Q Okay.

21 A I know what was awarded and why generally.

22 Q Right. I have a copy of the order. I wanted to
23 save you and everybody else from going through this. I
24 would submit that we can -- that my questions will end
25 right here.

1 MR. HALM: And unless you object, Mr. Peters, we
2 don't have to put the entire underlying order into
3 evidence.

4 MR. PETERS: Well, that's fine. You don't need
5 to do that. I may choose to clarify the witness on -- on
6 redirect, but --

7 MR. HALM: Absolutely.

8 MR. PETERS: -- that's up to you.

9 JUDGE VOSS: Please proceed.

10 MR. HALM: I have no further questions on that
11 issue. And I'd like to move Exhibit 13 into the record.

12 JUDGE VOSS: Are there any objections to the
13 admission of Exhibit 13?

14 MR. PETERS: I don't believe I have an
15 objection.

16 JUDGE VOSS: Hearing none, it is admitted.

17 (Exhibit No. 13 was offered and admitted into
18 evidence.)

19 Q (By Mr. Halm) With respect to the local
20 exchange tariff at issue in this case, as I understand
21 CenturyTel's argument, it is that the local exchange
22 tariff which is also identified as CenturyTel of Missouri,
23 No. 1, is incorporated because the interconnection
24 agreement incorporates any, quote, unquote, applicable
25 tariff. Is that a fair characterization of your position?

1 A It is our position that the interconnection
2 agreement incorporates all tariffs without exception.

3 Q All tariffs without exception.

4 A There are no exceptions listed in the agreement.

5 Q Okay. And CenturyTel of Missouri No. 1, the
6 tariff that we know as CenturyTel Missouri No. 1 is not
7 identified in the interconnection agreement; is that
8 right?

9 A It says all tariffs.

10 Q It is not specifically identified in the
11 interconnection agreement?

12 A It does not list any tariff by specific name.

13 Q Thank you. All tariffs. How many tariffs do
14 you have in Missouri?

15 MR. PETERS: At which time? Objection.

16 Q (By Mr. Halm) At -- now. Today.

17 JUDGE VOSS: Objection -- what is the objection?

18 MR. PETERS: The objection was --

19 JUDGE VOSS: And can you speak into the
20 microphone?

21 A If we are speaking of CenturyTel of Missouri,
22 off the top of my head, I can think of the CenturyTel of
23 Missouri local exchange tariff, the access -- state access
24 tariff.

25 And there is an FCC tariff which does apply to

1 the State of Missouri, and there is a new, fairly recent
2 wholesale tariff.

3 Q Do you have a toll tariff on file? Do you know?

4 A CenturyTel of Missouri is not a -- I don't know
5 the word. For a toll carrier, no, I don't know.

6 Q How about a tariff for WATS service, W-A-T-S
7 service?

8 A That's not my end of the business. I don't
9 know.

10 Q Private line?

11 A I believe that private lines are encompassed in
12 the tariffs I just mentioned.

13 Q Digital data, local network access? I'm reading
14 from a printout of the CenturyTel web site, the tariff
15 library, which identifies eight different CenturyTel of
16 Missouri tariffs on file in Missouri. Would you stipulate
17 that your tariff web site is accurate?

18 A I'm sure it is if that's what you pulled that
19 from.

20 Q Okay. All right. So then all of those tariffs,
21 I guess, under your theory, are incorporated into the
22 interconnection agreement?

23 A That would be correct.

24 Q Okay. So toll tariffs, WATS tariff, why would
25 we incorporate those into the interconnection agreement?

1 A To the extent that there were some terms in the
2 agreement that pertain to those tariffs and some
3 relationship between the parties, then you would look to
4 that.

5 Q Okay.

6 A If not, then you wouldn't.

7 Q All right. And you referenced a federal tariff.
8 How many of your FCC tariffs are incorporated in the
9 contract, as you understand it?

10 A I don't know how many FCC tariffs we have
11 pursuant to Missouri. I think just one. But, again,
12 stipulating -- I'd need to go look.

13 Q Whatever you have, they're incorporated?

14 A Yes.

15 Q Okay. These are, then, all applicable tariffs
16 as that term is used under the interconnection agreement?

17 A Yes.

18 Q Okay. The local exchange tariff, CenturyTel
19 Missouri local exchange tariff, do you know when that
20 tariff was first implemented?

21 A I'm not sure I understand the context of the
22 question.

23 Q When was that tariff first filed with this
24 Commission?

25 A Probably on or around the 1st of September,

1 2002, would have been the initial version.

2 Q Okay.

3 A To the best of my knowledge.

4 Q Okay. Were the service order charges that you
5 have identified, the \$23 charges, were they in the tariff
6 at that time in 2002?

7 A There would have been a version of them.
8 They've changed over time.

9 Q The actual rate has changed?

10 A Yes.

11 Q Why is that?

12 A I am not the tariff person. But my general
13 understanding is that some of those charges changed
14 periodically based on the consumer price index or some
15 other factor.

16 Q Okay.

17 A Again, not my end of the business.

18 Q Understood. Nothing to do with number porting,
19 though?

20 A No.

21 Q All right. Those rates changed for a whole
22 bunch of different reasons. They have nothing to do with
23 number porting.

24 In your surrebuttal testimony on pages -- page
25 9, lines 11 through 12, you've talked about the new

1 wholesale tariff that was filed recently?

2 A Yes.

3 Q What's the purpose of that tariff?

4 A Would you like to -- me to explain the
5 background of why we initially did it?

6 Q I guess I'd like to know why you filed a
7 wholesale tariff, which I presume applies to competitors
8 when you already had your local exchange tariff on the
9 books?

10 A The driving force behind that was actually 9/11
11 and the fact that 9/11 services, as they are contained in
12 a general exchange tariff, apply to end users, to county
13 PSAPs and also to carriers and competitors such as
14 Charter.

15 All three of those types of entities were
16 encompassed within the 9/11 terms of the local exchange
17 tariff. In addition, a year and a half ago, two years
18 ago, I'd have to look to be sure, at some point, you may
19 recall that the FCC came out with a -- an order directing
20 that non-carrier VOIP providers were obligated to provide
21 9/11 services.

22 And where they were non-carriers, they need to
23 enter into commercial arrangements. And so as CenturyTel
24 talked to at least one of these non-carrier VOIP
25 providers, we made a determination that rather than doing

1 a commercial agreement, perhaps we could produce a tariff,
2 which would encompass all carrier type users of 911,
3 including non-carrier VOIP providers, in an effect, pull
4 out the terms that existed in the general exchange tariff
5 that would have covered competitors like Charter, make
6 sure that those terms were clearer and also make them
7 applicable to non-carrier VOIP.

8 And that's why we created the wholesale tariff.
9 And then there are other things that were germane to doing
10 that as well. We put directory in it as well, for
11 example.

12 Q So that I understand, what you did was you
13 created another tariff that's specifically applicable to
14 other carriers and VOIP providers?

15 A For the limited services that are in there, yes.

16 Q Right. And you did so because the local
17 exchange tariff wasn't always clear?

18 A Well, to the extent that there was question in
19 the local exchange tariff on 911 because it encompassed
20 three different types of customers, end users, carriers
21 and PSAPs, and there were sometimes confusion because of
22 that. But, more importantly, the driving force of the
23 non-carrier VOIP providers, it seemed appropriate if we're
24 going to create a tariff for that to go ahead and
25 encompass everybody. So we did so.

1 Q Besides 911, are there any other services in the
2 wholesale tariff?

3 A Directory listing was in there.

4 Q Okay. Is the \$23 service order charge that's in
5 your local tariff also in your wholesale tariff?

6 A No. Because the wholesale tariff has charges
7 for services in it already encompassed within those
8 services.

9 Q Is there a service order charge at all in your
10 wholesale tariff?

11 A I don't have a copy in front of me. I don't
12 know.

13 Q You did testify earlier that carrier competitors
14 routinely place orders with CenturyTel, right? That's
15 what a local service request is?

16 A That's correct.

17 Q All right. But you don't know whether or not
18 there's any service order charge in the wholesale tariff?

19 A I'd have to have the tariff in front of me, and
20 we'd have to go through it.

21 Q You don't know?

22 A No.

23 Q I don't have the tariff. I'm not -- I'm not
24 asking us to go through it. If you don't know, you don't
25 know. That's -- that's okay to say that.

1 A (Witness shakes head.)

2 Q If I understand CenturyTel's position correctly,
3 the interconnection agreement incorporates the local
4 exchange tariff and the CenturyTel service guide. And
5 when you read those three documents together, it's clear,
6 from your perspective, that a rate should be assessed for
7 responding to port requests; is that right?

8 A I don't think you have to read all three of them
9 together. I think any two of them will get you there. In
10 other words, I think that the CenturyTel service guide is
11 encompassed within the definition of tariff that Charter
12 and Verizon negotiated.

13 It is very clear that, based on the definition
14 that those two companies agreed to, the service guide is
15 encompassed within that definition.

16 Q Okay.

17 A And the -- the agreement sets forth where you
18 will find rates. It refers to the tariff. You can go
19 from the agreement straight to the local exchange tariff
20 and find the applicable rate.

21 The service guide merely clarifies it that,
22 yeah, that was our intent. The service guide clarifies
23 that CenturyTel's intent and policy is that there will be
24 a charge for all LSRs, including those submitted for
25 porting to process the LSR. And the rate used will be a

1 rate found either in the agreement or the local exchange
2 tariff as referenced on the particular page within the
3 guide.

4 Q So that in order for the Commission to sustain
5 these charges and rule on CenturyTel's behalf here, they
6 don't need to find that both the service guide and the
7 local exchange tariff were incorporated. They can just
8 look to the local exchange tariff or they can just look to
9 the service guide?

10 Because I had understood that what you were
11 saying is the service guide describes what's going on, and
12 then I think maybe Mr. Peters said there's a link in the
13 service guide that points you to the local exchange
14 tariffs, which are on the CenturyTel web site.

15 A There is a link in the guide which points you to
16 the local exchange tariffs.

17 Q Okay. On page 22 of your direct testimony, at
18 line 17 and 18, you state that the tariffs provide for the
19 charging of a service order charge for any and all order
20 processing work done to satisfy a request made of
21 CenturyTel by another party. Do you see that?

22 A I'm sorry. Where are you reading?

23 Q Page 22, lines 17 and 18.

24 A Yes.

25 Q Did you review the -- did you review the local

1 exchange tariff before you wrote this testimony?

2 A Yes.

3 MR. HALM: I'd like to offer another exhibit.

4 And it is CenturyTel's local exchange tariff, No. 1.

5 Unfortunately, it's big. It's bulky.

6 JUDGE VOSS: I believe the Commission should be
7 able to take notice of a local exchange tariff that's on
8 file with the Commission.

9 MR. HALM: Okay. Thank you, your Honor. I was
10 hoping we could. If I could provide a copy to the
11 witness --

12 JUDGE VOSS: Okay.

13 MR. HALM: -- I'd like to ask him a couple of
14 questions about some of the definitions. Would it be
15 useful for you to have a copy as well?

16 JUDGE VOSS: With the pages in question? We can
17 actually pull them up online.

18 MR. HALM: We've got them all right here.

19 JUDGE VOSS: Oh, you have made copies?

20 MR. HALM: We did. Unfortunately, the trees are
21 already down for this one.

22 JUDGE VOSS: I trust you will recycle?

23 Mr. HALM: Yes, we will.

24 JUDGE VOSS: Might have one more in case
25 Commissioner Clayton comes back.

1 MR. COMLEY: Yes.

2 JUDGE VOSS: And then we will -- One good thing
3 about being online is that you could actually pull up the
4 tariffs on our computers.

5 MR. COMLEY: I've got one for you, too.

6 JUDGE VOSS: Thank you. And for the record, the
7 Commission will take notice of the relevant portions of
8 the local exchange tariff of CenturyTel of Missouri, LLC.

9 MR. HALM: Thank you. This would be marked as
10 Exhibit No. 14. Am I correct?

11 JUDGE VOSS: There's no need to mark it. We can
12 take notice of it because it's --

13 MR. HALM: Right. Part of the public record.
14 There are a number of definitions in the tariff, some of
15 which I'm interested in. The first one begins on section
16 three, original sheet three. Unfortunately, there are no
17 pages numbers in this tariff so you have to find your
18 way --

19 JUDGE VOSS: So this is PSC No. 1, right?

20 MR. HALM: No. 1, PSC Missouri No. 1. In the
21 upper right-hand corner, there are the section numbers.
22 Original Sheet 3.

23 MR. PETERS: I'm sorry, Counsel. I missed your
24 reference. Can you give me the reference one more time?

25 MR. HALM: Section 3.

1 MR. PETERS: Section 3.

2 MR. HALM: Original Sheet 3.

3 MR. PETERS: Okay. Thank you.

4 Q (By Mr. Halm) The third defined term is
5 customer. Do you see that, Mr. Miller?

6 A Yes.

7 Q This is the same tariff that you reviewed before
8 preparing your testimony?

9 A Yes.

10 Q Can you read to us the definition of customer?

11 A The individual partnership, association or
12 corporation which contracts for telephone service has
13 responsible for the payment of charges and compliance with
14 generations of the company.

15 Q The term which contracts for telephone service,
16 what do you understand that to mean?

17 A I've never thought about it.

18 Q Do you have a moment now? You've been in the
19 telephone industry for a long time. Telephone service.
20 What's the first thing that comes to your mind?

21 A Well, it tells me that customer is the
22 individual, partnership or association or corporation
23 which wants some service pursuant to this tariff.

24 Q Okay. Okay. Does Charter meet the definition
25 of a customer under your local exchange tariff?

1 A I think you do, yes.

2 Q They do?

3 A Yes. Absolutely.

4 Q Because they contract for telephone service?

5 A Contract for service -- telephone service

6 encompasses this entire tariff and absolutely, Charter is

7 a customer of this tariff. Yes.

8 Q You do think they contract for telephone, as you

9 understand it?

10 A I think that Charter can and has contracted for

11 services pursuant to this tariff.

12 Q But do they meet the definition of a customer?

13 Let's -- let's approach it a different way.

14 MR. PETERS: Objection. Asked and answered.

15 Q (By Mr. Halm) Does Charter purchase local

16 telephone service from CenturyTel?

17 A I have no idea.

18 Q If I told you that they didn't, would you

19 believe me?

20 A I have no reason to believe or not to believe

21 you. I have no knowledge of all of Charter's service

22 across the entire state of Missouri. They could be buying

23 service for an executive for all I know.

24 Q Right.

25 A It happens frequently.

1 Q All of the facts that you have at your
2 knowledge, based upon the four and a half, five years that
3 you've been involved in this dispute, have you ever heard
4 that Charter purchases telephone service from CenturyTel?

5 A I don't believe it's ever come up in our
6 conversations.

7 Q So then you have not heard?

8 A I have no knowledge one way or the other.

9 Q Okay. Do you have any reason to believe that
10 Charter would purchase telephone service?

11 A I have reason to believe that they would.

12 Q Really?

13 A Yes.

14 Q Could you please explain?

15 A I just explained a moment ago. It's very common
16 for some companies to -- to pay for certain things for
17 senior executives. To the extent that a senior executive
18 lived outside of Charter's service territory and the
19 company wanted to install service for that customer so
20 that -- that executive could have access to the Internet
21 or private line, whatever, certainly, they would be buying
22 service from CenturyTel if it was our territory.

23 Q Right. I see. So Charter's executive has a
24 lake home at Lake of the Ozarks. I don't know if you guys
25 serve that area, but what you're saying is that Charter

1 might contract with CenturyTel to purchase telephone
2 service for that executive?

3 A I'm saying that's extremely likely based on my
4 experience of 30 years in the telephone industry. Yes.

5 Q All right. Okay. So they would be purchasing
6 telephone service, i.e., local exchange service, local
7 dial tone?

8 A In that particular instance.

9 Q Right. Did you review the wholesale tariff
10 before you wrote your testimony?

11 A Not word for word. I'm familiar with the 911
12 section because I put it in there.

13 Q I think you cited to the wholesale tariff,
14 didn't you?

15 A Yes, I did.

16 Q Quoted it? So you did -- did you review it?

17 A I didn't. I believe my citation was in
18 reference to the 911 service, which is what I was familiar
19 with.

20 Q Okay. Is the definition of customer under the
21 local exchange tariff the same definition of a customer
22 under the wholesale tariff?

