

Exhibit No.: _____

Issue: Policy

Witness: Guy E. Miller, III

Type of Exhibit: Surrebuttal Testimony

Sponsoring Party: CenturyTel of Missouri, LLC

Case No.: LC-2008-0049

Date Testimony Prepared: March 14, 2008

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

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

Case No. LC-2008-0049

SURREBUTTAL TESTIMONY OF

GUY E. MILLER, III

ON BEHALF OF CENTURYTEL OF MISSOURI, LLC

March 14, 2008

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1 **Q. Are you the same Guy E. Miller who submitted direct and rebuttal testimony in this**
2 **case?**

3 A. Yes.

4 **Q. What is the purpose of your surrebuttal testimony?**

5 A. The purpose of my surrebuttal testimony is to expand upon and clarify my earlier
6 testimony and to point out inconsistencies in the rebuttal testimony of Mr. Schremp and
7 Mr. Voight.

8 **Q. Did you read the rebuttal testimonies of Mr. Schremp and Mr. Voight?**

9 A. Yes.

10 **Q. What was your first impression of Mr. Schremp's testimony?**

11 A. Mr. Schremp spends a lot of his testimony pointing out that I am not an attorney and
12 thereby implying that I should not be making arguments he believes should be found in
13 counsel's Legal Brief. Mr. Schremp seems to not understand that a Carrier Relations
14 executive spends much of his or her entire day, every day, dealing with the company's
15 and its competitors' compliance with applicable law. While I am not an attorney, I am
16 nevertheless knowledgeable regarding what law applies and what applicable law means,
17 based upon my experience and knowledge in overseeing compliance with that law.

18 **Q. What was your first impression of Mr. Voight's testimony?**

1 A. With all due respect, it strikes me that Mr. Voight has based his testimony on inconsistent
2 logic. Specifically, Mr. Voight's argument on the one hand insists that this is a strict
3 contract interpretation case as between the parties, and on the other hand insists on
4 reaching outside the contract to define terms that are already defined in the contract itself.
5 And his conclusion would permit Charter to have profited from its failure to properly and
6 timely escalate a dispute by receiving three-and-one-half years of services from
7 CenturyTel free of charge. He reaches this conclusion by finding that a party may not
8 recover its costs for work that is in fact performed by that party unless the parties clearly,
9 unequivocally and definitely agreed in writing to charge a specific, defined rate for the
10 service in question, rather than relying on a charge that is specifically incorporated by
11 reference into the agreement

12 In my opinion, the more logical starting point would be, and the more accurate
13 premise is, that when a competitor performs work for another competitor, it intends to be
14 paid, and that the parties have this understanding when they enter into any given business
15 transaction. Thus, when one competitor requests another competitor to perform work for
16 it, the norm would be for the requesting party to pay for that work. This premise of the
17 requesting (and benefiting) party paying is consistent with the general premise of
18 applicable law governing competitive carrier relationships. To the extent that there is to
19 be any exception to this general rule, that exception should be stated clearly, as it is
20 simply not typical, and is in fact illogical, for competitors to perform work for each other
21 for free.

22 In my view, the Interconnection Agreement ("ICA") at issue in this case,
23 including the body of the agreement and documents attached to or incorporated therein,
24 should be interpreted in light of the realities of both the intent of applicable law and of

1 the market. The Commission's starting point, therefore, should be that when Charter
2 requests that CenturyTel perform work for it by submitting a Local Service Request
3 ("LSR") requesting the porting of a number, Charter should have to pay for that work
4 unless there is documented evidence that the Parties have taken a position that the order
5 will be processed without charge. The Commission can then turn to the ICA terms to
6 determine what rate applies for CenturyTel's services. Beginning with any other premise,
7 specifically the premise that parties do not expect to pay one another for their services,
8 will produce a result that is not consistent with the intent of law and market realities

9 **Q. Is CenturyTel performing work for Charter's benefit when it processes Charter's**
10 **Local Number Porting ("LNP") LSRs?**

11 A. Yes, without question. A LSR is a service order, through which the requesting party, in
12 this case Charter, asks the receiving party, in this case CenturyTel, to perform work.

13 **Q. Does CenturyTel incur costs to process Charter's LNP LSRs?**

14 A. Yes. As I previously testified, CenturyTel's employees have to perform a multi-step
15 administrative process upon receipt of the LSR. This is in addition to the work
16 performed for the actual port.

17 **Q. Did you believe that the parties intended to charge for LSR processing under this**
18 **ICA, including for LNP LSRs?**

19 A. Yes. It is CenturyTel's belief that the Parties agreed that some rate will be paid for the
20 processing of every order submitted for porting. The basis for this belief starts with
21 Section 15 of the ICA, which requires submittal of a LSR for each port request. It is
22 common practice within the industry to charge for LSR processing, including those LSRs
23 for LNP. As I have testified previously (Miller Direct at p. 20) carriers regularly charge
24 for this service, and even Charter regularly pays for this service. Additionally,

1 CenturyTel has recently confirmed that Verizon also charged Charter for LSR processing
2 under this ICA *and did so at a rate not listed in the ICA*. The only valid question to ask
3 is, where do the Parties look to find the appropriate charge? In fact, this is exactly the
4 question that I proposed to Charter in 2004 when it first raised a dispute on this issue.
5 (*See* GM – Schedule 1 (**HIGHLY CONFIDENTIAL**), attached.)

