

**BEFORE THE  
MISSOURI PUBLIC SERVICE COMMISSION**

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

Case No. LC-2008-0049

**CHARTER REPLY TO CENTURYTEL MOTION TO DISMISS**

Pursuant to Missouri Code of State Regulations, 4 C.S.R. 240-2.070, and 4 C.S.R. 240-2.117, Charter Fiberlink-Missouri, LLC ("Charter") hereby replies to CenturyTel's Motion to Dismiss in the above referenced matter. Charter's Answer and Affirmative Defenses to the counterclaims of CenturyTel of Missouri, LLC ("CenturyTel") are presented in a separate pleading being filed in conjunction with this pleading.

**I. INTRODUCTION**

In its Motion to Dismiss CenturyTel argues that the Commission has no jurisdiction over the Parties' current dispute, but fails to acknowledge that governing federal law and the Parties' Agreement both vest this Commission with the authority to hear interconnection agreement disputes like this one. Indeed, the Commission has specific and express authority to hear this dispute under federal and state law. CenturyTel masks this truth with assertions that Charter has not properly disputed these charges, a curious claim when one considers the amount of time and energy that Charter has committed to trying to resolve these bill disputes for the *last four years*.

In an attempt to bolster its already questionable position of assessing charges which have no contractual basis upon Charter, CenturyTel unveils a number of spurious theories concerning

the application of extraneous documents and tariffs to Charter. These arguments are based on an overly broad construction of the Agreement, and ignore the fundamental fact that the Parties have an express contract governing their mutual duties and obligations in Missouri. Nowhere in the four corners of the contract is there any language that authorizes, or even contemplates, that CenturyTel will charge Charter whenever a telephone number is ported from CenturyTel's network to Charter's network. The fact is, there are no provisions authorizing such charges.

In apparent recognition of that fact, CenturyTel also argues that if Charter is not forced to pay these charges CenturyTel will be providing a "service" to CenturyTel for free. But the premise of CenturyTel's argument, that its provision of number portability to Missouri consumers constitutes a "service" to Charter is fundamentally flawed. The fact is, federal law requires CenturyTel to port numbers to competitors, and when it does so it is fulfilling its legal duties under the Section 251(b)(2) of the Telecommunications Act of 1996, rather than providing a "service" to Charter. Moreover, CenturyTel fails to acknowledge that Charter has the same duty (to port telephone numbers to CenturyTel's network without charge), and that it fulfills this duty without attempting to assess similar charges on CenturyTel for every number ported away from Charter's network.

## **II. THE COMMISSION HAS THE JURISDICTION AND AUTHORITY TO ADJUDICATE CHARTER'S COMPLAINT AND SHOULD THEREFORE DENY THE MOTION TO DISMISS**

Charter responds to CenturyTel's various arguments in the order presented in the CenturyTel's Motion to Dismiss (the "Motion").

### **A. The Commission Has Jurisdiction Over this Matter and Should Therefore Deny CenturyTel's Motion to Dismiss**

CenturyTel moves for dismissal of Charter's Complaint on the grounds that Charter has not satisfied the dispute resolution provisions of the Agreement, which it contends are a

condition precedent to filing a complaint with the Commission. *Motion* at 6. CenturyTel claims that the Parties' discussions in 2004 were conclusively resolved (in a unilateral fashion when CenturyTel "sustained" its own charges) and that after that point in time, the matter was not open to further discussion. *Id.* CenturyTel also asserts, incorrectly, that Charter "never initiated a dispute with regard to the charges presently at issue in this matter." *Id.* at 7.

These arguments fail, though, on both the facts and the law. First, it is demonstrably false to assert, as CenturyTel does, that Charter has never disputed the charges at issue in this matter. To the contrary, Charter has consistently and continually disputed these charges from late 2002 to the present. Second, CenturyTel improperly asserts that the Agreement precludes this type of action. In fact, the Agreement specifically contemplates the type of complaint filed by Charter, and clearly allows either Party to pursue "any appropriate remedy under the law." Third, the Commission's jurisdiction is established by federal and state law, which clearly grants the authority to adjudicate the claims in Charter's Complaint, rather than by the Parties' Agreement.