23 A I don't know if there's a definition of customer
24 in the wholesale tariff.

25 Q Okay. Do you know how this tariff defines local

1 exchange service?

2 A (Witness shakes head.)

3 Q Have you ever looked at that definition?

4 A No.

5 Q Let's look at it now. I think you'll find that
6 on Section 3, Original Sheet 7. Is number porting local
7 exchange service -- I'm sorry. You're not there, are you?

8 A Yes, I am.

9 Q Section 3, Original Sheet 7. Is number porting
10 local exchange service?

11 A Counselor, the only way I can answer your
12 question is to say that I believe that the general and
13 local exchange tariff, which is what this is, general and
14 local exchange tariff encompasses many things beyond just
15 telephone service. Is -- if you're asking me is
16 portability telephone service? No. Is it something
17 within the purview of the general and local exchange
18 service? Yes.

19 Q And my question was, is number portability local
20 exchange service? Not whether or not you think number
21 portability is encompassed by this tariff.

22 A I would say pursuant to this definition, that,
23 yes, it would meet that.

24 Q It would. Okay.

25 A Yeah.

1 Q Interesting. There's another definition I would
2 like to point your attention to on Section 3, Original
3 Sheet 10. It's the very first definition on that page,
4 the term service charge.

5 A Yes.

6 Q Would you please read that definition into the
7 record?

8 A The non-recurring charge a customer is required
9 to pay for establishing telephone service or subsequent
10 modification of that service.

11 Q Now, you just told us that you believe number
12 porting is local exchange service. And your response to
13 prior to that was you didn't think number porting is
14 telephone service. Do you still think number porting is
15 not telephone service?

16 A Are we talking about service as it's defined in
17 this or defined in the agreement? Service is a defined
18 term.

19 Q Yeah. I'm talking about in the interconnection
20 agreement. I'm talking about the tariff.

21 A I know. But we have to look at this tariff in
22 light of the interconnection agreement. That's why we're
23 here. To the extent that service is a defined term within
24 the interconnection agreement, yes, it's a non-recurring
25 charge that your client is required to pay for

1 establishing a service as a defined term.

2 Q That wasn't my question. Is number porting
3 telephone service, as that term telephone service is used
4 in this definition, in the tariff?

5 A I don't know how to answer that.

6 Q You don't know the answer to that?

7 A I don't think it's a -- a yes/no answer. I -- I
8 believe that L&P is a local exchange service. I could
9 explain that if you want me to.

10 Q No. I want you to answer the question.

11 A Well, that's what I expected.

12 Q Here we go. I'm going to go back to your direct
13 testimony on page 3. I've worked in the
14 telecommunications industry in various capacities for
15 approximately 30 years.

16 You've got a wealth of experience, Mr. Miller.
17 If you don't know how to answer the question, is number
18 portability telephone service as that term is used in it
19 tariff?

20 MR. PETERS: Objection. Asked and answered.
21 It's argumentative.

22 JUDGE VOSS: I think the problem is the question
23 hasn't actually been answered. I think the witness does
24 need to answer the question even if it's an I don't know.

25 A In reviewing applicable regulation, in my mind,

1 I'm inclined to say yes.

2 Q (By Mr. Halm) Thank you for your answer. When
3 we go back and look at a particular provision, section of
4 the tariff that has these charges, there's a number of
5 other questions that come up. Section 5, I believe, is
6 the appropriate section of the tariff.

7 And let me ask you one other question before we
8 go there. Do you know whether or not local number
9 portability or number porting are terms that are used in
10 this tariff?

11 A I'd have to do a word search.

12 Q Okay. If I told you that I did a word search
13 and I didn't find those terms, would you believe me?

14 A I'd believe that's what you said you found.
15 Yes.

16 Q Okay. Okay. I am most interested in Section 5,
17 Original Sheet 1(A), No. 1(a). Are you there, Mr. Miller?

18 A Yes.

19 Q Can you read that sub provision to us?

20 A Service connections?

21 Q Yes.

22 A Service connections, installations or subsequent
23 additions of telephone service and/or semi-public
24 telephone equipment. Move an existing service to a
25 different premise.

1 Q Is this the section of the tariff where the \$23
2 rate is found?

3 A Section 5 is the section. Yes.

4 Q All right. This section deals with service
5 order charges?

6 A Service charges, yes.

7 Q Right. Are the rates assessed upon Charter
8 service charges for service connections?

9 A Movement of existing service to a different
10 premises?

11 Q Uh-huh.

12 A It certainly falls within that definition.

13 Q Right. And I assume that when you read it,
14 telephone service in this definition, you're thinking
15 number porting?

16 A When I read this definition, I'm thinking not
17 only this definition, but also the definition of service
18 within the ICA.

19 Q Right. So if I were to ask you the questions I
20 asked with respect to the definitions and what the term
21 "telephone service" means, I assume you'd have the same
22 answer here?

23 A I believe that number portability is encompassed
24 within this, yes.

25 Q And that number portability is a telephone

1 service?

2 A I think it is a telephone service as service is
3 defined in applicable regulation in the ICA.

4 Q Does CenturyTel also apply the service order
5 charges in this section to end user customers?

6 A Yes.

7 Q When the end user does what?

8 A Whatever it says within this tariff. We'd have
9 to go through the entire tariff to tell you all the
10 specifics when this could apply. But, basically, it's any
11 time they submit an order that requires a service charge.

12 Q Okay.

13 A Any type of order.

14 Q What if -- what if somebody moves to Missouri
15 and they're buying a home in the CenturyTel service area
16 and they want to buy local telephone service from you?
17 They call up the CenturyTel rep. They order service.
18 Would you assess a service charge under this provision of
19 the tariff?

20 A Stipulating that that's not my end of the
21 business, I would assume that the answer is yes.

22 Q I'm relying on your 30 years of experience.

23 A Oh, I understand that. It was when I worked for
24 Bell 30 years ago in the service department.

25 Q Okay.

1 A Yes, we would assess a service order at
2 Southwestern Bell when I did that job.

3 Q In your rebuttal testimony on page 10 at lines
4 21 through 22, you say that the record is not yet
5 established as to whether Charter has purchased from the
6 local exchange tariff.

7 JUDGE VOSS: I missed that section number.

8 MR. HALM: I'm sorry. Surrebuttal, page 10,
9 lines 21 through 22.

10 JUDGE VOSS: Thank you.

11 Q (By Mr. Halm) Do you see that reference,
12 Mr. Miller?

13 A Yes.

14 Q We're building the record right now. Do you
15 know of any instance in which Charter has purchased local
16 telephone service from CenturyTel?

17 A I have knowledge of instances that could exist.
18 I don't know whether they do or they don't. The record
19 doesn't exist.

20 Q Okay.

21 A I'd reference the example I used earlier where
22 Charter could be buying service for one of its executives,
23 which is very common.

24 Q That was a hypothetical, right?

25 A Right.

1 Q Right.

2 A A non-hypothetical might be 911 which, until a
3 year or so ago, was in the local exchange tariff. Now,
4 whether you purchased 911 pursuant to that, again, I've
5 had no reason to search for 911 services.

6 Q That's my question. Do you know. If you don't
7 know, it's okay to say I don't know.

8 A I don't know.

9 Q Okay. I want to get something straight. Excuse
10 me. Page 12 of your surrebuttal, lines 18 and 19. Maybe
11 this is just a clarification for us. But you say on --
12 beginning on line 18, An L&P LSR is a change order as
13 change orders are commonly defined in the industry. Can
14 you explain that a little bit more?

15 A My reference there was going back to my days in
16 the customer service department at Southwestern Bell when
17 there are different types of orders that are processed by
18 customer service personnel.

19 Examples of these are new connect, disconnect,
20 what we called in the day F&T, from and to, which is a
21 move order, and there was a change order. A change order
22 would be anything other than one of the other types.

23 And service order charges would apply to those.
24 And you could have the same service order charge apply to
25 multiple types of those orders, depending upon the

1 purpose.

2 Q So then when you say an L&P LSR is a change
3 order, do you mean historically that's how it was viewed
4 or today that's how you believe it's viewed, or CenturyTel
5 believes --

6 A What I'm saying is if I was a service
7 representative in a customer service department like the
8 people I supervised 30 years ago and an order came in for
9 this type of thing, we would put a C up there in the
10 corner because back then it was not electronic.

11 It would have been a change order. It would not
12 have been a disconnect, a new connect or a from and to.
13 It would have been a change.

14 Q Okay. Does CenturyTel believe that L&P LSRs or
15 requests for porting from Charter constitute a change
16 order today?

17 A I'm just referencing that there are many types
18 of -- of service order charges that are applicable, and
19 change is one of them.

20 Q Okay. Go back to the tariff -- and I think
21 we're almost done, so I promise not to spend too much time
22 here. There's also a statement of the changes associated
23 with changes on Section 5, Original Sheet 1, Subsection C.

24 There's a reference to substitution of
25 semi-public telephone equipment or rearrangement of such

1 equipment.

2 A Yes.

3 Q Do you think number porting is semi-public
4 telephone equipment as that term is used in this tariff?

5 A No.

6 Q Okay. Flipping back a couple more pages to the
7 actual rates that we've talked about for so long, Section
8 5, sixth revised Sheet 4. Rate and charges is the header
9 of this section.

10 Subsection 1 is for non-competitive exchanges.
11 Subsection 2 is for competitive exchanges. And then there
12 are two different rates for service ordering charge,
13 \$23.88 for non-competitive exchanges, \$23.48 for
14 competitive exchanges.

15 Do your costs differ when Charter requests
16 porting in a competitive exchange as opposed to a
17 non-competitive exchange?

18 A I would believe not.

19 Q Okay. And the reason there is two separate
20 rates here, do you know why?

21 A Is that -- okay. I was going to say, is that a
22 question?

23 Q That wasn't a question until I said do you know
24 why. Do you know why there two separate rates there?

25 A I have a general knowledge of why.

1 Q (By Mr. Halm) Okay. I want to talk very
2 briefly about the service guide. Do I understand
3 CenturyTel's position correctly that the service guide is
4 not specifically referenced in the interconnection
5 agreement? Is that correct?

6 A It is encompassed within the definition of
7 tariff. It is not referenced as the service guide is
8 specifically here.

9 Q Yeah. I'm thinking of your rebuttal testimony,
10 page 5, lines 5 and 6 where you said CenturyTel stipulates
11 that it did not negotiate any specific reference to the
12 CenturyTel service guide in an ICA. Does that sound
13 right?

14 A We didn't negotiate this agreement. That's
15 correct.

16 Q Okay.

17 A It is my understanding, however, that Verizon
18 had a guide.

19 Q Okay.

20 A And, presumably, that's why your client and
21 Verizon agree to encompass it within the definition of
22 tariff. But that's just how I read it.

23 Q Right. And you actually quote from the Verizon
24 guide in Footnote 8 of your rebuttal testimony, page 5. I
25 think you made a point that the interconnection agreement

1 reflects Verizon's intent regarding the applicability of a
2 guide and that Verizon has a guide, which is similar to
3 CenturyTel's service guide. Page 5, I think, Footnote 8.

4 A I'm sorry. Is there a question, there,
5 Counselor?

6 Q I was waiting for you. Do you have the
7 citation?

8 A Yes. Yes.

9 Q And you said, As found in other Verizon
10 agreements filed in Missouri, there is a reference to a
11 service guide.

12 A Yes.

13 Q Did you look at other Verizon agreements filed
14 in Missouri?

15 A I have the ones that we acquired when we bought
16 the properties. I'm not aware that Verizon exists in
17 Missouri anymore.

18 Q Okay. The contracts that you have now --

19 A Yes.

20 Q -- you looked at, that's presumably what you're
21 referring to?

22 A Yes.

23 Q Okay. So they specifically refer to a service
24 guide in those contracts, but they didn't in this
25 contract; is that right?

1 A Some do. Some don't. Agreements are different
2 over time for a variety of reasons.

3 Q Right. Would you presume that if they wanted to
4 incorporate the service guide, they would have
5 specifically identified it if they had these other
6 agreements?

7 MR. PETERS: Object to the form of the question.
8 Lacks foundation.

9 JUDGE VOSS: Can you see if your microphone -- I
10 heard you, but the record didn't.

11 MR. PETERS: I'm sorry. Object to the form of
12 the question. Lacks foundation. He's asked him to assume
13 something Verizon did or didn't intend.

14 JUDGE VOSS: Can you try to restate the question
15 as to provide proper foundation? Because that sounds
16 reasonable to me.

17 MR. PETERS: It further calls for speculation.

18 Q (By Mr. Halm) Okay. If Verizon specifically
19 identified the service guide in other agreements but did
20 not do so in this agreement, is it reasonable to infer
21 that they didn't intend to incorporate the service guide
22 in this agreement?

23 A No. I don't think it's reasonable to infer that
24 at all based on the definition of tariff. That's another
25 way of doing it. And I think that's what they did.

1 Q If you were writing this contract today and you
2 were drafting these provisions as you've told us you do,
3 would you include a specific reference to your service
4 guide?

5 A Counselor, if I was --

6 MR. PETERS: Objection. Relevance.

7 MR. HALM: It goes to the question of how we
8 construe the contract. If there's a reference to a
9 particular document in some agreements but not in other
10 agreements, it might have --

11 JUDGE VOSS: I'm going to overrule that.
12 Restate the question for the witness. Answer the best of
13 your ability.

14 MR. HALM: Is it possible for the court reporter
15 to restate the question?

16 (The previous question was read back.)

17 A Counselor, stipulating that this was written
18 many, many, many years ago and that technology has
19 changed, competition has changed, CenturyTel's experience
20 with competitors has changed, I wouldn't write this
21 agreement the way it was written, no.

22 Q (By Mr. Halm) That's not my question.

23 A I'd be much more explicit --

24 Q You would --

25 A -- in a lot of things.

1 Q Okay.

2 A I would be. That's not the writers of this
3 agreement.

4 Q Right. And that's what I'm asking. Would you
5 include a specific statement about the service guide in
6 any new agreement that you're --

7 A Our new template has a specific reference, yes,
8 sir.

9 Q Great. I think you've testified that the
10 service guide sets forth generally available terms,
11 conditions and prices, and, therefore, meets the
12 definition of a tariff?

13 A Yes.

14 Q Yes. Has this Commission ever reviewed or
15 approved your service guide?

16 A They've approved the prices that are referred to
17 in it, yes.

18 Q Have they reviewed the service guide?

19 A I have no idea. You'd have to ask the
20 Commission that question.

21 Q Okay. Do you know if any other state Commission
22 has ever reviewed and/or approved your service guide?

23 A They've approved the prices therein. I can't
24 speak to what they reviewed in the guide or not.

25 Q You don't have any knowledge that a state

1 Commission has reviewed them?

2 A I have -- I have belief that some have, but I
3 can't point to -- the question has never been asked as to
4 what they did or didn't do.

5 Q Okay. Okay.

6 A There's been no need. It's not been challenged
7 before.

8 Q The service guide has changed over time; is that
9 right?

10 A Yes, it has.

11 Q All right. Attached to Mr. Schremp's/Ms.
12 Giaminetti's testimony, I believe it's a surrebuttal
13 testimony, is a copy of the CenturyTel service guide that
14 was dated April of 2005. Did you see that?

15 A I saw that there was something attached to it,
16 yes.

17 Q Okay. Did you read that attachment?

18 A Yes.

19 Q Let me see if I can get you a copy.

20 A That would be great.

21 MR. HALM: I do need a copy for Mr. Miller. So
22 did you have a copy? I'll give him mine.

23 MR. COMLEY: You may have a copy of
24 Mr. Schremp's testimony.

25 Q (By Mr. Halm) Do you have a copy of

1 Mr. Schremp's surrebuttal testimony with you?

2 A Not up here. No, sir.

3 MR. HALM: May I approach, your Honor?

4 JUDGE VOSS: Yes, you may.

5 Q (By Mr. Halm) So for the record, this is TS
6 Schedule 1 to the Schremp/Giaminetti surrebuttal
7 testimony, which is already in evidence. Have you had a
8 chance to review that?

9 A It's familiar with what I've seen before in his
10 testimony. Yes.

11 Q Right. Are the rates that you have assessed
12 Charter, the \$19 rate or the \$23 rate identified in that
13 service guide?