6 **Q. Are you referring to the dispute resolution that was invoked by Charter, not**
7 **CenturyTel, in 2004 and that you testified ended with the tariff rate being sustained**
8 **and Charter failing to challenge that outcome through escalation?**

9 A. Yes.

10 **Q. Mr. Voight implies that CenturyTel should have negotiated a new ICA sometime in**
11 **the past to permit the billing of such a charge without dispute. Why did CenturyTel**
12 **not seek negotiations for a new ICA?**

13 A. Knowing that it is our policy to charge for LNP LSRs, CenturyTel did not feel any need
14 to terminate this ICA and negotiate a new one for that purpose because we did not believe
15 that the ICA was silent with regard to charges for LSRs. Rather, CenturyTel believed
16 then, as it continues to believe now, that the ICA clearly allows for such charges.

17 **Q. Both Charter and Mr. Voight assert that CenturyTel cannot charge because they**
18 **believe that the ICA does not specifically state a rate as applicable to a LNP LSR.**
19 **Why does CenturyTel believe that the ICA specifically points to the tariffed service**
20 **order rate?**

21 A. Let's be very clear about this. This is an agreement that CenturyTel inherited; we did not
22 negotiate these terms and they are neither the most comprehensive nor most clear terms
23 that I have ever read. Nevertheless, the ICA specifically provides that LNP shall be
24 ordered via a LSR. A LSR is an industry standard form used for various ordering

1 purposes. It is common practice within the industry to charge for LNP LSR processing.
2 As I earlier stated in my testimony (Miller Direct at p. 20), several companies charge
3 Charter in Wisconsin, AT&T charges companies including CenturyTel's CLEC affiliate,
4 and CenturyTel's ILEC affiliates are charged by many competitive carriers.

5 Knowing that CenturyTel charges for LSRs, the only question for CenturyTel
6 was, what is the appropriate rate to charge under this inherited ICA? It is my department,
7 Carrier Relations, which has the responsibility for ICA interpretation. As we reviewed the
8 terms, we noted that the ICA expressly incorporates the tariffs and, according to the ICA,
9 the tariff is the very first place that rates should be found, not the ICA itself. In fact,
10 language in the ICA specifically sets forth that a tariff rate even supersedes rates in the
11 ICA. Accordingly, it was clear to us that the service order charge in the tariff was the
12 rate intended to be used under the terms of the ICA.

13 **Q. You said that CenturyTel did not negotiate these terms. This ICA was negotiated**
14 **between Verizon and Charter, correct?**

15 A. Yes.

16 **Q. Did Verizon ever bill Charter a service order rate that is not specified within the**
17 **ICA?**

18 A. Yes. In going through our archived emails for this case, we recently uncovered an email
19 from Charter in June 2003 that disputes a nine-month-old September 2002 CenturyTel
20 bill¹ for service order charges that were billed by Verizon prior to the August 31, 2002
21 acquisition date. The bill and Charter's own dispute form show that the service order rate
22 billed was \$20.08 (*see* GM – Schedule 2 (**HIGHLY CONFIDENTIAL**), attached). The

1 Commission might also note that even back then, Charter was making a dispute in an
2 attempt to avoid payment for work done on its behalf. The argument here was that
3 Verizon did the work, not CenturyTel, so Charter did not have to pay. This argument
4 ignores, of course, the fact that CenturyTel purchased Verizon's receivables.

5 **Q. Did you know about Verizon charging a non-ICA rate in 2004 when Charter first**
6 **disputed CenturyTel's billing for service order charges?**

7 A. I don't see how in a 2004 dispute resolution on service order charges we could have
8 failed to remember a submitted 2003 dispute on service order charges, but I admit that I
9 do not have any notes referring to Verizon's charge. Almost five years have now passed
10 since the dispute of Verizon's charges and since the conclusion of the 2004 dispute
11 resolution; CenturyTel has had no reason to keep knowledge of Verizon's billing on the
12 front burner.

13 **Q. Was Verizon charging this non-ICA service order charge for the processing of LNP**
14 **LSRs?**

15 A. Admittedly, Charter's bill dispute does not indicate the type of LSR charges at issue.
16 However, Charter has consistently claimed that it does not submit LSRs except for and
17 related to porting under this ICA and Charter has only submitted LSRs to CenturyTel for
18 porting or porting-related purposes such as CSRs. It is unlikely that eighty (80)
19 occurrences of charging for service orders on the September 2002 bill are for any purpose
20 other than porting.

¹ The Commission should note the timing of all the disputed amounts on Charter's 2003 email in light of the relevant Agreement terms- "9.3. ... The billed Party shall pay by the Due Date all undisputed amounts. ... Notice of a dispute may be given by a Party at any time, either before or after an amount is paid, and a Party's payment of an amount shall not constitute a waiver of such Party's right to subsequently dispute its obligation to pay such amount..." Charter has failed to comply with the Agreement terms since the very beginning of our relationship.

1 **Q. So for the Commission’s understanding, in your opinion, is it correct to say the**
2 **ILEC that negotiated the ICA under discussion, Verizon, intended the terms to**
3 **encompass service order rates not found within the ICA?**

4 A. Based on Verizon’s billing of a service order rate not listed in the ICA, in my opinion, I
5 believe that to be a reasonable conclusion regarding the negotiator’s intent.