1. *Charter Has Consistently Disputed CenturyTel's Charges In Compliance with the Terms of the Agreement*

CenturyTel's claim that Charter has not properly disputed these charges is simply false. Indeed, CenturyTel itself admits that Charter did in fact issue dispute statements to CenturyTel during this time.<sup>1</sup> However, CenturyTel now raises the argument that none of the dispute statements submitted by Charter during the last four years satisfy the bill dispute provisions of the Agreement. This argument relies upon a construction of the Agreement that is not credible.

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<sup>1</sup> See CenturyTel Answer at ¶ 18 ("CenturyTel admits that Charter disputed prior charges,..."), and ¶ 24 ("Charter may have sent an occasional indication that took issue with some of the charges..."), and ¶ 19 ("CenturyTel admits that Charter claimed to reserve a right to seek a refund of its payment...").

Further, CenturyTel incorrectly asserts that the formal dispute resolution negotiations between the Parties were conclusively resolved in September of 2004, during a conference call in which CenturyTel claims to have “sustained” its charges. *Motion* at 6. CenturyTel then asserts that Charter did not take any further action with regard to that dispute. *Id.* Thus, CenturyTel argues, the dispute was “resolved” in favor of CenturyTel.

This argument fails for two reasons. First, the dispute resolution provisions of the Agreement do not give CenturyTel the unilateral power to “sustain” its charges and conclusively determine when a dispute is, or is not, resolved. There is simply no provision of the Agreement that provides CenturyTel such authority (and Charter has never consented to such an approach). Second, Charter has clearly and consistently disputed these charges, consistent with its obligations under Section 9.3.

There are two provisions of the Agreement dealing with bill disputes: Section 9, which deals with the mechanics of the billing, payment, and dispute of bills, and Section 14, which addresses dispute resolution processes.

With respect to the bill dispute process, Section 9.3 of the Agreement establishes a very clear process for disputing charges, as follows:

If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party shall give notice to the billing Party of the amounts it disputes (“Disputed Amounts”) and include in such notice the specific details and reasons for disputing such item.

Agreement, § 9.3

Thus, the process for disputing a charge is relatively simple. The disputing Party must do two things. First, it must “give notice to the billing Party of the amount it disputes” and, second, it must include “specific details and reasons for disputing such item.” *Id.*

Charter has provided bill dispute statements to CenturyTel over the course of the last several years which satisfy these requirements. Charter's bill dispute statements are delivered to the designated CenturyTel representative electronically (thereby providing prompt notice to the billing Party - CenturyTel), and each of the dispute statements provides specific details as to the reason for the dispute. Thus, Charter has complied with this provision, and has consistently disputed CenturyTel's charges.<sup>2</sup>

CenturyTel suggests, however, that these disputes are not valid because they were not coupled with negotiations contemplated by Section 14 of the Agreement. According to CenturyTel, every month that Charter disputes a charge it must *both* send a formal notice of dispute under Section 9.3, *and* engage in dispute resolution negotiations under Section 14. (Note that every month CenturyTel delivers bills to Charter with unauthorized charges.) Thus, CenturyTel would have had Charter deliver a bill dispute statement, and then initiate new dispute negotiations every month for the last three years. But that approach is clearly not contemplated by the Agreement, and would lead to nothing more than a waste of papers as the Parties' respective positions on the disputed issues were firmly in place following the 2004 dispute negotiations.<sup>3</sup>

During the 2004 negotiations Charter delivered several formal letters to CenturyTel explaining in painstaking detail each and every item disputed on the CenturyTel bills, the basis

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<sup>2</sup> These bill dispute statements are delivered on a monthly basis to CenturyTel. There are several short periods during the last four years in which Charter did not, for a number of reasons, deliver a bill dispute statement to CenturyTel. However, even then, there can be no doubt that CenturyTel was on notice of Charter's dispute of these charges.