14 A Not in this very old version of it, which is not
15 current as of that date that you say it is. No.

16 Q And that's April 2005, right?

17 A Yeah. And I don't believe this is an accurate
18 version from that date.

19 Q It's for the -- you mean, in April of 2005, that
20 version doesn't reflect what your --

21 A I'm well aware it doesn't reflect what I
22 remember to be available as of that date.

23 Q Okay.

24 A The guide that you handed me, Counselor, which
25 presumably was a guide that was provided to your client,

1 is undated. As I reviewed it, I could tell it was a very
2 old version of the CenturyTel service guide. And I have
3 personal knowledge that it is not what I had in use as of
4 this time frame in 2005.

5 Q Okay.

6 A Because the version that was concurrent with
7 that time frame did have the language in it because I
8 personally put it there.

9 Q Okay. This was provided to Charter by a
10 CenturyTel employee named Fran Runkle. Do you know
11 Mr. Runkle?

12 A He's a retired employee of CenturyTel, yes.

13 Q Did you work with Mr. Runkle?

14 A He worked for me at the time.

15 Q Okay. Okay. The date on the e-mail
16 transmitting that service guide --

17 A Yes.

18 Q -- can you read it into the record?

19 A April 14th, 2005.

20 Q All right. And Mr. Runkle is providing Charter,
21 through me, a copy of the service guide current as of that
22 date?

23 A To the extent that what you've attached to this
24 is the service guide that was attached to Mr. Runkle's
25 e-mail, I can only tell you that he didn't give you a

1 current copy. Through error, mistake, whatever, it's not
2 the most recent copy that I was aware of.

3 Q Okay. What -- when did CenturyTel first include
4 references to either the two rates at issue here or the
5 tariff in its service guide?

6 A I don't have an exact date, Counselor.

7 Q Do you have a general date?

8 A Sometime after the implementation of intermodal
9 portability.

10 Q And that was, what, 1999?

11 A Intermodal portability came out in November of
12 2003.

13 Q Okay. Sometime after 2003?

14 A November 2003.

15 Q Sometime in between then and now, you included
16 those rates in the references to the tariffs?

17 A Closer to then than now, but yes.

18 Q If a number porting request is made in
19 Wisconsin, does CenturyTel assess the \$23 rate we've been
20 talking about today or a different rate?

21 A The \$23 rate is in the Missouri tariff.

22 Q Okay. That is a Missouri rate?

23 A Yes.

24 Q Okay. There's other rates that apply in other
25 states?

1 A That's correct. And that's referenced in the
2 service guide.

3 Q You've already told us that your costs, you
4 don't think -- you don't think that your costs differ when
5 responding to a service request from one carrier versus
6 responding to another carrier so that your costs are
7 presumably the same in responding to an LSR for porting in
8 Wisconsin as they are in Missouri?

9 A The costs are presumably the same. The
10 rate-making process is different.

11 Q Right. Any idea whether there's a correlation
12 between the rate in Wisconsin and the cost?

13 A I don't understand the question.

14 Q When determining the rate in Wisconsin, did the
15 person who determined that rate have any idea what
16 CenturyTel's costs are?

17 A The rate in a tariff, if that's what you're
18 asking me, are done pursuant to a cost proceeding which is
19 approved by the State Commission. The State Commission
20 allocates all the costs across a variety of rates.

21 Q Are you aware of any cost proceeding that has
22 dealt with the types of LSR charges that we're talking
23 about today?

24 A I am not aware of any.

25 Q Okay. Do you know whether or not Charter has

1 ever consented to any revisions in this service guide?

2 A Charter's not required to consent pursuant to
3 the terms of the agreement.

4 Q What about other CLECs? Do you normally seek
5 out their consent, or do your other agreements not require
6 that as well?

7 A It depends on the specific agreement. I can
8 only think of one agreement that requires consent.

9 Q Okay. That's all I have on the service guide.

10 A Would you like your copy back?

11 Q Thank you very much. Do you have a copy of the
12 interconnection agreement with you?

13 A I don't have one up here.

14 MR. PETERS: Exhibit 1?

15 A Or wait. I'm sorry. You did give me one. I do
16 have one.

17 Q (By Mr. Halm) You have obviously looked at
18 Section 15 of the interconnection attachment to this
19 interconnection agreement, haven't you?

20 A Yes.

21 Q Did you spend a lot of time looking in that
22 provision? Did you spend a lot of time looking at that
23 provision?

24 A Pursuant to this proceeding, I've looked at it.

25 Q Right.

1 A And I've looked at it in general before.

2 Q Would you agree with my characterization that
3 Section 15 is pretty detailed with respect to specific
4 number porting obligations?

5 A I -- I would agree that Section 15 covers number
6 porting operations and does so over several pages, yes.

7 Q You're right. And in your experience with
8 interconnection agreements, drafting them, is this the
9 type of detail, the amount of detail you would expect to
10 see?

11 A Quantity, not quality.

12 Q There's a lot here, right?

13 A There's a lot here.

14 Q Okay. There's a lot of detail in this section?

15 A There is some detail in this section. Yes.

16 Q All right. There's no provision in this section
17 that says Charter shall pay or CenturyTel's responding to
18 LSRs for porting, right?

19 A Yes.

20 MR. PETERS: Objection. I'm sorry. Objection.
21 The document speaks for itself. I've rarely been accused
22 of not being loud enough, so this is new territory.

23 JUDGE VOSS: Well, even if I could hear you, it
24 won't be reserved for the audio presentation. Could you
25 restate the question? Because I'm inclined to agree with

1 Mr. --

2 MR. HALM: Yes.

3 Q (By Mr. Halm) Is there any provision in section
4 15 that specifically says that Charter will pay and
5 CenturyTel shall charge an LSR for responding to
6 portability?

7 MR. PETERS: Same objection.

8 JUDGE VOSS: I believe the document speaks for
9 itself. But I believe you were asking similar questions
10 of his witness, so I'm going to go ahead and overrule the
11 objection and let the question -- let the witness answer
12 the question.

13 A There is no specific sentence in this section
14 which says that Charter will or will not pay --

15 Q (By Mr Halm) Thank you.

16 A -- for an LSR.

17 Q Thank you. Is there any language in this
18 section that uses the term "purchasing party?"

19 A I don't know.

20 Q Let me put it differently. In all the time you
21 spent reviewing this section, preparing for this hearing,
22 did you see any reference to the term "purchasing party?"

23 A I do not recall any.

24 Q I think you testified earlier -- or maybe I'm
25 confusing with you Mr. Peters. But the point was made

1 earlier that --

2 A He's younger than I am.

3 Q In the definitions, in Section 2.70 on page 40,
4 the term "purchasing party" is specifically defined.

5 A I don't recall referencing it, but it is
6 definitely a defined term.

7 Q Right. Could you just read the definition for
8 us?

9 A Party requesting or receiving a service from the
10 other party under an agreement.

11 Q Thank you. If you were drafting a number
12 porting provision today or a new agreement between Charter
13 and CenturyTel, would you include a specific reference to
14 a charge for LSRs for porting?

15 MR. PETERS: Objection. Relevance.

16 MR. HALM: This is the same question we asked
17 with respect to inclusion of a service guide.

18 JUDGE VOSS: I do understand the same question.
19 And he didn't draft the original agreement. So I -- I
20 don't really -- can you give me a little more background
21 why this --

22 MR. HALM: If a new agreement were being drafted
23 today, and Mr. Miller told us that he would include
24 specific language authorizing these charges that might
25 inform us, the Commission, as to how to construe a

1 contract that does not have such language.

2 MR. PETERS: That's not what's before this
3 Commission. We're interpreting this contract and how it
4 might be done differently, better, worse today is not --
5 is not the issue you're being asked to interpret, I don't
6 believe.

7 MR. HALM: I'll withdraw the question.

8 JUDGE VOSS: All right. Thank you.

9 Q (By Mr. Halm) If I understand your testimony
10 correctly, you have testified that CenturyTel has never
11 considered proposing an amendment to this interconnection
12 agreement. You never felt it was necessary because it's
13 CenturyTel's policy to assess these charges?

14 A Is that a question?

15 Q I want to make sure I'm characterizing your
16 testimony correctly.

17 A Is that a question?

18 Q Yes. Did I characterize your testimony
19 correctly?

20 A Could you say that again, please?

21 Q Do I understand your testimony correctly that
22 CenturyTel has never believed it necessary to amend this
23 interconnection agreement because it is CenturyTel's
24 policy to assess charges for LSRs for porting?

25 A That's an incomplete statement. We've never

1 felt it was necessary to amend this agreement because of
2 not just our policy, but in this case, the outcome of the
3 2004 dispute resolution. It was concluded. It was
4 concluded in sustaining the charge. It was never
5 escalated.

6 We felt that you knew that. You continued to
7 submit orders to us. We continued to bill for it. It was
8 over. We had no need to update this because you knew that
9 we would be charging, and we expected to be paid.

10 Q You didn't think it was necessary or appropriate
11 to include specific language in the contract?

12 A Not once the dispute resolution was concluded.
13 No.

14 Q Okay. After that dispute resolution process
15 ended, did Charter continue to submit monthly bill
16 statements to CenturyTel?

17 A Not on a monthly basis, no. That's not my
18 understanding. I'm aware, for example, of -- golly gee.
19 It was -- it's in my testimony -- I don't know the exact
20 number, but 18 of them, maybe, that were submitted after
21 you filed this complaint that went back as far as 2006.
22 So, yes, sir, your client maybe correct in that they've
23 disputed all months now. But at the time, they didn't.

24 JUDGE VOSS: Mr. Halm, can I just see how much
25 more you have of this witness? Because it's kind of time

1 for a break if you have much more.

2 MR. HALM: Yes, your Honor. I would estimate 20
3 or 30 minutes tops.

4 JUDGE VOSS: Okay. Let's go ahead and take a
5 break. We've been going for two hours. We'll come back
6 at 20 after, give you a chance to stretch your legs.

7 (Break in proceedings.)

8 JUDGE VOSS: Okay. We are going to go back on
9 the record, continuing cross-examination. Please proceed.

10 MR. HALM: Thank you. Your Honor, I would like
11 to offer another exhibit, which, I believe, would be 14.
12 And my co-counsel, Mr. Comley, will distribute those.
13 Don't forget, Mr. Miller needs a copy.

14 Q (By Mr. Halm) Mr. Miller, before we broke, we
15 started talking about disputes and the dispute process.
16 And immediately prior to that, we talked about whether or
17 not CenturyTel believed an amendment was appropriate if
18 necessary --

19 A Yes.

20 Q -- in the Charter agreement. So I'd like to ask
21 a couple questions with respect to the amendment question
22 and then move to the dispute issue and then wrap it up.
23 Do you have a copy of the document captioned Application
24 for Approval of Amendment to an Interconnection Agreement?

25 A Yes, I do.

1 MR. HALM: All right. Would it be appropriate,
2 your Honor, to ask the Commission to take administrative
3 notice of this like --

4 JUDGE VOSS: I'm not sure what the case number
5 is that was ultimately assigned to this document. It's if
6 the --

7 MR. COMLEY: The case number, your Honor, is
8 TK-2007-0327.

9 JUDGE VOSS: It is a short document. Would it
10 be easier for the parties to put it in as an exhibit or to
11 take notice of it?

12 MR. HALM: Actually, I'd prefer to put it in as
13 an exhibit.

14 JUDGE VOSS: Okay. It's short. I don't have a
15 problem with putting it in. We could take notice of it,
16 but for convenience --

17 Q (By Mr. Halm) Mr. Miller, this -- would you
18 agree that this is an application for approval of an
19 amendment to CenturyTel's interconnection agreement?

20 A Yes. It appears to be so.

21 MR. PETERS: I -- excuse me, witness. I'm going
22 to object to -- I think this -- this document, to the
23 extent we're going to be talking about it on the grounds
24 of relevance. I'm not sure what an application for the
25 approval of an amendment in an unrelated matter would have

1 any bearing on this particular case. And so my objection
2 is two-fold, one being relevance, and, B, it would involve
3 collateral matters unrelated to the issues before this
4 Commission.

5 JUDGE VOSS: It has been offered. But if you're
6 going to cross-examine on it, would you like to state the
7 relevance of this piece of -- or this exhibit prior to --

8 MR. HALM: Yes, your Honor. The relevance of
9 this document is that it demonstrates that CenturyTel has,
10 and, in fact, does amend its interconnection agreements to
11 provide specific provisions that establish rates for
12 porting.

13 The Staff's witness, Mr. Voight, has already
14 testified as such. And it clearly demonstrates and points
15 to an issue that we just discussed, and that is whether or
16 not there was a need or a reason to amend the current
17 Charter interconnection agreement for whatever reason,
18 but, presumably, because it didn't have any charters.

19 JUDGE VOSS: Is there any reason this document
20 cannot speak for itself?

21 MR. HALM: The document can speak for itself.
22 Yes. So if I could simply offer it into evidence, then I
23 won't have any questions.

24 MR. PETERS: Again, I'd object on grounds of
25 relevance. We would stipulate, certainly, that

1 CenturyTel, as a company, has the ability and/or the right
2 to seek an amendment of an agreement. I think that's --
3 that's common knowledge.

4 Yet this witness has previously testified that
5 they can't do so in this case and asked and answered the
6 reasoning for why that wasn't done. So I question the
7 relevance of this document or accepting it into evidence.

8 JUDGE VOSS: I think the document itself could
9 be relevant and speak for itself. I don't see for the
10 limited purpose -- I'm sorry. I'm not understanding your
11 objection to the relevance of it. I mean, if it's being
12 admitted to show that in some instances you do seek
13 amendments to interconnection agreements, as Mr. Halm
14 said, I don't see that that's -- I mean, I can see the
15 relevance of that.

16 MR. HALM: It's a question --

17 JUDGE VOSS: It hasn't been done in this case.

18 MR. HALM: It's a question that Mr. Miller has
19 just testified to.

20 JUDGE VOSS: So I'm going to overrule the
21 objection and let it be admitted into the record for the
22 purposes -- limited purposes that we've discussed. But I
23 don't see that this witness should be questioned on it.

24 MR. PETERS: And that limited purpose, just so
25 I'm clear, your Honor, being that CenturyTel has the

1 ability to or has in the past filed amendments or seeking
2 amendments to an interconnection agreement?

3 JUDGE VOSS: This document is a public record at
4 the Commission. It's something that could be taken notice
5 of as well as admitted as an exhibit.

6 MR. DORITY: Well, and, your Honor, I would
7 point out that this appears to be in context of an
8 adoption of an underlying wireless agreement. And, again,
9 I -- I guess I could just echo my co-counsel's objection
10 that I -- I fail to see any relevance here other than the
11 fact that from time to time CenturyTel does see the need
12 to amend certain agreements and, particularly, in the
13 context of a wireless agreement that may be adopted by a
14 -- another carrier. So --

15 JUDGE VOSS: And I think, as I said, that this
16 agreement should speak for itself. And if they address it
17 in briefing, I would expect that CenturyTel would
18 differentiate it based on the text of the document. So --
19 okay. So aside from that, are there any objections to the
20 admission of Exhibit 14? It is admitted.

21 (Exhibit No. 14 was offered and admitted into
22 evidence.)

23 MR. HALM: Thank you, your Honor.

24 Q (By Mr. Halm) Okay. I'd like to move to
25 dispute resolution issue that we talked about just before

1 we left for break. And I'd like to hand you two copies of
2 documents that were produced to Charter during discovery
3 period in this case.

4 As my co-counsel is distributing copies of these
5 documents, let me just explain that these, again, are two
6 documents provided to Charter during the discovery
7 process.

8 The first one is marked with Bates Stamp CT-037.
9 The second one, unfortunately, the Bates Stamp marking has
10 been cut off in the photocopying process, I presume. But
11 I believe it was received from CenturyTel in this manner.
12 Both documents are titled Charter Missouri Dispute
13 Summary.

14 MR. HALM: Everybody's got a copy?

15 MR. COMLEY: No.

16 MR. HALM: Oh, okay.

17 JUDGE VOSS: Yeah. I'd like to offer these.

18 MR. COMLEY: They haven't been marked yet.

19 JUDGE VOSS: And I only have one copy. There's
20 only one? You said there were two.

21 MR. COMLEY: Let's go ahead -- I think we
22 probably ought to mark the first one and get it out of the
23 way so it's marked.

24 MR. HALM: Okay.

25 MR. COMLEY: Then I'll pass out the next one.

1 MR. HALM: Okay. So then the first one would
2 have the Bates stamped designation CT-037. Is that the
3 one you have, your Honor?