6 **Q. And is it also correct to say that Verizon did charge Charter for LNP LSRs under**
7 **this ICA?**

8 A. Again, based on Verizon’s billing of eighty (80) separate occurrences of service order
9 charges on a single monthly bill, in my opinion, leads to the reasonable conclusion that
10 Verizon did charge Charter for LNP LSRs under the negotiated ICA.

11 **Q. Charter claims that CenturyTel just recently concocted this theory about the tariff**
12 **and “reverse engineered” its story about the erroneous rate billed earlier (Schremp**
13 **Rebuttal at 19). Is that true?**

14 A. No. Mr. Schremp may not have been employed by Charter at the time, but Charter and
15 CenturyTel first had the discussion about the applicability of the tariff rate in mid-2004. I
16 not only told Charter verbally in 2004 that the tariff rate applied, I also told Charter in
17 writing. (See GM – Schedule 1 (**HIGHLY CONFIDENTIAL**), attached.) Contrary to
18 Mr. Schremp’s testimony, Charter cannot plausibly deny that I told them over three-and-
19 one-half years ago that the tariff charge applied under the ICA. I also told Charter during
20 the 2004 dispute resolution that the incorrect rate billed was due to human error and
21 CenturyTel would not seek to back bill the difference, as the error was in Charter’s favor.
22 It is factually impossible for CenturyTel to “reverse engineer” a story in 2008 about the
23 rate billed, when it had specifically stated that the tariff rate was the correct rate back in
24 2004, and also acknowledged the human error at that same time.

1 Further, when the 2004 informal dispute ended with CenturyTel sustaining the
2 rate, Charter did not escalate the dispute in a timely manner, so CenturyTel believed that
3 the tariff rate was confirmed by the outcome of the dispute resolution. In other words,
4 whether grudgingly or not, Charter's failure to escalate a dispute resolution at the
5 conclusion of the 45-day negotiation period was a tacit acknowledgment that it would be
6 billed for and should pay that rate. As the Party claiming to be aggrieved, Charter never
7 escalated the matter to obtain an adjudication determining the charges to be invalid. And
8 consequently, there was nothing more that CenturyTel needed to do. The outcome
9 sustained the tariffed rate and Charter had paid its past-due amounts at that point.

10 **Q. Let's set aside exploring Charter's failure to escalate for the moment and stay with**
11 **the tariff. Do you believe that Charter has understood that the tariff rate was to be**
12 **applied for every LNP LSR submitted?**

13 A. Yes. In addition to verbally informing Charter of this, I put it in writing in 2004 that the
14 first precedent for rates in the ICA is the tariff. As my September 2, 2004 letter states in
15 part:

16 "...the only valid matter of dispute would now seem to be what general pricing
17 term [of the ICA] applies to this situation and therefore what rate CenturyTel may
18 charge Charter (and vice versa) for its LSRs. To initiate the discussion,
19 CenturyTel would point out that contrary to Charter's assertion; the first
20 precedent listed in the general pricing terms is not the agreement but the
21 applicable CenturyTel tariff."

22 **Q. How do you answer Charter's assertion that the tariff does not apply to it?**

23 A. Charter agreed to use the tariffs for rates – all the tariffs without exception – when it
24 signed the express ICA terms stating such. There is no exclusion of any tariff – all tariffs
25 are incorporated as a basis for applicable rates. Further, Charter agreed to use rates found
26 in a tariff before considering any rate in the ICA. That is the precedent in the Pricing
27 Attachment – you go first to the tariff. If no applicable rate is in the tariff, only then do

1 you look in the ICA. And any tariff change supersedes the rates in the ICA. The tariff
2 always takes precedence by the express terms that Charter negotiated.

3 **Q. Charter claims that the general exchange tariff does not apply because Charter is**
4 **not a customer. Mr. Voight seems to agree with that argument when he refers to the**
5 **general exchange tariff as not containing “wholesale” rates. Do you have anything**
6 **further to say on that subject?**

7 A. Contrary to both Charter’s and Mr. Voight’s assertions, I have already addressed in my
8 earlier testimony how competitive local exchange telecommunications companies
9 (“CLECs”), as wholesale customers, regularly purchase services from the general
10 exchange tariff. “Wholesale” CLEC customers purchased 911 services from the general
11 exchange tariff until approximately one year ago, when CenturyTel filed and obtained
12 approval for a new wholesale tariff. For Charter to now claim the general exchange tariff
13 is excluded despite the express ICA terms, because it does not consider itself a
14 “customer” is a self-serving attempt to justify its position.

15 As I testified earlier, a LSR is a service request. The party submitting the LSR is
16 "requesting," or more appropriately "ordering," service from the receiving party, who
17 then performs work for the requester. For the purpose of a LSR sent to CenturyTel,
18 Charter is thus a customer. The fact that Charter is also a competitor does not change
19 this.

20 CLECs are customers, albeit “wholesale” customers. There is no doubt that when
21 Charter submits a LSR order, a CenturyTel employee performs work for Charter. The
22 fact that Charter does not want to pay for the work that it requested does not exclude
23 Charter from being a customer in the practical sense.

24 **Q. Is there any other reason why Charter is a customer under the tariff?**

1 A. Yes. The tariff does not set forth only charges for telecommunications services as
2 telecommunications services is a defined term in applicable law. The tariff also includes
3 charges for work performed upon request by an outside person or entity. This is exactly
4 what is at discussion here – work performed upon request by an outside entity. Charter
5 requests the performance of work from CenturyTel for which CenturyTel does charge,
6 and CLECs do purchase services out of all the tariffs, including the general exchange
7 tariff.