4 JUDGE VOSS: Yes.

5 MR. HALM: Okay. So we'll mark that as 15. Is
6 it appropriate to mark the second document at this point
7 in time?

8 MR. COMLEY: I think so.

9 MR. HALM: Okay. Mr. Peters, have you seen
10 these documents before?

11 MR. PETERS: I have. I think we produced them
12 to you.

13 MR. HALM: Your co-counsel was asking which
14 document request we --

15 MR. DORITY: Which one was it?

16 MR. PETERS: I don't know. But I could probably
17 find out.

18 MR. HALM: Yeah. That looks to be correct.
19 Data Request 21.

20 MR. DORITY: Thank you. I couldn't figure it
21 out.

22 MR. HALM: Yeah.

23 Q (By Mr. Halm) Thank you for your indulgence.
24 Have you had an opportunity to review these documents,
25 Mr. Miller?

1 A No. It was just handed to me. Just a moment,
2 please.

3 Q Okay.

4 A Okay.

5 Q Have you seen these documents before?

6 A Yes.

7 Q Did you participate in the gathering of
8 documents and facts in response to Charter's discovery or
9 data request in this matter?

10 A No to these two particular ones, no.

11 Q Did Ms. Hankins prepare these documents?

12 A I believe so. Yes.

13 Q These documents identify bill dates for two
14 separate accounts in the left-hand column; is that
15 correct?

16 A Yes.

17 Q And that would be -- that would represent the
18 date in which CenturyTel issued a bill to Charter --

19 A Yes.

20 Q -- correct? The second column, the header is
21 captioned Date Dispute Filed.

22 A Yes.

23 Q For every bill date identified in these two
24 documents, is there a date the dispute was filed?

25 A Yes.

1 Q Do you have any reason to believe Charter did
2 not dispute any particular month, stipulating the lateness
3 of many of these?

4 A No.

5 Q Okay. So then they did dispute them, but they
6 may not have disputed them within 30 days?

7 A Or even one year. Yes.

8 Q Or one year. But they did dispute them?

9 A Yes. Again, stipulating that some of these are
10 a year and a half after the fact, they did dispute them.

11 Q Right. Is there a provision in the contract
12 that requires that they -- requires that they be disputed
13 within 30 days?

14 A I don't believe there's a specific wording to
15 that effect.

16 Q No. Is there any date or term in the contract
17 which requires disputes to be submitted within any period
18 of time?

19 A I believe there is an applicable term here,
20 Counselor. It may not be the one you had in mind,
21 however. In Section 9, 9.2, it says, Except as otherwise
22 provided, payment of amounts billed for services provided,
23 where billed on a monthly basis shall be due 9.3 says, If
24 it's subject to a good faith dispute --

25 Q I'm sorry. Before we move on to 9.3, 9.2,

1 payment of amounts billed?

2 A Uh-huh.

3 Q Shall be due immediately?

4 A Uh-huh.

5 Q Doesn't 9.2 go to when payment is required?

6 A Twenty days after the date of the statement.

7 Q Right. That's different from when a dispute is
8 required?

9 A Well, yes, sir.

10 Q Okay. 9.3, please go ahead.

11 A If the amount or any portion -- if any portion
12 of the amount is subject to a good faith dispute, the
13 billed party shall give notice to the amount and include
14 in such notice specific details and reasons for disputing
15 these items.

16 And 9.4 goes on to say, Undisputed charges due
17 to non-payment by the due date shall be subject to late
18 payment.

19 Q Okay, Mr. Miller.

20 A And these were not disputed on time. Therefore,
21 they should have been paid and subject due to late
22 payments. So, yes, sir, you can dispute them a year and a
23 half after the fact, but you should have paid them, which
24 they didn't do.

25 Q Going back to 9.3, which is on page 11 of the

1 contract, and four lines down, there's a sentence that
2 begins Notice.

3 A Yes.

4 Q Notice of a dispute. Would you read that
5 sentence to us?

6 A Notice of a dispute may be given by a party any
7 time either before or after an amount is paid -- before or
8 after an amount is paid. And the party's payment of an
9 amount shall not constitute a waiver of such party's right
10 to dispute this obligation to pay such amount or to seek a
11 refund of such amount paid.

12 Q Thank you. The sentence immediately preceding
13 that sentence speaks to respective -- prospective dispute
14 of charges. I assume you're familiar with that provision
15 of the contract?

16 A I -- where are you? 9. --

17 Q 9.3.

18 A Three. Yes. I see that 9.3 does speak to
19 prospectively the class of charges and goes to on to say
20 that those would be subject to disputes resolution,
21 Section 14 in the same paragraph.

22 Q Okay. Are you aware of the prospective disputes
23 offered by Charter in 2004?

24 A I'm aware that Charter offered a prospective
25 dispute prior to our dispute resolution that you and I had

1 personally. And that was concluded in 2004.

2 Q And that prospective dispute was pursuant to
3 Section 9.3 of this contract?

4 A I would assume that that's -- yes, it was.

5 Q Okay.

6 A You had a Section 14 dispute that addressed that
7 prospective dispute.

8 Q Section 14 dispute, if I read your testimony
9 correctly, you believe that CenturyTel has a right to
10 sustain its charges and terminate dispute proceedings. Is
11 that a fair characterization of your testimony?

12 A I believe that Section 14 says that we shall get
13 together, we'll talk it out in an attempt to reach a
14 resolution, and that if a resolution is not satisfactory
15 to one of the parties, they may escalate.

16 Q Okay.

17 A And that -- no escalation was done in this case.

18 Q Where is the provision that says CenturyTel has
19 a right to sustain its charges and terminate dispute
20 proceedings?

21 A 142 says, If the parties have been unable to
22 resolve the dispute -- and I assume that means to the
23 satisfaction of one of the party -- within 45 days of the
24 day of the initiated party's written notice, either party
25 may proceed to remedies available in the agreement at law,

1 equity or otherwise, but not limited to instituting the
2 appropriate proceeding before the Commission, the FCC or a
3 court of competent jurisdiction.

4 Q Thank you for restating that. Which provision
5 of the contract gives CenturyTel the right to sustain a
6 billing dispute and terminate a billing dispute?

7 A In 14.1, it says that the parties
8 representatives shall meet at least once in 45 days after
9 the date of initiating party's written notice in an
10 attempt to reach a good faith resolution of the dispute.

11 Q So your answer is Section 14.1?

12 A It says that we're supposed to attempt to reach
13 a resolution of the dispute.

14 Q Is your answer Section 14.1?

15 A Yes.

16 Q Thank you. Is there any provision in Section 14
17 that said disputes must be -- must be escalated within 45
18 days?

19 MR. PETERS: Objection. The document speaks for
20 itself.

21 JUDGE VOSS: I'll sustain that.

22 Q (By Mr. Halm) Okay. Let me ask a separate
23 question. On page 16 of your surrebuttal testimony, at
24 lines 11 and 12, do you have that in front of you?

25 A I do.

1 Q There, you say the wording of the ICA implies
2 that the dispute is over after 45 days unless escalated.
3 When you use the term implies, did you mean that the
4 contract does not specifically state, but seems to
5 indicate?

6 A I believe that if you read the context of the
7 contract, it says that if the parties have been unable to
8 resolve the dispute that it tells me that the unsatisfied
9 party has the right to escalate.

10 Q When you wrote this testimony -- you did write
11 this testimony, didn't you?

12 A I did write that testimony.

13 Q Okay. Why didn't you say the wording of the ICA
14 states or requires?

15 A Because I didn't write this wording, so it's not
16 as clear as I would have written it.

17 Q I'm sorry. I thought you said did you write
18 this?

19 A No. No. I'm sorry. I didn't write this
20 agreement. I wrote the testimony. I'm sorry. I
21 misspoke. I did not write this agreement, so it's not a
22 positive statement that I personally might have made.

23 Q When you wrote the testimony, in this sentence,
24 on line 11, the wording of the ICA implies, why didn't you
25 say that the wording of ICA states, requires?

1 A Because the ICA is not a perfect agreement. It
2 doesn't state things as positively as we might both
3 imagine it should.

4 Q Okay. Thank you. I think the last issue that I
5 want to ask you about is a statement you made in your
6 rebuttal testimony on page 12 on lines 14 through 16. In
7 particular, the particular sentence that I want to ask you
8 about is that which states -- wherein you state, Neither
9 the customer's ability to port nor the implementation of
10 the customer's decision to port are at issue here. Is
11 your point there that those particular issues are not
12 relevant to this dispute?

13 A The context of that statement, Counselor, refers
14 to Mr. Schremp's testimony where he was trying to, in my
15 opinion, take us off the track by implying that the
16 customer can't port, and that's not what's at discussion
17 here.

18 We're not talking about the customer not being
19 able to port. We're talking about whether or not Charter
20 paid it -- paid its bill. The customer always has the
21 ability to port.

22 Q Okay.

23 A It has nothing to do with us. We're talking
24 about Charter not paying its bill.

25 Q If CenturyTel terminated the interconnection

1 agreement with Charter, would CenturyTel still continue to
2 port numbers to Charter?

3 A I suspect that would be a matter that we would
4 take up with this Commission. It is CenturyTel's position
5 that we do not want to stand between a customer and his
6 rights.

7 However, we do expect to be paid. And we would
8 expect that the Commission would uphold our ability and
9 our right to be paid. And we would expect the Commission
10 to also be concerned about the customers, but to want
11 Charter to pay us so that the customer could continue to
12 get their ability to port.

13 Q Didn't you testify earlier that an
14 interconnection agreement is required in order for porting
15 to occur between two carriers?

16 A An interconnection agreement is required in
17 order for porting to occur between two wire line carriers.

18 Q Is CenturyTel a wire line carrier?

19 A Yes.

20 Q Is Charter a wire line carrier?

21 A Yes.

22 Q If the current contract were terminated and a
23 new contract were not put in place, would CenturyTel still
24 port numbers to Charter?

25 A If you did not have a contract in place, there

1 would be no obligation under law to port to you.

2 Q If you have no obligation under the law, you
3 being CenturyTel, presumably, CenturyTel wouldn't port; is
4 that right?

5 A If we do not have an obligation under law, then
6 we do not have an obligation under law.

7 Q So the termination of this agreement could
8 affect the customer's ability to port numbers between
9 Charter and CenturyTel?

10 A If Charter takes an action to terminate this
11 agreement, Charter would cause customers not to be able to
12 port to Charter.

13 Q What if CenturyTel took that action to --

14 A CenturyTel would only take an action to
15 terminate pursuant to Charter's action. It would be
16 Charter who was ultimately the causer of the termination,
17 not CenturyTel.

18 MR. HALM: Okay. I have no more questions, your
19 Honor. Thank you, Mr. Miller.

20 JUDGE VOSS: Did you want to move for Exhibits
21 15 and 16?

22 MR. HALM: Yes, I did. If I could move for
23 entry of Exhibits 15 and 16 into the record, your Honor.

24 JUDGE VOSS: Are there any objections to those
25 exhibits? Hearing none, they're admitted. And questions

1 from the Bench? Commissioner Murray?

2 COMMISSIONER MURRAY: Thank you.

3 CROSS-EXAMINATION

4 BY COMMISSIONER MURRAY:

5 Q Good afternoon.

6 A Good afternoon.

7 Q What is the ratio, if you know, of the customers
8 that port from CenturyTel to Charter versus those that
9 port from Carter to CenturyTel?

10 A You know, Commissioner, I wish I had the exact
11 answer for you. I know, generically, Mr. Halm I think
12 alleged earlier this morning, thousands and thousands and
13 thousands. I think it's somewhere in the five figure
14 thousands versus somewhere in the scores, hundreds. I
15 mean, it's a huge variance --

16 Q So --

17 A -- at this point in time.

18 Q So the fact that Charter doesn't charge
19 CenturyTel for the service, the number portability
20 services really doesn't affect Charter very much, does it?

21 A No. It's definitely in Charter's best interest
22 not -- to say that both parties shouldn't charge. It's in
23 their financial best interest.

24 Q Okay. Are there other services that are listed
25 in the interconnection agreement without mention of a

1 charge for which either party does, in fact, impose a
2 charge?

3 A I'm sorry. Say that again, Commissioner.

4 Q All right. Are -- are there other services
5 other than the administrative services for local number
6 portability that are listed as a service in the
7 interconnection agreement without a charge being mentioned
8 for which either party does, in fact, impose a charge?

9 A Stipulating that I'm not opening the agreement
10 right now and actually trying to go through it, I think
11 the answer would be yes. And the first one that would
12 come to mind would be interconnection type trunkage.

13 Typically, the parties would have a meet point
14 or a colocation for their interconnection. And quite
15 often, the -- the CLEC does purchase facilities from
16 CenturyTel and they do so pursuant to our tariff for their
17 side of the -- the equation. Or they -- they pay for 50
18 percent of it. It just depends on the terms of the
19 agreement.

20 Q And you don't think that there's any mention
21 about charge or pricing related to the interconnection
22 type --

23 A Typically, what it would do is the exact same
24 thing it does here. It says the parties will look to the
25 applicable tariff.

1 Q All right. Looking at the pricing attachment to
2 the interconnection agreement -- do you have that
3 interconnection agreement before you?

4 A Yes, ma'am.

5 Q On page 127 --

6 A Okay.

7 Q -- the part that provides for the non-engineered
8 initial service order?

9 A Yes.

10 Q Now, is that the pricing that was apparently
11 charged by CenturyTel in the beginning as it -- that you
12 said was not the correct charge?

13 A No, ma'am. Let me -- let me clarify that for
14 you. I need to set the context that back in the end of
15 2002 when CenturyTel acquired this property, to that
16 point, CenturyTel had primarily been a rural local
17 exchange carrier and was very unfamiliar with competition,
18 which is one of the reasons that they hired me by that
19 point in time.

20 So the CenturyTel service representative
21 employee who set up the billing for Charter opened up this
22 agreement, turned to this pricing section and found a rate
23 that said port charge, port, unfortunately, being one of
24 many terms within the telecom world that the same word has
25 multiple meanings.

1 That employee, knowing that it was our policy to
2 charge for porting, when it got around to setting up the
3 billing for this as we implemented this purchase, these
4 properties, he or she saw that charge and said, Oh, that
5 must be the charge that we levy when they submit a port
6 order, not realizing that it was referring to an unbundled
7 switch port. So that's where that \$19 and whatever it was
8 came from.

9 The reference here to the non-engineered initial
10 service order points to Mr. Voight's testimony where
11 Mr. Voight decides that in his view, this should be
12 strictly a matter of contract interpretation.

13 And the point that CenturyTel is making here is
14 although we respectfully disagree with Mr. Voight's
15 position overall, if we accept -- if the Commission
16 accepts that is he correct and that this is a strict
17 matter of interpretation, if you look at this agreement
18 and look at everything in this agreement, you will find
19 that LSR is a defined term.

20 And LSR, as a defined term, can only mean LSR as
21 a defined term. It's not correct in my assessment as a
22 non-lawyer, but as a contract person, to use a term in
23 some manner other than as defined within the same body of
24 an agreement.

25 And if you look to LSR as a defined term, it

1 says that it -- well, let me find and actually read it to
2 you, if I may.

3 Q Page 37?

4 A Yes. Page 37. An industry standard form which
5 contains data elements and usage rules used by the parties
6 to establish, add, change or disconnect, resold
7 telecommunications service and network elements.
8 Therefore, pursuant to this agreement, the defined term
9 LSR means that it can only be used as defined, which is
10 the industry standard form used to establish, add, change,
11 disconnect, resold or network elements.

12 Therefore, when you turn to Section 15 back in
13 the interconnection when it says an LSR is going to be
14 used for porting, if you have to use an LSR pursuant to
15 its definition in this agreement, then you're led to the
16 conclusion that, oh, the parties meant to say that an LSR
17 is used for these purposes.

18 Therefore, any definition of an LSR is
19 encompassed within these two purposes. So the fact it's
20 used for porting, even though it's not resale and network
21 elements doesn't matter.

22 The pricing established for network elements is
23 what you will use when an LSR is used, period, end of
24 discussion. And if you'd look at the type of work
25 required, the processing of a resale LSR is virtually

1 identical administratively to the processing of a porting
2 LSR. That's how we get to the non-engineered initial
3 service order on page 127.

4 Q Okay. Thank you for that. There's a reference
5 in Section 15.2, and that's page 1 -- page 78 that -- that
6 says, The parties shall provide L&P on a reciprocal basis.
7 What do you think reciprocal basis means in that context?

8 A I believe it means that we'll use the same
9 processes, the same intervals and everything else and that
10 they port from us, we can also port from them using the
11 same rules, regulations, processes, et cetera. I mean,
12 stipulating the term processes, of course, but --

13 Q Does it mean to you that they can charge?

14 A Absolutely, they could charge us. In fact, we
15 have paid them. We paid them back in 2004, which they
16 never gave back.

17 Q Under this interconnection agreement, did you
18 receive a bill for such services?

19 A No. When we were at the time of dispute, we
20 felt that even though they were making a point of not
21 charging us that we felt that we should have paid -- we
22 should pay them, and we did.

23 Q And that's one of those dollars and cents things
24 where if you both do it, it's better financially for
25 CenturyTel. And if you both do it, its better financially

1 for Charter, correct?

2 A Oh, there's no doubt that if -- if we don't
3 charge each other, Charter gets an awful lot of work out
4 of CenturyTel and CenturyTel has an awful lot of resources
5 tied up on behalf of Charter for which we are receiving no
6 compensation.

7 If we do charge each other, CenturyTel doesn't
8 make out anyway. We don't get a profit out of this. We
9 just get a chance to recover some of our costs for doing
10 the work for them, which is all we're asking to do. In
11 their case, they get profit. In our case, we don't.

12 Q If you'd look at Section 15.4 2, which is page
13 79 -- no. It's not page 79.

14 A Page 80.

15 Q Page 80. That section says, Prices for interim
16 numbered portability and formulas for sharing terminating
17 access revenues associated with interim number portability
18 shall be provided where applicable upon request by either
19 party.

20 And my question there is, if, for interim number
21 portable, prices are expressly mentioned, why wouldn't a
22 similar reference have been made for just local number
23 portability if pricing were contemplated?

24 A Well, interim is very different. Interim number
25 portability, of course, Commissioner, is essentially call

1 forwarding. Where until the implementation of permanent
2 number portable, we would just call forward the number to
3 another number assigned by the competitor in this case,
4 Charter.

5 And what this is referring to has nothing to do
6 with -- with the cost incurred by processing that or
7 anything else. It's specifically referring to terminating
8 access revenues because with -- with interim number
9 portability, a terminating call is still coming to
10 CenturyTel and using CenturyTel switch and we're incurring
11 switching costs and so forth.

12 And then we're forwarding it to them. So it's
13 -- we're sharing access costs in that case. And it says
14 because you're sharing the access costs on an interim
15 basis, you guys need to work out the details of how you're
16 going to do that. It's a very different situation.

17 Q What was the trigger, if you know, that caused
18 CenturyTel to demand payment or discontinue service after
19 an extended period of time without making that demand?

20 A Commissioner, you have to understand that -- as
21 I mentioned earlier, you know, CenturyTel, prior to 2002,
22 was primarily a rural local exchange carrier with very
23 little experience in dealing with competitors.

24 And, accordingly, we didn't have much in the way
25 of processes and knowledge and dealing with competitors,

1 nor did we have tracking systems in place to track the
2 accounts receivable of our competitors.

3 In fact, that wasn't a function of the Care
4 Relations Department. So when it was brought to our
5 attention in 2004, we had this dispute resolution. We
6 were paid. We were clean at the time. We established
7 that it should be this charge going forward. We knew that
8 we were billing them.

9 We, in Care Relations, didn't know what they
10 were paying and not paying and what the balance was. We
11 just didn't have systems this place to track that. And as
12 we engaged in our daily business, in dealing with other
13 competitors, other issues and so forth, we just -- we just
14 didn't know what was going on with this situation until it
15 was later brought to our attention how this accounts
16 receivable had grown.

17 The AR Department brought it to our attention,
18 Hey, do you guys know that Charter's got this big bill out
19 there in Missouri where they haven't been paying for this?
20 And that's what triggered us doing that.

21 Now, we have subsequently modified things.
22 We've adapted processes to track this better. And we
23 brought it into the Care Relations Department so that we,
24 the people who are most knowledgeable with the
25 interconnection agreements, with the provisions of the

1 agreements and the ones who have to address the disputes
2 on these agreements, we also now know what's going on with
3 payments and billings to our competitors. But that was
4 not something that was in place until the past couple
5 years.

6 Q All right. Would you please explain your
7 understanding of the cost recovery rule 47 CFR Section
8 5233 that you mention on page 11?

9 A That is the end user charge?

10 Q Well, it's called the cost recovery rule. Let
11 me see. Yes. That is the end user charge. Yes.

12 A Yes. Again, without having the documentation in
13 front of me and just doing this from memory, the cost
14 recovery rule says basically that local exchange carrier,
15 incumbent local exchange carrier, I believe, only, could
16 take the implementation costs and local number portability
17 and break that down into an estimate of -- of what the
18 costs would be on a per end user basis over five years and
19 then levy that as a monthly charge, specifically, to
20 recover the cost of implementing the local number
21 portability, things such as the software, upgrades to the
22 system that were specific to portability as opposed to
23 generic, upgrades to the service order system to
24 accomplish the processing of porting LSRs and so forth.

25 All of those kinds of L&P specific costs to

1 implement portability, we were allowed to take those
2 costs, evaluate them over a five-year period and -- and --
3 and break it down on a per end user basis and then recover
4 them that way.

5 It was never meant to recover ongoing
6 operational costs. And the FCC has clarified that in
7 further orders. Operational costs, including things such
8 as the -- the dip charge.

9 If a call is processed -- is sent to us on a
10 ported number and the other carrier fails to do the dip to
11 send it to the right place, we have the right to assess a
12 dip charge. That's one.

13 These service order charges are another. They
14 are not included in that end user charge. These are other
15 costs according to the FCC that should be recovered
16 through normal methods. That's what the Bell South case
17 in 2004 said.

18 Q All right.

19 A And by the way, Commissioner, the -- as I
20 understand the order, once the five-year period is ended,
21 which it did in this case back in March of 2004, we're
22 allowed to take all ongoing costs and recover them through
23 normal methods.

24 So even ones that potentially were included in
25 that end user charge, to the extent that there are

1 continuing ongoing costs, we can now recover those through
2 normal methods such as service order charges.

3 Q So are you -- are you saying that you could be
4 charging Charter more based upon some of the
5 implementation costs being --

6 A Not the implementation costs, the ongoing
7 operational costs. For example under the -- the cost
8 recovery rule, we are not allowed to charge for actually
9 doing a port.

10 What we're talking about here today,
11 Commissioner, is the administrative service order
12 processing, the processing of LSR regardless of what the
13 purpose is.

14 Once that LSR was entered into the system and
15 goes to the provisioning people who actually work the
16 port, to work with -- with SOA and NPAC and do the actual
17 port itself, we are not allowed to recover those costs
18 from Charter or any other local exchange carrier while
19 this five-year period was in place.

20 Once the five-year period is ended, which it is
21 in this case, those are ongoing operational costs which we
22 can now recover through normal means, including service
23 order charges. So, yes, we could charge Charter more
24 today than we could prior to March of 2004.

25 COMMISSIONER MURRAY: Thank you. I think that's

1 all I have.

2 A Okay. You're welcome.

3 JUDGE VOSS: Commissioner Jarrett?

4 CROSS-EXAMINATION

5 BY COMMISSIONER JARRETT:

6 Q Good afternoon.

7 A Good afternoon, sir.

8 Q When Commissioner Murray asked you a couple of
9 questions and you had answers regarding the fact that had
10 you paid Charter --

11 A Yes, sir.

12 Q -- for --

13 A Yes, sir.

14 Q -- processing some LSRs, how much did -- did you
15 pay?

16 A Stipulating on only relying upon memory, I think
17 it was around \$6,000.

18 Q And what -- what does that come out per LSR?

19 A We gave them the exact same rate we were
20 charging them.

21 Q Okay.

22 A I mean, to --

23 Q So that's how you based your charges, on what
24 you were charging them?

25 A To the extent Commissioner Murray was asking

1 about reciprocal, we paid them at the same rate we charged
2 them.

3 Q I believe you were here this morning when Ms.
4 Giaminetti -- is that close enough?

5 MR. HALM: Giaminetti.

6 A Giaminetti.

7 Q (By Commissioner Jarrett) Were you here when
8 she testified this morning?

9 A Yes, sir, I was.

10 Q Do you recall her testimony?

11 A Yes, sir, I do.

12 Q She had testified that CenturyTel took over the
13 ICA from Verizon in approximately September of 2002. And
14 then she testified that it wasn't until nine months later
15 that CenturyTel started charging for these LSRs.

16 And I believe her testimony was that it was over
17 -- at least over a hundred LSRs were processed by Charter
18 -- or by CenturyTel during that time that Charter never
19 charged for.

20 A Correct.

21 Q Or CenturyTel never charged for. Excuse me.
22 Charter never paid for. In your experience, is that -- is
23 that accurate?

24 A It's a true statement. Yes. There's a reason
25 for it, of course, but it's a true statement.

1 Q That was my next statement. Why didn't
2 CenturyTel charge for those?

3 A Well, Commissioner, again, going back to 2002
4 when we were primarily a rural local exchange carrier and
5 not familiar with competition and didn't have processes in
6 place for competition, it was our intent to charge from
7 Day 1. Without question, Commissioner, it was our intent
8 to charge from Day 1.

9 But a couple things had to happen there. First
10 off, you have to realize that we made two purchases at the
11 same time, in fact, our two, to the best of my knowledge,
12 largest states. We purchased all the properties from GTE
13 Verizon and Missouri and Alabama within one month of each
14 other. So we were very, very wrapped up in taking those
15 purchases and trying to incorporate them into the company.

16 I mean, those of us in Care Relations, for
17 example, we suddenly received hundreds of interconnection
18 agreements that we had to assimilate, we had to
19 understand. We had to know what the competitors were,
20 what the -- what -- this, that and the other thing.

21 So we're trying to assimilate two extremely
22 large bites of the apple at one point in time. And, of
23 course, interconnection and interconnection agreements,
24 while a main focus of my department are just one part of
25 the entire acquisitions and one piece of the things that

1 had to be assimilated.

2 So when you take your resources of a company,
3 you have to allocate them on a priority basis, and that's
4 kind of what we did in doing this. I mean, our first --
5 our first priority is to the end users to ensure that as
6 they transition from GTE Verizon to CenturyTel that we
7 didn't want any hiccups there.

8 As to the extent that we were due monies from
9 Charter or anybody else, you know, we had to focus first
10 on end user customers so billing to that goes first before
11 we worry about billing to anybody else.

12 If you look in the agreement, and I don't have
13 the exact citation in front of me, but I can find it for
14 you, it basically says in the agreement that the fact that
15 we didn't do something doesn't waive our right to do it
16 later. It doesn't mean we've waived it totally.

17 So we knew we could pick it up whenever we
18 needed to. I mean, by not charging for those first few
19 months, we weren't waiving our rights forever to charge.
20 It just meant we didn't get to it.

21 So we're trying to assimilate two big things.
22 We're focusing on priorities first. First the customers
23 and then dealing with Commissions such as yourself and
24 what your requirements were. And, you know, finally --
25 and, again, we didn't have any processes in place. We

1 didn't have the billing processes in place for these
2 competitors.

3 We had to develop those. We had a billing
4 system, but we didn't have billing processes for these
5 competitors. And they have to be set up on an individual
6 basis and an individual element basis such as this LSR
7 charge. So it took time to do all that, and that's why it
8 took time to get around and get it in place.

9 Q I had one -- I guess one final line of
10 questions, maybe one or two questions regarding talking
11 about CenturyTel saying if -- if there is no agreement
12 between Charter and CenturyTel, then CenturyTel is not
13 obligated to port the number. Is -- is that accurate from
14 what you state?

15 A Can I put that in a context so it would be
16 understandable to you?

17 Q Please. Yeah.

18 A Let me -- let me -- let's talk for a moment
19 about non-carrier VOIP providers. There are a lot of
20 companies out there who have taken the position that, Oh,
21 I'm not a carrier. I'm just an ESP. And they do this, my
22 personal opinion, to avoid a lot of telephone regulation
23 and charges that they otherwise would have to pay, such as
24 access if they are telephony company.

25 But they've taken the position that they're not

1 a carrier. So to the extent that the Telecom Act, Section
2 251 and specifically 251(b) refers to obligations of all
3 local exchange carriers, they are not a local exchange
4 carrier. They are not incorporated as such. They are not
5 set up as such. They don't hold themselves out as such,
6 and they don't come to you, the Commission, to get a
7 certificate for one.

8 Therefore, we have no obligation to port to
9 those companies, and, in fact, we don't. If a non-carrier
10 VOIP -- if an end user wants to go to a non-carrier VOIP
11 and just directly from that non-carrier VOIP, then the
12 non-carrier VOIP cannot send us an order because they are
13 not a local exchange carrier.

14 It was for this reason that FCC recently
15 clarified that, Oh, well, we want customers to be able to
16 port to these people, but we recognize that they're not
17 carriers. Therefore, they need to partner with a carrier
18 to act as their carrier front so that there is a legal
19 basis to port to them.

20 So my reference earlier to not porting was if we
21 didn't have an interconnection agreement in place, which
22 is required between wire line local carriers, we have no
23 obligation to port to them if -- if they are not a wire
24 line local exchange carriers who are operating pursuant to
25 251. If they're operating pursuant to 251, they must have

1 an agreement.

2 So if they don't, we don't have that obligation.
3 So, therefore, we wouldn't port directly to them, but we
4 would certainly port to a certificated carrier partner of
5 theirs on their behalf.

6 Q So let's say -- I have a hypothetical. Let's
7 say that this dispute between you and Charter reached its
8 climax and -- reached its climax and you decided that they
9 were in default of the agreement, and you weren't going to
10 honor any more of their requests.

11 I'm a customer of CenturyTel. I want to switch
12 to Charter. I want to keep my phone number. Charter
13 submits the request to port. You refuse it. What happens
14 to me as the customer? Do I get to keep my number with
15 Charter?

16 A Well, Commissioner, given the fact that we are
17 speaking hypothetically, and I don't think it would ever
18 come to that because at worst there would be a short
19 period of time where porting might cease until, as Charter
20 did in 2004, they paid what they owed and we process their
21 orders and went back to life as normal or we came before a
22 Commission on an expedited basis and -- and you instructed
23 us to -- to port on an interim basis while they was
24 resolved or something would happen to take care of the end
25 user.

1 In fact, CenturyTel would probably come to you
2 for -- and I'm just speaking from my opinion now. If they
3 didn't, we probably would come to you with a concern to
4 make sure that we address the end user appropriately
5 during this type of a dispute.

6 We know how important that is to you, the
7 Commission. And it's important to us as -- as a carrier
8 as well because we expect that we're going to get some of
9 these people back someday. We expect we're going to get a
10 lot of these people back someday, and we don't want them
11 to leave on a sour note if possible.

12 COMMISSIONER JARRETT: Very good. Thank you.
13 No further questions.

14 A Thank you.

15 JUDGE VOSS: Is there any recross based on
16 questions from the Bench?

17 MR. HALM: Yes, your Honor, a couple questions.

18 THE COURT REPORTER: Excuse me. I need to
19 change paper before we do that.

20 JUDGE VOSS: Change paper real quick.

21 (Break in proceedings.)

22 JUDGE VOSS: Please proceed.

23 MR. HALM: Thank you.

24 RE CROSS EXAMINATION

25 BY MR. HALM:

1 Q Mr. Miller, in response to Commissioner
2 Jarrett's question a moment ago, with respect to why
3 CenturyTel didn't assess charges for a period of time
4 after your acquisition with Verizon, of the Verizon
5 properties, excuse me, you referred to Section 48, I
6 believe, or the waiver provision of the interconnection
7 agreement. Didn't you? Do you recall making --

8 A I recall referring to -- yes. I didn't have it
9 specifically by number.

10 Q And just explain a little bit more your point
11 there.

12 A Well, Section 48 says that a failure or delay of
13 either party to enforce any of the provisions of the
14 agreement or any right or remedy available or to require
15 performance of any provision, exercise any option which is
16 provided shall in no way be construed to be a waiver of
17 such provisions, remedies, options.

18 I read that to mean that the fact that we
19 delayed billing the service order charge to Charter did
20 not in any way con -- was construed a waiver of our right
21 to do so.

22 Q Okay. Does this provision also apply to bill
23 dispute processes under Section 9?

24 A I don't know that Section 9 refers to this.
25 It's a general term of the contract.

1 Q It seems to refer to any right that a party has
2 under the contract?

3 A It appears to do so.

4 Q And you testified earlier that because Charter
5 didn't escalate the 2004 dispute after the forty-fifth day
6 that it had effectively waived its right to do so.