8 Further, CLECs are described as "customers" within CenturyTel tariffs. For
9 example, in the Wholesale tariff approved by this Commission and referenced by Mr.
10 Voight:

11 SERVICE CHARGES

12 A. SCOPE

13 The purpose of this section is to provide installation rates for services provided by
14 the company to Competitive Local Exchange Carriers (CLEC) customers.

15 And CenturyTel's intrastate and interstate access tariffs – from which Charter and other
16 CLECs purchase some interconnection and other transport facilities – clearly describe the
17 purchaser as the "customer." "Carrier" and "customer" are not mutually exclusive.

18 **Q. Charter also seems to assert that it has never purchased services from the general**
19 **exchange tariff as support for its position that it is not a customer of CenturyTel.**
20 **How would you address such an assertion?**

21 A. First, I don't think the record is established as to whether Charter has or has not
22 purchased service from CenturyTel's general exchange tariff. Further, there are services
23 in the general exchange tariff that clearly *could* be purchased (or could have been
24 purchased in the past) by Charter in its CLEC capacity. For example, I have confirmed
25 with CenturyTel's 9-1-1 manager for Missouri that Charter has made several inquiries

1 about CenturyTel's 9-1-1 service² and for any inquiries made prior to December 22,
2 2006, Charter would have purchased such services *from CenturyTel's general exchange*
3 *tariff* had CenturyTel been the 9-1-1 lead in the Counties at question.

4 **Q. Does the FCC provide any guidance on this issue?**

5 A. Yes. Although the terms "customer" and "service" are not defined by FCC regulations,
6 telecom law and regulation is replete with the concept that a requesting party pays. For
7 example, you only have to start with Common Carrier regulation under 47 USC § 201 to
8 find such an example:

9 § 201. Service and charges

10 (a) It shall be the duty of *every* common carrier . . . ***to establish physical***
11 ***connections with other carriers,***³ ***to establish*** through routes and ***charges***
12 ***applicable thereto and the divisions of such charges,*** and to establish and
13 provide facilities ***and regulations for operating such through routes.***⁴ (*emphasis*
14 *added*)

15 Further, remembering that the previous section specifically requires carriers to
16 interconnect and operate through and in connection with such interconnection, I would
17 ask the Commission to review Charter's refusal to pay for the work performed upon its
18 request, in light of the language in the next section of Common Carrier regulation.

19 § 202. Discriminations and preferences

20 (a) Charges, services, etc.

21 It shall be unlawful for *any* common carrier to make any ***unjust or unreasonable***
22 ***discrimination*** in . . . ***practices . . . in connection*** with like communication
23 service, directly ***or indirectly,*** by any means or device, or to make or give ***any***
24 ***undue or unreasonable*** preference or ***advantage*** . . . or to subject any particular
25 person, class of persons, or locality to ***any undue or unreasonable*** prejudice or
26 ***disadvantage.*** (*emphasis added*)

27
28 (b) Charges or services included

² Recent telephone inquiries have been placed to CenturyTel's 9-1-1 manager for Missouri by Dave Evans of Charter.

³ *I.e.*, "interconnection".

⁴ Such as the processing of number porting orders between carriers.

1 Charges or services, whenever referred to in this chapter, include charges for, *or*
2 *services in connection with*, the use of common carrier lines of communication . .
3 . . (*emphasis added*)

4 Charter seeks to advantage itself and disadvantage CenturyTel by refusing to compensate
5 CenturyTel for work performed and expenses incurred solely to benefit Charter's
6 business and associated revenues.

7 **Q. Mr. Voight implies throughout his testimony that the service order charge in the**
8 **tariff is only for installation purposes. Do you agree?**

9 A. No, I must respectfully disagree with Mr. Voight in that I believe he is making too
10 narrow of an interpretation with regard to the language of the ICA.

11 **Q. Can you expand upon that statement?**

12 A. A service order charge is also levied for many other purposes – such as when the order
13 involves a move of existing service to a new premise, a change in *any* facet of the service
14 that does not involve a change to the equipment or the wiring, the transfer of telephone
15 service, and the processing of directory listing orders. I would note that Charter makes a
16 rather nebulous claim disputing its directory orders; and here is a clear reference to the
17 charge being applicable to such. Further, “Changes” is a specific category for which this
18 charge is applied and it is a Change order that is at issue here. An LNP LSR is a Change
19 order as Change orders are commonly defined in the industry. For example, I started my
20 career in the Business Office and a Change order was the category applied to any service
21 order requested other than a New Connect, Disconnect or From and To (move of service).

22 **Q. So to summarize, the ICA language encompasses the general exchange tariff without**
23 **exception, CLECs can and have purchased services out of the general exchange**
24 **tariff and CLECs, such as Charter, are and always have been customers in both the**
25 **descriptive and the operational sense?**

1 A. Yes.

2 **Q. Charter also claims that the Service Guide cannot be used for justifying the charge**
3 **because CenturyTel can change the rates whenever it wants. Mr. Voight is**
4 **concerned about “unilateral” changes to the rates in the Guide (Voight Rebuttal at**
5 **12). Are these arguments valid?**

6 A. No. CenturyTel cannot change rates whenever it wants via a change in the Guide. The
7 rates referenced in the CenturyTel Service Guide are only those rates incorporated by
8 reference and already established in the tariffs. Mr. Voight should be reassured that
9 CenturyTel cannot change any tariff rates identified in the Guide without Commission
10 approval and that all tariff rates currently referenced in the Guide have been submitted to
11 the Commission as required by law, and have received Commission approval.