7 A Well, I think this general provision is just
8 that, Counselor. It's a general provision. And it
9 doesn't speak to specifics when specifics are addressed
10 elsewhere in the agreement.

11 Q But you do think it applies to CenturyTel's
12 failure to bill during a period of time, but you don't
13 think it applies to Charter's decision not to escalate the
14 dispute; is that right?

15 A No. I don't think it does apply to Charter's
16 failure to escalate.

17 Q Okay. With respect to the payments you made to
18 Charter in 2004, I think you said it was roughly \$6,000.
19 It may already be in the record, but I'd like to clarify.
20 Did Charter bill CenturyTel for this?

21 A No. I did state that Charter did not bill.

22 Q Okay. Finally, in response to a question from
23 Commissioner Murray, I think you were referring to
24 Mr. Voight's testimony and I guess you would say the
25 implications of accepting Mr. Voight's testimony. And it

1 seems to me, and tell me if I have this wrong, but what
2 you're saying is if we construe the contract on its terms,
3 literally, then the only time that Charter should be
4 permitted to submit an LSR to CenturyTel is if it want to
5 resell service or purchase an unbundled network element
6 from CenturyTel because that's what an LSR is defined as
7 under the contract?

8 A No. That's not quite --

9 MR. PETERS: Objection. Objection. Misstates
10 his prior testimony.

11 JUDGE VOSS: I couldn't hear the last part of
12 the your objection.

13 MR. PETERS: Misstates his prior testimony.

14 JUDGE VOSS: I -- could you restate your
15 question?

16 MR. HALM: Yes.

17 JUDGE VOSS: Okay. If it misstates the prior
18 testimony, I expect the witness to correct it.

19 Q (By Mr. Halm) Could you please explain to us
20 the point you were making in response to Commissioner
21 Murray about reading the contract by its terms and,
22 specifically, the definition of an LSR?

23 A Certainly. As I stated, although we
24 respectfully disagree with Mr. Voight's overall
25 interpretation and do believe that if you go to the tariff

1 and that's what applies, my point was, if we take
2 Mr. Voight's position that we're supposed to use strict
3 contract interpretation, the fact that LSR is a defined
4 term means you must use that defined term in this
5 agreement without exception.

6 You're not allowed to say, Well, yeah, I mean,
7 it's here, but we can't -- it means something else
8 somewhere. No. You can't do that.

9 Therefore, what I was attempting to explain is
10 that under that theory, it would be obvious to me that the
11 parties who negotiated this, which would have been GTE
12 Verizon and would have been the predecessor employees of
13 -- of your client, meant to say that any time an LSR was
14 used for any purpose in this agreement, it was encompassed
15 within that definition.

16 Therefore, because LSR is used in Section 15 to
17 port, it specifically says you'll submit an LSR that the
18 parties meant that an LSR for porting was encompassed
19 within either resale or -- or network elements as regard
20 to the pricing, that the parties meant that use of it are
21 for porting, you would use the resale pricing if that was
22 the most applicable rate. And it would be from a pure
23 logical standpoint on the work this time.

24 Q I'm reminded of your statement a little bit
25 earlier on that this contract is less than clear. Do you

1 still agree with that statement?

2 A There are provisions within this contract that
3 are less than clear.

4 MR. HALM: Great. Thank you. Thank you.

5 JUDGE VOSS: Redirect?

6 REDIRECT EXAMINATION

7 BY MR. PETERS:

8 Q Mr. Miller, just a couple clarification points.
9 Why do you think number portability is a local exchange
10 service as you testified earlier today?

11 A When Mr. Halm was asking me and trying to get me
12 to determine one way or the other whether portable was a
13 local exchange service, yes, no, I believe it is.

14 And the reason I believe it is is, respectfully,
15 not just because I want to disagree with Mr. Halm, and I
16 think the Commission needs to understand that. Number
17 portability is a 251(b) obligation. 251(b), if you -- and
18 I'm doing this from memory. But if you go look at it --
19 my memory, I believe, is pretty good -- it says that these
20 are obligations of all local exchange carriers. These are
21 local exchange carrier obligations.

22 In fact, the entire Telecom Act has to do with
23 competition of local exchange services. Therefore, in my
24 mind, everything that is encompassed within the Telecom
25 Act and in this case, Sections 251(b) and 251(c) do follow

1 within the purview of local exchange services because
2 that's what the Competition Act in those particular
3 provisions are all about.

4 Q Thank you for clarifying that. Mr. Halm asked
5 you a few questions -- I think he was referring to Exhibit
6 13 which was an order approving an arbitration award with
7 modification entered in that Public Utility Commission
8 case in Texas. Do you recall that testimony?

9 A Yes, I do.

10 Q Do you recall he showed you kind of the -- the
11 Exhibit 13, which was that final order --

12 A Yes.

13 Q -- that approved a rate of \$0.00?

14 A Yes.

15 Q Do you recall that?

16 A Yes, I do.

17 Q All right. On our -- on our break at about
18 3:00, did you have an opportunity to take a look at actual
19 opinion, the underlying opinion?

20 A Yes, I did.

21 Q All right. Can you explain for the Commission,
22 if you would, please, just briefly, what -- what your
23 understanding was of that opinion?

24 A My understanding is that, essentially,
25 Consolidated had the exact same position that we do, which

1 is any time we process an order, an LSR, including those
2 for porting, we do work. We incur expenses, and we
3 deserve to be paid for that. We deserve to be able to
4 recover our costs for doing work on behalf of a competing
5 carrier when they send us an LSR.

6 It is my understanding that setting aside the
7 rate, which I'll address in a minute, that the Texas
8 Commission agreed with Consolidated and said, yes, when
9 you process an L&P LSR, you are doing work. You are doing
10 work on behalf of the submitting carrier, and you deserve
11 to be compensated for that. You deserve to be able to
12 charge an administrative local service charge for
13 processing that LSR.

14 Now, in fact, the difference, as I tried to
15 point out as succinctly as I could, but, of course, I
16 could only respond to the questions I was asked, the
17 difference between that case and this case, that was an
18 arbitration of a new interconnection agreement where the
19 parties were establishing rates, terms and conditions
20 versus what is before the Commission today, which is a
21 dispute under an existing agreement which already has
22 rates, terms and continue conditions in it.

23 And in the case of the arbitration, the Texas
24 Commission said, you know, we think that you should be
25 able to charge for this. We agree with you. You're doing

1 work. You should be able to charge it. But you failed at
2 any time during this arbitration to -- to give us any
3 basis of your costs to allow us to give you a rate, and
4 that's why we're setting it at zero is because you weren't
5 diligent enough to follow through what you should have in
6 the arbitration.

7 So that's the -- the difference between that
8 case and this case. And that's the complete context.

9 Q And, again, thank you for that clarification.
10 Early on in Mr. Halm's cross-examination, he asked you a
11 couple questions that, frankly, confused me at the
12 beginning. But he asked you about agreements. Then he
13 also asked you about unwritten agreements.

14 Do you remember there was some testimony you
15 gave about agreements and he asked you if you had any
16 unwritten agreements?

17 A Yes.

18 Q A couple points of clarification. Do you port
19 any numbers for wireless carriers?

20 A Yes, we do.

21 Q And how frequently does that occur?

22 A Quite frequently.

23 Q And does CenturyTel have written contracts,
24 interconnection agreements or other agreements with these
25 wireless carriers typically?

1 A We have interconnection agreements with the
2 wireless carriers. But because they're wireless carriers,
3 they didn't have porting provisions. Porting was not
4 required on an intermodal basis until 2004.

5 So every agreement that predates didn't have
6 anything because we didn't port to wireless carriers. And
7 every agreement subsequent doesn't have terms either
8 necessarily in all cases because the FCC, in their
9 infinite wisdom, decided that for some strange reason,
10 interconnection agreements and porting terms were not
11 required for intermodal porting.

12 They're required for wire line porting, as I
13 emphasized earlier, but not for intermodal. So we do port
14 to wireless carriers where we do not have interconnection
15 agreements in place with rates and terms to do porting.

16 In fact, I think that was the basis of what
17 Mr. Halm was attempting to put in the record -- or did put
18 in the record earlier.

19 Another agreement that was amended, that was a
20 wireless agreement. The wireless agreement didn't have
21 rates, terms and conditions for reporting.

22 Q Is there a so-called unwritten agreement that
23 allows CenturyTel to charge an administrative service
24 order charge to these wireless carriers for porting
25 numbers to them?

1 A Well, to the extent it's not covered in the
2 interconnection agreement, we charge because we always
3 charge for service orders, and that's why our service
4 guides speaks to that. And the wireless carriers are
5 paying us, and they're paying us a tariff rate.

6 Q So you charge, then, the tariff rate much like
7 you're doing in this situation?

8 A We charge them the tariff rate.

9 Q And do wireless carriers, do most of them pay
10 these charges?

11 A Yes, they do.

12 Q Okay. Just one last area. There was some
13 discussion in response to Mr. Halm's question about why --
14 why you didn't come and seek out this Commission's
15 assistance or help in trying to revise this agreement to
16 allow for some more specific rate, let's just say, to be
17 charged. Do you remember that line of questioning?

18 A I do.

19 Q Okay. And, again, you've previously testified
20 that this agreement that you've got about which we've been
21 having much discussion was inherited by CenturyTel,
22 correct?

23 A Correct.

24 Q Okay. And CenturyTel was not involved in the
25 negotiation process or, frankly, the approval process with

1 this Commission as it relates to that interconnection
2 agreement; is that accurate?

3 A That's correct.

4 Q Okay. Did you believe that this agreement had
5 -- had had previous Commission approval?

6 A Yes.

7 Q All right. And did you similarly understand or
8 believe that the -- that the tariff rates were -- were
9 also previously approved by this Commission?

10 A Yes.

11 Q Did you think there was any need to come to this
12 Commission and -- and seek some sort of a modification or
13 revision?

14 A No.

15 Q Why -- why not?

16 A Again, once we had the dispute in 2004, we
17 reached the end of that dispute process. Charter failed
18 to escalate. In other words, despite the fact that they
19 threatened three times during this process to say, If you
20 don't give us an explanation or refund our money, within
21 45 days, we're taking you to the Commission to get that
22 back.

23 They didn't do that. I gave them the
24 explanation. I did not refund their money. They didn't
25 come to the Commission. By all -- everything I know about

1 dealing with -- with competitive carriers and
2 interconnection agreements, the dispute was over.

3 And, in fact, I believe the -- the agreement has
4 a good faith provision that says that she should have come
5 to the commission on a timely basis. Didn't do so. So to
6 that respect, we felt that it was over. The agreement was
7 clear.

8 The parties understood what the agreement was.
9 We had approved rates. The Commission had approved the
10 agreement. They approved tariffs. We were charging.
11 Charter knew we were charging. They knew they were
12 obligated to pay. There was no need to seek any type of
13 amendment to this agreement.

14 Q And had you not demanded to be paid for the
15 charges that accumulated thereafter, the 122, \$128,000
16 worth of charges that you testified about earlier had
17 accumulated, do you have any reason to believe that
18 Charter would have filed an action and come to this
19 Commission and sought a refund of its money?

20 Had it done any -- had it given you any evidence
21 of any intent that it was going to do that and tell you --
22 demand to be paid?

23 A I have no reason to believe that Charter would
24 not continue to submit orders and not pay for them to the
25 extent that we continued to process them had we not told

1 them we weren't going to do that anymore.

2 Q Without suing for a refund of the previous --

3 MR. HALM: I object, your Honor. Can you hear
4 me?

5 JUDGE VOSS: Yeah, I can.

6 MR. HALM: He's asking the witness to speculate.

7 JUDGE VOSS: Could you repeat the question?

8 MR. PETERS: Yeah. And, and to some degree,
9 he's correct.

10 Q (By Mr. Peters) But my point was is, Charter
11 had done nothing and evidenced no intent to file an action
12 to get a refund through this entire period. And my
13 question -- let's just rephrase the question. Try to
14 clarify the objection.

15 Had they done anything over this period of time
16 to tell you that they were going to follow you through
17 with their previous threats from three years before to
18 initiate an action to seek a refund of their money until
19 such time as you demanded that they pay in the summer of
20 '07?

21 A No, they had not.

22 MR. PETERS: Okay. Thank you. I have no
23 further questions.

24 JUDGE VOSS: Commissioner Jarrett?

25 COMMISSIONER JARRETT: I'm sorry to jump in. I

1 did have one -- one more question.

2 RE CROSS EXAMINATION

3 BY COMMISSIONER JARRETT:

4 Q Can I direct you to the ICA, page 42? It's the
5 definition of tariff.

6 A I'm sorry, Commissioner. What page?

7 Q Page 42.

8 A 42.

9 Q And it's the definition of tariff. The service
10 guide -- you're not claiming that that is a Commission
11 approved state tariff, are you?

12 A Oh, no. Absolutely not.

13 Q You're claiming it's the other document under
14 2.85.2?

15 A Yes.

16 Q Right. Okay.

17 A The document is amended from time to time. It
18 said for general terms these are the prices.

19 Q Got you. Okay. I just wanted to clarify that.
20 Thanks.

21 MR. HALM: Your Honor, one administrative
22 question. Would it be appropriate to enter into the
23 record the Texas PUC decision that Mr. Peters just asked
24 Mr. Miller about? We think it would benefit the
25 Commissioners' review. So I would propose that we do move

1 it into the record. Do you have any objection?

2 MR. PETERS: No, I don't. That's fine.

3 JUDGE VOSS: And that will be 17?

4 MR. HALM: I believe so.

5 JUDGE VOSS: Do you have sufficient copies of
6 it?

7 MR. COMLEY: We'll do that tomorrow. It may be
8 tomorrow before we can get the copies made, your Honor.

9 JUDGE VOSS: Okay.

10 MR. HALM: We do have one copy for the court
11 reporter and --

12 JUDGE VOSS: Will one copy suffice for you?

13 THE COURT REPORTER: Uh-huh.

14 JUDGE VOSS: Okay. It's been offered. I'm
15 showing there's no objections to the admission of that
16 document. Hearing none, it is admitted.

17 (Exhibit No. 17 was offered and admitted into
18 evidence.)

19 JUDGE VOSS: And I think the only copy that we
20 really need will be any additional copies that the court
21 reporter needs because once the record is in, we'll be
22 able to access all that stuff through EFIS. So we don't
23 need --

24 MR. COMLEY: Okay.

25 JUDGE VOSS: What was the title of that

1 document?

2 MR. COMLEY: It was the arbitration award in
3 Case No. 31577 before the Public Utility Commission of
4 Texas.

5 JUDGE VOSS: Thank you. Are there any
6 additional recross based on the very limited additional
7 Bench questioning?

8 MR. HALM: No, your Honor.

9 MR. PETERS: No, your Honor.

10 JUDGE VOSS: All right. In that case, you may
11 step down.

12 MR. MILLER: Thank you.

13 JUDGE VOSS: Do you need any of this?

14 THE COURT REPORTER: I don't think so.

15 JUDGE VOSS: Very good. We're going go ahead
16 and call Ms. Hankins. Haskins. I don't know why. I
17 apologize.

18 MS. HANKINS: That's okay.

19 JUDGE VOSS: I keep catching myself about to say
20 Haskins, and then I stop.

21 MS. HANKINS: Hawkins. Haskins.

22 PAM HANKINS,
23 being first duly sworn to testify the truth, the whole
24 truth, and nothing but the truth, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. PETERS:

2 JUDGE VOSS: Thank you. Your witness.

3 Q (By Mr. Peters) Good afternoon.

4 A Good afternoon.

5 Q Would you please state your full name and spell
6 it for the court reporter?

7 A Pam Hankins, P-a-m H-a-n-k-i-n-s.

8 Q All right. And what's your -- by whom are you
9 currently employed?

10 A CenturyTel.

11 Q All right. What's your business address?

12 A 11 CenturyTel Drive, Monroe, Louisiana.

13 Q And can you tell us, if you would, just briefly,
14 a little bit about the -- the nature of your employment,
15 what you do and what your background is?

16 A Well, I've been employed with CenturyTel for
17 just over 20 years. I've been in the regulatory area and
18 cost separations and regulatory finance. And then for
19 about the last five years, I guess, close to it, I've been
20 in Carrier Relations as a Support Manager in that group.

21 Q Okay. Do you hold any graduate degrees?

22 A I have a degree, a post -- yeah. I have a
23 graduate degree, a BA from Northeast Louisiana University.

24 Q Are you a CPA?

25 A Yes, I am.

1 Q Okay. Are you testifying on behalf of the
2 respondent CenturyTel of Missouri in this proceeding?

3 A Yes.

4 Q And did you cause to be filed in this proceeding
5 direct, as well as rebuttal testimony?

6 A Yes, I did.

7 MR. PETERS: All right. May I approach?

8 JUDGE VOSS: Yes, you may.

9 Q (By Mr. Peters) Ms. Hankins, I've handed you
10 what's been marked as Exhibit 8-HC. Is this your
11 pre-filed direct testimony?

12 A Yes, it is.

13 Q All right. And I'll also hand you what's been
14 marked as Exhibit 9. Is this your pre-filed rebuttal
15 testimony?

16 A Yes, it is.

17 Q Do you have any changes, additions or
18 corrections to the testimony at this time?

19 A No, I don't. But I -- I would like to make a
20 note that I noticed in Charter's witness's testimony this
21 morning that they referred to updated information. And I
22 have not updated my information in my exhibits. It's as
23 of December 2007. So they are subject to additional --

24 Q So there would be some updates that have taken
25 place since the last three months have gone by. But you

1 don't have those at the current time; is that correct?

2 A That's correct.

3 Q All right. If I asked you the questions that
4 are in your direct and your rebuttal testimony today, if I
5 asked you the same questions, would your answers to that
6 -- those questions be the same as what's contained in your
7 direct and rebuttal testimony?

8 A Yes, they would.

9 Q Okay. Are those answers true and correct to the
10 best of your knowledge, information and belief?

11 A Yes, they are.

12 MR. PETERS: All right. Thank you, Ms. Hankins.
13 I would offer Exhibits 8-HC and 9, your Honor, and tender
14 the witness for cross-examination at this time.

15 JUDGE VOSS: Are there any objections to either
16 of those exhibits? Hearing none, Exhibits 8-HC and 9 are
17 admitted into the record.

18 (Exhibit Nos. 8-HC and 9 were offered and
19 admitted into evidence.)

20 MR. PETERS: Thank you.

21 JUDGE VOSS: And Staff?

22 MR. BAKER: I have no questions, your Honor.

23 JUDGE VOSS: Okay. Charter?

24 CROSS-EXAMINATION

25 BY MR. HALM:

1 Q How are you today?

2 A I'm good.

3 Q You've been sitting through the proceeding, I
4 believe. You've heard the testimony offered today by Ms.
5 Giaminetti and Mr. Miller?

6 A Yes, I have.

7 Q Right. And there was a discussion very recently
8 about whether or not porting would be affected if the
9 contract between the parties was terminated. Do you
10 recall that testimony?

11 A I -- somewhat, yes.

12 MR. HALM: Okay. Your Honor, I would like to
13 offer as an Exhibit No. 18, if I may approach the witness.

14 Q (By Mr. Halm) Ms. Hankins, are you familiar
15 with this document? Have you seen this document before?

16 A Yes, I have.

17 Q Okay. Is this document a letter written under
18 your name to Gerald C. Lambert, vice President and Senior
19 Counsel at Charter?

20 A Yes, it is.

21 Q Yes. The purpose of this letter was what?

22 A To notify Charter that they were in default of
23 payment of -- of, in this case, two accounts.

24 Q If Charter didn't pay those two accounts, what
25 would happen?

1 MR. PETERS: Objection. The document will speak
2 for itself.

3 MR. HALM: May I rephrase the question?

4 JUDGE VOSS: You may.

5 Q (By Mr. Halm) Would you please read to us the
6 last sentence on the bottom of page 1, the sentence that
7 begins, Accordingly?

8 JUDGE VOSS: When -- when -- I would sustain the
9 objection that the document does speak for itself. Does
10 she need to read the section into the record?

11 MR. HALM: We'll take it on its own.

12 JUDGE VOSS: Okay.

13 Q (By Mr. Halm) All right. Had Charter not filed
14 this complaint and if Charter had not paid these amounts,
15 would CenturyTel terminate the contract?

16 A CenturyTel -- I don't want to second-guess what
17 you're asking me. According to the terms of the agreement
18 and according to this letter, CenturyTel would be within
19 its right to terminate the agreement.

20 Q And so from the time line perspective -- let's
21 try to put this in order. There was a dispute in 2004
22 there were many dispute statements filed before and after
23 that. Different rates were assessed during that period.

24 And then your letter was delivered to Charter.
25 And in it, you say, Charter must pay or CenturyTel will

1 terminate this agreement. Charter has not paid, came to
2 the Commission and initiated this proceeding. If Charter
3 had not done so, would you have followed through on your
4 threat to terminate this contract?

5 MR. PETERS: Objection. That calls for
6 speculation.

7 JUDGE VOSS: I think the witness is probably
8 qualified to answer this question. Wouldn't you -- I
9 mean, if she's not qualified to answer that question, I
10 think she can state that. Proceed.

11 A Your question, as I understand it, is would
12 CenturyTel terminate the contract?

13 Q (By Mr. Halm) Right.

14 A And I believe I just answered you in that under
15 provisions of the contract, if Charter was in default, we
16 would terminate the contract.

17 Q Okay. Thank you. Attached to direct testimony
18 are several exhibits. And I'd like to make sure that I am
19 not referencing a highly confidential.

20 The first exhibit is a copy of an invoice from
21 CenturyTel to Charter. Can I confer with your counsel?

22 MR. HALM: Is that designated highly
23 confidential?

24 UNIDENTIFIED SPEAKER: They all are.

25 BY MR. HALM: They all are. Could we go

1 in-camera?

2 JUDGE VOSS: We'll say if anyone has cross -- or
3 redirect based upon this limited exhibit, we'll try to
4 address it all together in one single in-camera session in
5 case you need any. So -- okay. Going in-camera.

6 REPORTER'S NOTE: At this point, an in-camera
7 session was held, which is contained in Vol. 3, pages 285
8 through 292.

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1 CONTINUED CROSS-EXAMINATION OF PAM HANKINS

2 BY MR. HALM:

3 JUDGE VOSS: There we go. Please proceed.

4 MR. HALM: And may I move for the admission of
5 Exhibit 18?

6 JUDGE VOSS: Are there any objections to the
7 admission of Exhibit 18?

8 MR. PETERS: No objection.

9 JUDGE VOSS: Hear none, it's admitted.

10 (Exhibit No. 18 was offered and admitted into
11 evidence.)

12 Q (By Mr. Halm) On page 10 of your direct, lines
13 19 through 22, you identify certain amounts that you
14 believe Charter owes CenturyTel. Of these amounts, can
15 you generally approximately tell us what percentage
16 represent the number porting charges?

17 A I -- let me make sure. That's actually
18 demonstrated on my Schedule PH-3. Exhibit --

19 Q Okay. I don't -- I can't ask questions about it
20 right now.

21 A But that shows a breakdown between the service
22 charges and the customer record research charges.

23 Q And when I looked at that before the hearing, I
24 got the impression that of the roughly, you know, more
25 than \$100,000 which you state here is owed by Charter

1 somewhere in the range of six or 9,000 relates to customer
2 records searches and the remainder relates to the port
3 charges?

4 A That's correct.

5 Q Okay. On page 11 of your direct testimony,
6 lines 3 through 5, here you describe when you discovered
7 the rate error and what actions you took to remedy that
8 situation.

9 You say, When we discovered in mid 2007 that
10 Charter was being assessed an inappropriate rate, we took
11 steps to change the rate. Mr. Miller has told us earlier
12 today that he discovered this in 2004. Did you
13 communicate with Mr. Miller about this?

14 A Yes, I did. In fact, when I was looking at this
15 and discovered it, I -- I did discuss this with him. In
16 fact, you also talked to him about the notice that we sent
17 out, too. But yes, I did bring it to his attention that
18 we were billing still the 19.78.

19 Q But -- but you say you discovered the problem in
20 mid 2007. I thought Mr. Miller told us that CenturyTel
21 discovered the problem in mid 2004.

22 A I said that --

23 MR. PETERS: I'm going to object to the extent
24 it misstates the prior testimony. I believe the witness
25 -- the prior witness said the problem was, indeed,

1 discovered in 2004. He'd asked that it be rectified and,
2 it wasn't rectified. And it wasn't until 2007 that he
3 discovered that it wasn't rectified, if that makes any
4 sense to you.

5 JUDGE VOSS: Objection is sustained. You might
6 restate your question.

7 Q (By Mr. Halm) Okay. I believe that Mr. Miller
8 has testified that he discovered and informed Charter in
9 2004 that the tariff rate should apply. You testified
10 that you discovered it in mid 2007.

11 You say we discovered. I'm not sure who we are,
12 that the wrong rate was being applied. Did Mr. Miller
13 communicate to you in between mid 2004 and mid 2007 that
14 the wrong rate was being applied?

15 A Not to my knowledge.

16 Q Okay. With respect to the rates assessed upon
17 Charter for customer record searches, on page 12 of your
18 testimony, lines 16 through 20 and then on page 13, lines
19 1 through 6, you talk about the rate that's assessed
20 Charter for customer -- customer records search orders
21 where at in line 19 you say the rate can be found in the
22 non-recurring charge of the uni rate section of the ICA.

23 Do you understand from the testimony offered
24 previously today that Charter doesn't purchase unbundled
25 network elements from CenturyTel?

1 A I don't remember hearing that testimony. But I
2 also don't have knowledge of Charter ordering unis from
3 CenturyTel.

4 Q Okay. Why was a uni rate assessed to Charter if
5 they don't order unis?

6 A My testimony also speaks to the fact that when
7 CenturyTel receives a customer service record request, we
8 don't know what the carrier is going to use that
9 information for. It's not required on the CSR.

10 And so in this case, CenturyTel had set up the
11 \$4.21 charge. And that's what we've been billing Charter.
12 And I seem to recall Carter's witness also saying they are
13 paying those in -- where they're being assessed today.

14 Q So you understood that Charter doesn't purchase
15 unbundled network elements but there was a decision made
16 to apply a uni rate nonetheless?

17 A There were two rates in the agreement. And
18 that's what you're referring to on page 12 and 13 of my
19 testimony. One is found in the uni section. It's the
20 4.21 rate. And the resale has a provision for 11.69.
21 We've been billing Charter the 4.21 rate.

22 Q Because they don't resell your services?

23 A Because that's what we had set up in the billing
24 system.

25 Q Right.

1 MR. PETERS: We can amend that if you'd like.

2 Q (By Mr. Halm) Okay. Earlier today, testimony
3 was offered that the \$19 rate that's listed in the uni
4 section of the price list was assessed to Charter for a
5 period of three or four years.

6 You've just told us that the \$4 uni rate per
7 customer record searches was assessed to Charter. Are
8 there any other uni rates that you know of that have been
9 assessed to Charter?

10 A Not that I'm aware of.

11 Q And when you review -- have you reviewed the
12 interconnection agreement?

13 A To some extent.

14 Q And you're familiar with the pricing appendix?

15 A Yes.

16 Q All right. And there's a section that deals
17 with uni rates --

18 A Yes.

19 Q -- right? It was quit a long section. There
20 are many rates listed there. Right?

21 A Yes.

22 Q Do you believe that those rates apply to
23 something other than the purchase of unbundled network
24 elements?

25 MR. PETERS: Objection. Foundation. The

1 document speaks for itself.

2 MR. HALM: Well, I'm asking about how CenturyTel
3 interprets this contract and applies the contract.

4 JUDGE VOSS: I'm going to overrule the
5 objection. I don't think it speaks for itself in this
6 instance. Please proceed. Answer the question to the
7 best of your knowledge and authority.

8 A Okay. I may get to you ask it again because I'm
9 not sure if I still remember what you asked me.

10 MR. HALM: Could I ask the court reporter to
11 repeat the question?

12 (The previous question was read back.)

13 A I believe that the uni rates do apply to
14 unbundled network elements. But we were talking about the
15 customer records. You were asking me this, I think, in
16 context of the customer records search request.

17 And I've already -- and I responded that at the
18 time we received those requests, we don't know what you're
19 asking, what you're going to use that information for. So
20 we look to the contract for a rate. There is a rate
21 provided in the uni section, and that's what we've been
22 billing Charter.

23 Q Do you know of any provision in the contract
24 that says the parties have agreed where there isn't a
25 specific rate to use the rates in the uni section as a

1 proxy or substitute?

2 A I'm not familiar with that language.

3 JUDGE VOSS: I hate to interrupt you mid
4 thought, but Daniel needs to turn that off, and he wants
5 to go home. We're going to take a very brief break. Go
6 ahead.

7 MR. HALM: And that was my last question.

8 JUDGE VOSS: Oh, was that your last question?

9 MR. HALM: So I am finished. Yes. Thank you.

10 JUDGE VOSS: Perfect timing. We'll take a break
11 then until a quarter after. Take a quick bio break.

12 (Break in proceedings.)

13 JUDGE VOSS: All right. Ready to go back on the
14 record. And I believe -- is that correct that you had
15 completed your cross-examination?

16 MR. HALM: Yes, your Honor. Thank you.

17 JUDGE VOSS: Great. Commissioner Jarrett, did
18 you have any questions?

19 COMMISSIONER JARRETT: As much as I'd like to
20 prolong the proceedings today, I don't -- I don't have any
21 questions. Thank you.

22 JUDGE VOSS: And I have a couple questions from
23 Commissioner Murray who, unfortunately, had to leave.

24 CROSS-EXAMINATION

25 BY JUDGE VOSS:

1 Q On page 11 of your direct testimony, you're
2 describing the service order rate that Charter was billed
3 and that -- again, it says uni port feature charge, the
4 time they initially sent porting orders in June of 2003.
5 Were there any porting orders prior to that time that were
6 not charged at all?

7 A Charter's put forth testimony to that effect. I
8 can only assume that they -- they did send some orders in.
9 But I don't have personal knowledge of that. This was
10 based on the billing.

11 Q Okay. And you wouldn't have any understanding,
12 then, of why they may have not been charged if they --

13 A No.

14 Q Okay. And then on page 5 of your direct, you're
15 discussing the LSRs. LSR dubbed CSR. It's Line 4.

16 A Yeah.

17 Q Okay. I want to make sure I understand this
18 question. Commissioner Murray has a much wider vocabulary
19 of the abbreviations applicable to telecommunications
20 practice than I. On page 5 of the direct discussing LSRs
21 at Line 4. Let's see. It says customer records search
22 requests are submitted via a type of LSR dubbed CSR.

23 A Yes. That's on my testimony.

24 Q Okay. Does the ICA expressly state,
25 interconnection agreement, expressly state pricing or CSR

1 -- for CSR type of LSRs?

2 A Yes. That's what we were just discussing the --
3 that's in the pricing attachment.

4 Q That was my understanding. I just wanted to
5 make sure that there wasn't anything else.

6 JUDGE VOSS: Okay. And I believe that is all
7 that I have. Did you have anything else, Commissioner
8 Jarrett, based on my confusing question?

9 COMMISSIONER JARRETT: No.

10 JUDGE VOSS: Okay. Is there any recross based
11 on the questions from the Bench?

12 MR. HALM: Just one.

13 JUDGE VOSS: Okay.

14 RECROSS EXAMINATION

15 BY MR. HALM:

16 Q I just want to make sure that the record is
17 clear that the CSR rate that you refer to in response to
18 the question from the Bench is the rate listed in the uni
19 section of the interconnection agreement?

20 A I believe she asked me if they were any CSR
21 rates in the ICA. And I -- I referred to the pricing
22 attachment which contains actually two prices for CSRs.

23 Q Which are not in the uni -- uni rate?

24 A One is in the uni section, and one is in the
25 resale section.

1 MR. HALM: Okay. Thank you.

2 JUDGE VOSS: Redirect?

3 MR. PETERS: Thank you. Just one quick area.

4 REDIRECT EXAMINATION

5 BY MR. PETERS:

6 Q You recall, Ms. Hankins, in testimony that you
7 gave some response to some questions from Mr. Halm about
8 the -- what CenturyTel would or wouldn't have done if
9 Charter had not come to the Commission in the summer of '0
10 -- summer of 2007 and asked for some sort of relief. Do
11 you recall that testimony?

12 A Yes, I do.

13 Q All right. There was -- there was some
14 implication that the agreement may have been terminated.
15 Is that -- do you recall that?