12 Further, both Charter and Mr. Voight repeatedly assert that CenturyTel can use
13 only those terms expressly set forth in the ICA; but I believe they have overlooked or
14 failed to consider the binding nature of the clear language of other very specific and very
15 relevant terms:

16 2.85 Tariff.

17 2.85.2 Any standard agreement *or other document, as amended from time-to-*
18 *time*, that sets forth the *generally available terms, conditions and prices* under
19 which a Party offers a Service.

20
21 35.2 Unless the context shall otherwise require, any reference to a Tariff,⁵
22 agreement, technical or other document (*including Verizon* or third party *guides*,
23 practices or handbooks), or provision of Applicable Law, is to such Tariff,
24 agreement, document, or provision of Applicable Law, *as amended and*
25 *supplemented from time to time* (and, in the case of a Tariff or provision of
26 Applicable Law, to *any successor* Tariff or provision). (*emphasis added*)

27 Mr. Schremp in particular acknowledges that the CenturyTel Service Guide is a
28 “document” but argues that it cannot be incorporated because Charter never agreed to do

⁵ A defined term that encompasses the Service Guide.

1 so (Schremp Rebuttal at 12). In point of fact, Charter *did* agree to incorporate the Guide
2 when it signed these express and explicit terms in the ICA. Mr. Schremp also argues that
3 the Guide is not appropriate because it can be modified – again asking the Commission to
4 ignore Charter’s signed agreement to the terms permitting “as amended and
5 supplemented from time to time.”

6 Mr. Voight, on the other hand, tries to tie or relate the inclusion of the Guide
7 within the definition of a tariff to the Commission's definition of a tariff (Voight Rebuttal
8 at 12). I would respectfully point to Mr. Voight’s initial argument– that this matter is
9 solely a case of contract interpretation (Voight Rebuttal at 3). I believe it is very
10 inconsistent to assert that this is a case of strict contract interpretation, and then later
11 ignore that same premise to use an outside source for a different interpretation. Under
12 Mr. Voight’s blanket premise, the Commission must concern itself only with the
13 definition of the term “tariff” under the ICA. No other definition would be appropriate as
14 it pertains to whether or not the Service Guide is included under the term tariff by the
15 express language of the ICA. I am not personally claiming that the Service Guide is a
16 tariff as the term tariff is generally used before this Commission. Rather, I am asserting
17 that this specific ICA – signed and agreed to by Charter – defines tariff in such a manner
18 as to include the Service Guide. I believe it is disingenuous for anyone to claim that the
19 parties must be held to the precise terms of the ICA, and then pay no heed to very clear
20 and specific terms found elsewhere in the ICA.

21 By the same justification, Mr. Voight’s concern about CenturyTel’s potential (but
22 unfounded in this case) ability to change the rates is again asking the Commission to
23 disregard Charter’s signed agreement to the terms permitting “as amended and
24 supplemented from time to time.”

1 As I testified previously (Miller Direct at pp. 24-25), the Guide meets the
2 definition of tariff under the specific terms of the ICA and therefore cannot be excluded.
3 In addition, these terms expressly encompass CenturyTel's documented practices – and it
4 is without dispute that CenturyTel's documented practices include charging the general
5 exchange tariff rate for LNP LSRs.

6 **Q. Charter and Mr. Voight argue that CenturyTel should have brought this rate**
7 **dispute before the Commission earlier. Why did CenturyTel not do so?**

8 A. I discussed this earlier in my rebuttal testimony. The 2004 dispute resolution was
9 concluded with Charter having paid its past-due balances and CenturyTel sustaining
10 ongoing charges at the tariff rate. CenturyTel had no dispute to bring to the Commission.
11 CenturyTel sustained the charges and continued billing for the LNP LSRs – CenturyTel
12 was not an “aggrieved” party at that time and had no dispute with Charter to bring before
13 the Commission. CenturyTel considered the dispute resolved. Charter had initiated the
14 dispute as the “aggrieved” party, and if Charter did not consider the dispute resolved, it
15 needed to escalate the dispute in a timely Complaint before this Commission.⁶ Charter
16 failed to do so, and CenturyTel believed that by the relevant terms of ICA, the dispute
17 was resolved. In CenturyTel's point of view, and by any measure of industry standard
18 ILEC–CLEC interaction under the ICA terms, the charges were deemed valid because
19 Charter did not escalate the dispute as required by those terms.

20 Remember that contrary to what Charter has portrayed, Charter was not faithful in
21 disputing these charges in a timely manner. In fact, Charter disingenuously filed a raft of
22 old disputes after initiating this 2008 complaint. Again, by overturning the 2004 dispute

1 resolution result and finding for Charter at this late date, the Commission would
2 effectively be rewarding Charter for failing to escalate the very dispute that it raised in
3 2004.

4 **Q. But Charter now claims that it had a prospective dispute on these charges following**
5 **that 2004 dispute resolution. How do you answer that claim?**

6 A. Remember that it was Charter that initiated the dispute resolution in 2004 as the
7 “aggrieved” party. Having gone through that dispute resolution process, any prospective
8 dispute by Charter *on the exact same issue* necessarily hinged upon Charter escalating the
9 dispute resolution outcome on that issue. Charter never did so. A party cannot
10 unilaterally leave a dispute open indefinitely once *that Party* invokes dispute resolution
11 and follows the process specified in the ICA. The wording of the ICA implies that the
12 dispute is over after 45 days unless escalated. Charter’s assertion that the dispute
13 remained “open” is simply wrong.