16 A Yes.

17 Q All right. Would you, to the best of your
18 knowledge -- or let me ask it this way: Has CenturyTel
19 ever refused porting requests even where an agreement may
20 have been terminated?

21 A Not that I'm -- not that I'm aware of.

22 Q What's your best -- your best belief based on
23 your overall knowledge as to what CenturyTel would have
24 done had -- had Charter not, indeed, come to the
25 commission?

1 A If -- if you'll note on the letter itself, on
2 the notice that we sent to Charter, the Missouri Public
3 Service Commission was copied on that as well as our
4 regulatory person here in Missouri.

5 And when we're in these situations, we always
6 keep the Commission closely updated as to what's going on.
7 And I know the Missouri Commission has concerns about
8 their -- you know, our end user customers and service to
9 those customers. We would not stop processing services to
10 a Missouri customer without the Commission telling
11 CenturyTel we could do that.

12 MR. PETERS: Thank you.

13 JUDGE VOSS: The Witness is excused. Okay. And
14 now we have the decision whether to now forward and be
15 very likely get through with Mr. Voight, I would assume,
16 by seven depending on how much cross people have. I'm
17 getting some nods. Is there anyone that has
18 substantial --

19 MR. HALM: Objections? No. I think we're
20 willing to move forward.

21 JUDGE VOSS: Go forward? Okay. In that case,
22 Staff, call your witness.

23 MR. BAKER: Staff calls William Voight.

24 WILLIAM VOIGHT,
25 being first duly sworn to testify the truth, the whole

1 truth, and nothing but the truth, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. BAKER:

4 JUDGE VOSS: Your witness.

5 Q (By Mr. Baker) Would you please state your name
6 for the record?

7 A William Voight.

8 Q Who are you employed by?

9 A The Missouri Public Service Commission.

10 Q What is your job title?

11 A I'm the -- a supervisor in the
12 Telecommunications Department.

13 Q What do your duties as a supervisor include?

14 A We make recommendations to the Commission on a
15 variety of policy matters and tariffs and certificates or
16 for telephone service, interconnection agreements and so
17 forth.

18 Q Did you prepare rebuttal testimony for this
19 case?

20 A Yes, I did.

21 MR. BAKER: May I approach?

22 JUDGE VOSS: Yes, you may.

23 Q (By Mr. Baker) I've handed you a document we've
24 labeled as Exhibit 10. Is this a true and accurate copy
25 of the testimony you prepared for this case?

1 A Yes.

2 Q Do you have any modifications or corrections to
3 your testimony?

4 A No.

5 Q You answered every question in there to the best
6 of your knowledge and belief?

7 A Yes, I have.

8 MR. BAKER: Your Honor, I'd move to submit
9 Exhibit 10. And I tender the witness for cross.

10 JUDGE VOSS: Are there any objections to the
11 admission of Exhibit 10? Hearing none, it is admitted.

12 (E Exhibit No. 10 was offered and admitted into
13 evidence.)

14 JUDGE VOSS: And first, cross-examination by
15 Charter?

16 MR. HALM: I think it was CenturyTel, wasn't it?

17 MR. PETERS: No. I think it's Charter.

18 JUDGE VOSS: It would be Charter because you're
19 more in line in position, so you'd go first.

20 MR. HALM: Okay.

21 CROSS-EXAMINATION

22 BY MR. HALM:

23 Q I have only a few questions for you, Mr. Voight.

24 On page 8 of your rebuttal testimony, lines 2 through 4,
25 you say that, Whatever may be said about Charter's request

1 for CenturyTel to port telephone numbers, clearly, such
2 requests do not involve connections of CenturyTel
3 telephone service. Did you hear Mr. Miller's testimony
4 today about this subject?

5 A Yes.

6 Q Yes. And I believe he told the Commission that,
7 at least from his perspective, number porting is the same
8 thing as telephone service. After hearing what he said,
9 do you want to modify this statement at all? Do you agree
10 with Mr. Miller that number porting is the same thing as
11 telephone service?

12 A I -- I don't have any reason to -- to modify my
13 statement. It -- my statement -- statement references
14 installation of telephone service. And I don't see that
15 that's contradicted by Mr. Miller's testimony that number
16 porting is local exchange service.

17 I would add that there's a definition of
18 telephone service in the Missouri statutes that I was
19 thinking of during that line of questioning. And I don't
20 have any reason to disagree that number porting is a -- a
21 local exchange service.

22 Q Well, maybe I'm confusing this point. But in
23 your testimony on line 3, you said, Whatever may be said
24 about this request to port telephone numbers, it doesn't
25 involve connections for CenturyTel telephone service.

1 A Right. It does not involve installation of
2 telephone service.

3 Q Okay. I think there were -- there was some
4 suggestion that maybe it constitutes a change of telephone
5 service.

6 A Well, his testimony as I understand it -- and I
7 -- I didn't really gather it until today. His testimony
8 that is the porting of -- of Charter -- request of Charter
9 is a subsequent order change. And I -- I didn't -- and I
10 was here during that line of questioning. And I would
11 still respectfully disagree with Mr. Miller along that
12 line.

13 Q All right. A little bit further down on page 8,
14 you begin to talk about CenturyTel's wholesale Tariff No.
15 10 and the significance of that.

16 A Right.

17 Q Do I understand your testimony correctly that
18 the wholesale reference -- or I'm sorry. The wholesale
19 tariff is exactly the place where you would expect to see
20 some sort of charge that may be incorporated into an
21 interconnection agreement and that it stands in contrast
22 to the local exchange tariff?

23 MR. PETERS: Objection. Leading and suggestive.

24 JUDGE VOSS: Could you rephrase that? We do
25 frown on friendly cross-examination.

1 Q (By Mr. Halm) Could you explain the distinction
2 and the import of the fact that CenturyTel has filed a
3 wholesale tariff?

4 A What I was attempting to point out in my
5 testimony is that both Tariff No. 1 and Tariff No. 10
6 compliment each other in defining service order as
7 involving the installation or moves and changes of
8 existing telephone service.

9 Q Okay. I see. I guess the distinction is that
10 Tariff No. 10, the wholesale tariff, applies to carriers,
11 and Tariff No. 1, the local exchange tariff, applies to
12 end user customers?

13 MR. PETERS: Same objection. Leading and
14 suggestive.

15 JUDGE VOSS: I believe you are crossing into
16 friendly cross-examination. I was addressing a question
17 regarding locking of this room, so I'm going to have to
18 ask you to repeat that question.

19 MR. HALM: I'll withdraw the question.

20 JUDGE VOSS: Okay. Thank you. We have to lock
21 the room up very carefully because we all leave computers
22 in here. And, normally, that's done by people who are no
23 longer in the building. So sorry for the interruption.
24 Plead proceed.

25 MR. HALM: That's all right. That's fine.

1 Q (By Mr. Halm) Commissioner (sic) Voight, have
2 you considered what the potential implications of a
3 decision by the Commission affirming CenturyTel's charges
4 -- have you considered what may happen if the Commission
5 approves these charges, requires Charter to pay the --
6 them would that have an effect on other carriers in
7 Missouri?

8 MR. PETERS: Objection. I believe that line of
9 questioning is outside the scope of the direct testimony.

10 JUDGE VOSS: Sustained.

11 MR. HALM: Okay. No further questions.

12 JUDGE VOSS: CenturyTel?

13 MR. PETERS: No questions at this time.

14 JUDGE VOSS: Excellent. Commissioner Jarrett,
15 do you have any questions?

16 COMMISSIONER JARRETT: I think I have just a
17 couple.

18 CROSS-EXAMINATION

19 BY COMMISSIONER JARRETT:

20 Q Mr. Voight, you've been listening to all the
21 testimony today. One of the theories here is that --
22 being advanced by CenturyTel is that their tariffs are
23 incorporated by reference into the agreements, so,
24 therefore, they can charge, you know, the tariffed rates
25 for this service. Do you agree with that?

1 A No, sir. The short answer is no. The Staff's
2 position -- we don't have an issue with carriers
3 referencing tariffs rates for charges among themselves.
4 And I've offered some examples in my testimony of that,
5 colocation and so forth.

6 Our -- our objection is that should -- when --
7 when they wish to rely on tariffs that there should be an
8 explicit reference. And we just don't think that the --
9 the references here are explicit for this -- for this type
10 of a charge.

11 COMMISSIONER JARRETT: Okay. That's the only
12 question I had. Thank you.

13 JUDGE VOSS: And I just had a couple.

14 CROSS-EXAMINATION

15 BY JUDGE VOSS:

16 Q On page 4, Mr. Voight, of your rebuttal
17 testimony, you say there's only one issue. Could you
18 explain that?

19 A I -- I think from the very onset of the filing
20 of the complaint, this has been a case overwhelmingly of
21 contract interpretation. And I continue to believe that.

22 I believe the only -- the only issue for the
23 Commission to decide is whether or not the interconnection
24 agreement sets forth the -- clearly the rates to be
25 charged for telephone number porting. And we don't

1 believe that it does.

2 JUDGE VOSS: Thank you. Commissioner Jarrett,
3 you had another question?

4 COMMISSIONER JARRETT: Yeah. I'm sorry. I
5 didn't mean to interrupt, but I did have one more
6 question.

7 RECROSS EXAMINATION

8 BY COMMISSIONER JARRETT:

9 Q There was also some talk earlier today in
10 testimony that charging for this was illegal under federal
11 law. Do you agree with that? Do you -- do you think that
12 CenturyTel can charge a service charge?

13 A The short answer is yes, that they -- we believe
14 -- although I don't -- I don't seem to -- I don't recall
15 addressing it in my testimony, but in terms of the FCC's
16 various pronouncements on number portability, CenturyTel
17 and Charter undoubtedly incur a cost in an administrative
18 -- what I would call a variable cost in porting telephone
19 numbers.

20 And I don't believe there's any -- any law that
21 precludes those carriers from seeking to recover their
22 legitimate costs. The -- the main issue would be -- for
23 the Commission would be whether or not they've come to a
24 mutual agreement on what -- what those costs are or what
25 -- or what the recovery mechanism is and that they clearly

1 set forth that in their interconnection agreement.

2 And we don't believe that they have done that.

3 I've offered as one of my schedules an example of when
4 CenturyTel has done that. And that was with the -- the
5 Socket agreement. And, yes, that was an arbitrated case
6 before the Commission.

7 However, I don't recall that particular issue
8 being an arbitrated issue. In any regard, it is set forth
9 clearly in their interconnection agreement. It's a rate
10 of approximately \$4. And that stands in stark contrast to
11 the situation before the Commission now with -- with this
12 interconnection agreement. There's nothing similar in the
13 Charter/CenturyTel agreement.

14 Q So Staff's position, basically, is that while
15 this is a legitimate charge that CenturyTel is legally not
16 banned from -- from seeking, it needs to be in the
17 agreement, and it is not in this case?

18 A Yes. That's correct.

19 COMMISSIONER JARRETT: Okay. Thank you.

20 JUDGE VOSS: Okay. And a couple more questions
21 from Commissioner Murray.

22 CROSS-EXAMINATION

23 BY JUDGE VOSS:

24 Q Your Schedule 4, do you have that in front of
25 you?

1 A Yes, Judge.

2 Q Is the purpose of that schedule to indicate that
3 if a charge were to apply for L&P administrative function
4 it would have been specifically set out as it is in that
5 interconnection agreement?

6 A I -- I believe the answer to that question is
7 yes. I'm -- I'm -- I'm offering the socket/CenturyTel
8 agreement as an example of what we would expect to see
9 when a charge was authorized and clearly set forth,
10 explicitly labeled.

11 Q And one more. Do you have a copy of
12 Mr. Schremp's rebuttal testimony?

13 A Yes.

14 Q Okay. On page 17 at lines 17 -- excuse me --
15 page 17, lines 9 and following, do you have an opinion
16 about the billing concern expressed in that rebuttal
17 testimony?

18 A I'm -- I'm sorry, your Honor. What -- who was
19 the witness? Rebuttal?

20 Q Schremp, Ted Schremp.

21 A Oh, yes. What -- what page?

22 Q On page 17 at lines 9 and following. The
23 question, Please explain your concern with CenturyTel's
24 practice. And do you have an opinion about the -- that
25 billing concern as it exists and whether it's a concern,

1 an ongoing --

2 A Well, yes, I have a concern over that. But as I
3 understood the testimony of the prior witness, this is
4 something that -- I believe the exact words to the best of
5 CenturyTel's ability has been resolved.

6 And until I -- I would -- until a Commission had
7 some satisfaction in knowing that it was completely
8 resolved, I think it may be -- may potentially represent
9 an ongoing concern.

10 I mean, I -- I appreciate the explanation, as I
11 understood it at least, was that during the port process,
12 it might take a couple of days. The end user made some
13 long distance telephone calls.

14 There was also an example begin of national
15 directory assist and -- which is just another form of long
16 distance dialing. But those charges should be billed to
17 the end user who -- who incurred the charges. Rather, it
18 appears that they were appearing on Charter's account and
19 the -- the question about credits.

20 We want to make sure that every -- everything
21 was adjusted. So --

22 Q Thank you.

23 A So, yeah, that would be a concern.

24 JUDGE VOSS: Thank you. Are there -- is there
25 any recross based on questions from the Bench?

1 MR. HALM: No, your Honor.

2 JUDGE VOSS: Hearing none, redirect?

3 MR. BAKER: Just a couple.

4 REDIRECT EXAMINATION

5 BY MR. BAKER:

6 Q Mr. Voight, when you were being cross-examined
7 by -- by Charter, you stated that number porting should be
8 considered to be a local exchange service; is that
9 correct?

10 A Yes.

11 Q Does that mean that CenturyTel has the ability
12 to apply a charge for porting from its local exchange
13 tariff?

14 A I'm sorry. Did -- is your question do they have
15 the ability?

16 Q Can they apply a -- if they choose, apply a
17 charge for number porting through their local exchange
18 tariff?

19 A I -- I don't believe there's anything in their
20 local exchange tariff that contemplates a number
21 portability charge.

22 Q But could they if they wanted to if they were to
23 change their tariff?

24 A Well, the -- I think that would be subject to
25 the Commission's prerogative whether or not that sort of

1 charge would be in the public interest.

2 MR. BAKER: Okay. That's all I have. Thanks.

3 JUDGE VOSS: Mr. Voight, you may step down.

4 MR. VOIGHT: Thank you, Judge.

5 JUDGE VOSS: And this concludes the hearing. I
6 believe -- is the previous schedule already established in
7 this one? It's not? I have three of these. And in one
8 of them, they set them way out in May. And is there any
9 reason for the transcript to be expedited? Or let --

10 MR. DORITY: I don't believe so, Judge. And I
11 was wondering if you might allow counsel for the parties
12 to discuss a briefing schedule and --

13 JUDGE VOSS: And submit it?

14 MR. DORITY: -- get back with you on that. We
15 honestly just haven't had a chance to visit about that
16 among ourselves at this point.

17 JUDGE VOSS: and I'll say that -- say by a week
18 from today --

19 MR. DORITY: That would be fine.

20 JUDGE VOSS: -- for you guys to submit a
21 briefing schedule?

22 MR. DORITY: Thank you very much.

23 JUDGE VOSS: I will say this. I'm -- I have
24 four other hearings this month, and I am the Judge on
25 Empire's rate case, which goes to hearing the second week

1 in May. So if you need a little more time with your
2 briefing, take in mind when I will actually be able to get
3 to it respective of when the briefs come in. So I just
4 want you to be aware ever it. Don't rush to get it out
5 yourselves since I will probably put it, very likely, on
6 the back burner at some point.

7 MR. DORITY: Thank you very much.

8 MR. PETERS: Thank you, Judge.

9 JUDGE VOSS: Thank you. This concludes the
10 hearing.

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1 REPORTER'S CERTIFICATE

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3 STATE OF MISSOURI)
)ss.
4 COUNTY OF OSAGE)

5

6 I, Monnie S. VanZant, Certified Shorthand
7 Reporter, Certified Court Reporter #0538, and Registered
8 Professional Reporter, and Notary Public, within and for
9 the State of Missouri, do hereby certify that I was
10 personally present at the proceedings as set forth in the
11 caption sheet hereof; that I then and there took down in
12 stenotype the proceedings had at said time and was
13 thereafter transcribed by me, and is fully and accurately
14 set forth in the preceding pages.

15

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal on April 18, 2008.

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Monnie S. VanZant, CSR, CCR #0539

22 Registered Professional Reporter

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