14 9.3 ... A Party may also dispute prospectively with a single notice a class of
15 charges that it disputes. ... Billing disputes ***shall be subject to the terms of***
16 ***Section 14, Dispute Resolution.***
17

18 14. Dispute Resolution
19

20 14.1 Except as otherwise provided in this ICA, ***any dispute*** between the Parties
21 regarding the interpretation or enforcement of this ICA or any of its terms
22 ***shall be addressed by good faith negotiation between the Parties.*** ... The
23 Parties’ representatives ***shall meet at least once within 45 days after the***
24 ***date of the initiating Party’s written notice*** in an attempt to reach a good
25 faith resolution of the dispute.
26

27 14.2 If the Parties ***have been unable to resolve the dispute within 45 days*** of
28 the date of the initiating Party’s written notice, either Party may pursue
29 any remedies available to it under this ICA, at law, in equity, or otherwise,
30 including, but not limited to, instituting an appropriate proceeding before

⁶ “14.2 - If the Parties have been unable to resolve the dispute within 45 days of the date of the initiating Party’s written notice, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction.” CenturyTel understands “either Party may pursue any remedies” to logically refer to whichever party remains aggrieved or unsatisfied.

1 the Commission, the FCC, or a court of competent jurisdiction. (*emphasis*
2 *added*)

3 So assuming, *arguendo that* Charter is somehow allowed to make another dispute
4 following the conclusion of a Section 14 dispute resolution process on that same disputed
5 topic, Charter would be obligated to follow the Section 14 terms once again. Notice that
6 after its claim of a “prospective dispute” that Charter failed to address this “dispute”
7 through a request for good faith negotiations, failed to request a meeting with CenturyTel
8 within 45 days of initiating the “dispute” and failed to escalate the “dispute” after the 45-
9 day period had ended. We are right back where we started. Charter had no valid
10 prospective dispute because it failed in all respects to follow the dispute resolution and
11 escalation terms specifically obligated by the ICA.

12 I would reiterate that the wording of the ICA deems that the dispute is over after
13 45 days unless the dispute is escalated. And setting aside the implied expectation of an
14 “immediate” escalation of a dispute after 45 days, as well as logic and common industry
15 practice as regards timely dispute escalation, I would point out to the Commission that
16 such a claim is refuted by specific ICA terms signed and agreed to by Charter. In this
17 case, Section 18–Good Faith Performance.⁷ Under Section 18, Charter was obligated to
18 bring this dispute to the Commission over three years ago if it intended to do so at all.

19 **Q. Can you summarize CenturyTel’s position for the Commission?**

20 **A.** CenturyTel is doing work for Charter and believes Charter is obligated to pay for that
21 work. CenturyTel believes the ICA establishes the comparable tariff rate for this work
22 and more importantly, that Charter has known this for almost four years and has tacitly

⁷ 18. Good Faith Performance. The Parties shall act in good faith in their performance of this Agreement. Except as otherwise expressly stated in this Agreement (including, *but not limited to*, where consent, approval, agreement *or a similar action is stated to be within a Party’s sole discretion*), where consent, approval, mutual agreement *or a similar action is required* by any provision of this Agreement, such action shall not be unreasonably withheld, conditioned or *delayed*. (*emphasis added*)

1 accepted the tariff rate by not escalating the dispute at the conclusion of the 2004 dispute
2 resolution process. CenturyTel believes that Charter was obligated by ICA terms to
3 escalate in 2004 to overturn the applicability of the tariff rate if it wished to continue this
4 dispute. Charter did not escalate in 2004 and therefore has no open dispute. With no
5 escalation, the dispute has already been addressed pursuant to ICA terms and the outcome
6 should not be overturned three and a half years later.

7 **Q. Let's focus more on Mr. Voight's testimony. Based on his testimony to date, Mr.**
8 **Voight does not agree with the applicability of the tariff rate?**

9 A. That is correct.

10 **Q. What are your thoughts on Mr. Voight's position?**

11 A. First, I believe that Mr. Voight has not considered the effect and outcome of the 2004
12 dispute resolution between the parties. If the Commission accepts Mr. Voight's opinion,
13 then Charter will be getting away with requiring CenturyTel to perform uncompensated
14 work for about four years, largely as a result of Charter having failed to make a timely
15 escalation of the dispute.

16 **Q. What other impression do you have about Mr. Voight's testimony?**

17 A. Mr. Voight suggests that the Parties can only be bound to those specific terms, payment
18 terms in this case, that are listed directly (rather than incorporated by reference) in the
19 ICA and that applicable law, FCC orders or industry practice do not come into play in
20 interpreting the parties' respective obligations. I believe that Mr. Voight is mistaken in
21 this belief and that common industry practice regarding ICA interpretations clearly shows
22 that applicable law, FCC orders or industry practice do come into play.

23 **Q. Let's talk about why you think Mr. Voight is mistaken in that regard.**

1 A. I'm not trying to be facetious here, but if I accept the premise that there are no obligations
2 other than those listed directly in the ICA, then by the specific ICA terms, neither party
3 has an obligation to terminate a call from the other party to an end user to which a dialed
4 number is assigned. Nowhere in the ICA does it expressly state – or even imply – that
5 the word “termination” means the delivery of a call from the other party to the end user
6 associated with the dialed number. By the express ICA terms, we are only obligated to
7 accept traffic and deliver it somewhere, presumably at a termination point of our own
8 choosing. Clearly the Commission would not interpret the ICA in this manner, but
9 applying Mr. Voight's strict logic would require it to do so.

10 Using the same analysis of the ICA terms, CenturyTel has no obligation to ensure
11 that its end-user customers can obtain Charter telephone numbers via Directory
12 Assistance. The ICA terms simply do not require CenturyTel to do so. Again, however,
13 applying common sense and industry practice produces the correct result.

14 And even more relevant to this dispute, Charter has tried to make an issue out of
15 not receiving some declared (but incorrectly applied) results from its submission of
16 CSRs. Again, using Mr. Voight's logic, I have a simple solution to this dispute.
17 Nowhere in the ICA is CenturyTel required to accept or process CSRs, except in
18 conjunction with Resale or the purchase of UNEs.⁸ Accordingly, and again I am not
19 trying to be facetious, under Mr. Voight's logic, it appears that CenturyTel would be
20 within its contractual rights to stop accepting Charter's non-Resale/non-UNE CSRs on an
21 immediate basis and do so until the ICA is amended to permit such. I believe this would

⁸ The flip side to this is that, Charter is not allowed by literal interpretation of the ICA terms to claim that any CSR is sent is for any purpose not listed. In my opinion, therefore, Charter has no valid basis to claim that CenturyTel has failed to perform some non-Resale or non-UNE related work.

1 resolve any further CSR dispute, as there would no longer be any disputable results or
2 billing for CSR processing.⁹

3 Clearly neither Charter nor the Commission would look favorably upon
4 CenturyTel if it followed the above conclusions as regards certain obligations. However,
5 this analysis clearly illustrates the point that, contrary to Mr. Voight's logic, the ICA
6 includes some obligations by reference or inference and more to the point, the
7 Commission and Charter both expect CenturyTel to fulfill certain obligations even if they
8 are not specifically spelled out in express terms in the ICA. You cannot have it both
9 ways – either the ICA obligations include referenced and inferred terms or they do not.
10 There is no pick and choose on an issue-by-issue basis.

11 **Q. If the Commission decides that Mr. Voight is correct – that this is solely a matter of**
12 **contract interpretation – what is the finding that Commission must make under that**
13 **argument?**

14 A. The Commission must still find that CenturyTel is entitled to charge a LSR rate, albeit
15 one that is listed within the ICA. If you accept that Mr. Voight has made a correct
16 interpretation that a rate must be specifically contained in the ICA in order to be billed,
17 the ultimate conclusion must be that CenturyTel is still entitled to payment for processing
18 Charter's LNP LSRs.

19 **Q. Why do you come to that conclusion?**

20 A. First, as I previously testified, the ICA never specifically says there will be no charge for
21 LNP LSRs, and exceptions to the general payment requirement are commonly and
22 specifically delineated in an ICA – including this ICA (Miller Direct at p. 28). More to
23 the point, LSR is a *defined term* in the ICA. As that term is defined, a LSR is used, and

⁹ I would note that I am using this to illustrate the problem with Mr. Voight's logic, and would add that

1 can therefore presumably *only* be used under contract interpretation rules, for ordering
2 Resale and UNEs. Rates for LSR processing for Resale and UNEs are *specifically listed*
3 within the ICA. Therefore, every LSR submitted under the ICA is subject to those rates.

4 The ICA then goes on to say that a LSR must be used for ordering LNP. If a LSR
5 is a defined term *only* to be used for Resale and UNE ordering, then its use for LNP
6 ordering *must*, by ICA terms, also be encompassed within the rates for Resale or UNEs
7 and one of the rates listed in the ICA must therefore apply to LSRs used for this purpose.
8 To this end, the work done processing an LNP LSR most approximates that for
9 processing a Resale LSR¹⁰ and the definition of the Resale LSR rate in the Pricing
10 Attachment, as written, does describe what happens in porting as well as in Resale:

11 Non-Engineered Initial Service Order – Changeover applies only to Basic
12 Services ***for services migrating from Verizon to Charter***. End-user service may
13 remain the same or change.

14 So to find the rate under Mr. Voight's logic, the following applies:

- 15 1) Section 15.2.1 of the Interconnection Attachment states that Charter will send a *LSR*
16 to CenturyTel to port a number.
- 17 2) *LSR* is a *defined term* pursuant to Section 2.54 of the Glossary and is therefore *solely*
18 for the purpose of establishing, adding, changing or disconnecting resold services and
19 Network Elements.

CenturyTel has no intention to stop accepting and processing Charter's non-Resale/non-UNE CSRs.

¹⁰ In processing both resale and porting LSRs, the CenturyTel representative retrieves the LSR from the ordering website and reviews the LSR to ensure all sections have been completed by the submitting CLEC. The representative then opens the end-user account in the billing system, double-checks the LSR information against the account and checks to see if the account has an Access Line Freeze or other issues that need to be addressed by referring the LSR back to the submitting CLEC. If all information on the LSR is complete and correct, the order entry activities then take place – typing in the due date, choosing the Reason Code, choosing the company the customer is moving to, checking the Billing and Records checkbox, completing the Contact info group box, entering detailed notes taken from the LSR including account number, end-user name, address, and telephone number and the company the end user is moving to. The representative then opens the appropriate CenturyTel operating company account of the CLEC and manually enters all of the end-user and CLEC information needed to process and bill for the order. Errors are identified and corrected. The order is then sent to the personnel who perform the actual work to move the customer.

1 3) In the Pricing Attachment, it states in 1.3 that the Charges for a Service shall be the
2 Charges for the Service stated in the Providing Party's applicable Tariff and then goes
3 on in 1.4 to say, in the absence of Charges for a Service established pursuant to
4 Section 1.3, the Charges shall be as stated in Appendix A of this Pricing Attachment.

5 4) Since Mr. Voight dismisses the applicability of the tariff, we look to Appendix A.

6 5) In Appendix A, the following rate is found is found under Resale:

7 Ordering and Provisioning

8 Non-Engineered¹¹ Initial Service Order - Changeover \$ 21.62

9
10 Initial Service Order - Changeover applies only to Basic Services¹² for services
11 migrating from Verizon to Charter. End-user service may remain the same or
12 change.

13 6) In the UNE section of Appendix A, the service order charges are specific to listed
14 UNEs; therefore the Resale service order rate is the applicable rate to apply by strict
15 ICA interpretation of LSR as a defined term.

16 **Q. If, after hearing what you just said, Charter claims that CenturyTel is “changing its**
17 **tune yet again” and “coming up with a new theory in an attempt to justify its**
18 **billing,” how would you respond?**

19 A. That Charter is casting doubt where none exists. I *clearly* said that it is CenturyTel's
20 position that the ICA points to the tariff as the applicable rate and that such was
21 confirmed in the 2004 dispute resolution outcome. We are not talking about
22 CenturyTel's position now, we are discussing how Mr. Voight stopped short of the only
23 valid outcome of his argument about this being strictly a matter of contract interpretation
24 and not encompassing anything else – such as the Parties' intent, prior precedence, etc. I
25 would also point out that the ICA pricing alternative is second in priority for rate

¹¹ “Non-Engineered” means that engineering design work is not needed for this service.

¹² “Basic Services” refers to residential and business lines.

1 determinations. In other words, if the Commission finds that, contrary to CenturyTel's
2 position, no tariff rate applies, the ICA then refers the parties to the pricing alternative.

3 **Q. Could Mr. Voight or Charter argue that despite LSR being a defined term, in the**
4 **case of LNP, the term LSR is used in a more general sense for porting?**

5 A. Not without obvious inconsistencies. Remember that Mr. Voight's argument is that the
6 ICA is, and must be, specific as to the charges levied. He makes a point at the beginning
7 of his testimony to state his belief that this is solely a matter of contract interpretation.
8 Therefore, neither Mr. Voight nor Charter, nor the Commission for that matter, can
9 embrace Mr. Voight's interpretation of holding only to the specific language contained in
10 the ICA and then also claim that a *defined term* can somehow also be used in a general
11 sense not specified by the ICA. If this case is a matter of strict contract interpretation, as
12 Mr. Voight suggests, then "LSR" is a *defined term* and the charges for *any* LSR,
13 including LNP LSRs, are the ones listed in the ICA for that defined term and those rates
14 *are payable* by Charter for every LSR, without exception. There can be no other
15 conclusion under Mr. Voight's argument.

16 **Q. How would you sum up this issue for the Commission?**

17 A. CenturyTel is doing work for Charter and believes Charter is obligated to pay for that
18 work. Verizon apparently did work for Charter and billed Charter service order charges
19 for that work at other than a rate specified in the ICA. Through his testimony, Mr.
20 Voight seems to imply that CenturyTel is doing work for Charter, and should have an
21 ICA rate in order to be compensated for that work. CenturyTel believes that it does have
22 such an agreement. The ICA establishes the comparable tariff rate for this work. Charter
23 has known this for almost four years, and has tacitly accepted the tariff rate by not
24 escalating the dispute at the conclusion of the dispute resolution process. Charter should

1 not be financially rewarded for failing to escalate this dispute three-and-one-half years
2 ago. CenturyTel believes that the Commission must find, by the ICA terms and the
3 precedence of the dispute resolution outcome, that the tariff rate applies.

4 If, however, the Commission believes that a rate must be contained within the
5 ICA as Mr. Voight suggests, then since LSR is a defined term in the ICA and there is a
6 rate in the ICA associated with that defined term, the Commission has no choice but to
7 assign that rate and to find that the billing must be trued up to that rate.

8 The Commission cannot logically accept that CenturyTel should have performed
9 all this work for Charter over the years without compensation because there is some
10 ambiguity in the ICA and that ambiguity favors Charter's delay in bringing this dispute to
11 the Commission. To let Charter get away with not paying is contrary to FCC precedent,
12 industry practice, CenturyTel's 2004 notice to Charter (GM – Schedule 1 (**HIGHLY**
13 **CONFIDENTIAL**)), Charter's tacit acceptance of the rate by continually sending orders
14 and failing to timely escalate its 2004 dispute; and it condones Charter's violation of
15 Section 18. Either the tariff rate is the right rate, as CenturyTel believes, (and as the 2004
16 dispute resolution confirmed), or the listed ICA rate for a LSR (as a defined term) is the
17 right rate – under Mr. Voight's logic – and the parties can true up the billing.

18 **Q. Does this conclude your surrebuttal testimony?**

19 **A.** Yes, it does.