<sup>3</sup> Furthermore, that construction directly contradicts the principle of prospective disputes of a class of charges, as allowed under Section 9.3. If CenturyTel were correct, and the Agreement required that the Parties engage in formal discussions for every monthly invoice disputed by Charter, then there would be no reason to include Section 9.3. Clearly, the Commission should not construe contracts in a manner that makes one provision superfluous, or unnecessary. See *City of Harrisonville v. Pub. Water Supply Dist. No. 9 of Cass County*, 49 S.W.3d 225, 231 (Mo. App. 1995) (explaining that terms on a contract should be construed to avoid rendering other terms meaningless).

for each of Charter's dispute, the legal rationales for the positions Charter took on these disputes, and other matters related to the resolution of this dispute. CenturyTel provided written responses to many of those communications, and the Parties' representatives ultimately engaged in several telephone conferences in attempts to resolve these disputes. Unfortunately, those negotiations were not successful, and the billing dispute between the Parties *continued to this day*.

Indeed, as Charter noted in paragraphs 9 through 25 its Complaint, it has been disputing these charges since they were first assessed, beginning in the second quarter of 2003. And, Charter also disputed the \$64,000 in charges it was forced to pay in 2004. And, most importantly, Charter has continued to dispute CenturyTel's charges to this day. A copy of recent bill dispute statements submitted to CenturyTel by Charter is attached hereto as Exhibit A.

In addition, Section 9.3 also allows a Party to dispute an entire "class" of charges prospectively by simply providing a single notice to the billing Party. The contract states: "[a] Party may also dispute prospectively with a single notice a class of charges that it disputes."<sup>4</sup> Charter provided such a notice to CenturyTel by formal correspondence dated July 26, 2004. A copy of that correspondence, with the prospective dispute of charges, is attached hereto as Exhibit B. Thus, Charter has provided notice of its disputes in two separate manners, by the single prospective notice of the dispute of the entire class of charges, and by its continued monthly dispute statements.

During the Parties' conference call in September, 2004, Charter reiterated its dispute of the charges, and the basis for such dispute: the charges were not allowed under the Agreement, and they were prohibited by federal law. CenturyTel continued to assert its position that the

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<sup>4</sup> Agreement, General Terms at § 9.3.

charges were proper, but never claimed that it had a unilateral right to sustain the charges.<sup>5</sup> In fact, the Agreement provides for a process of dispute of charges, followed by negotiations. Charter complied with that process, but CenturyTel refused to move from its unbending position that these charges were authorized by the Agreement. Following those negotiations in 2004 it became clear that CenturyTel would not acknowledge the error in its charges, Charter decided to continue disputing the charges. Charter did so by sending bill dispute statements to CenturyTel, *for the last four years.*

Significantly, these notices were delivered to CenturyTel *after* the September 2004 teleconference that CenturyTel claims to have been the final, determinative meeting of the Parties. This shows that CenturyTel is factually incorrect when it states that following the September, 2004 meeting “Charter did not take further action with regard to that dispute.” *Motion* at 6. In fact, the opposite is true. Charter took the actions required by the Agreement: it continued disputing these charges for three straight years, from September, 2004 to the present, and thereby provided CenturyTel specific notice of its dispute of these charges.

If CenturyTel is correct that its charges were “sustained,” or that the dispute was “resolved,” *Motion* at 6, that does not explain why Charter continued to dispute these charges (in two different ways), and why Charter continued to withhold payment. If the dispute was actually resolved, as CenturyTel suggests, then Charter would have begun to pay the disputed charges. But that did not happen. Indeed, quite the opposite: Charter continued to dispute the charges. It is therefore clear that CenturyTel’s claims of “sustaining” its charges was simply a unilateral declaration of its position, and clearly did not reflect a mutual understanding that the dispute was resolved.

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<sup>5</sup> Further, if CenturyTel had asserted such a right, Charter would have pointed out that the Agreement does not make CenturyTel the final arbiter on which bill disputes are resolved, or not resolved.

Moreover, it is telling that CenturyTel has never attempted to initiate a proceeding at the Commission to collect these charges. If CenturyTel truly believed it had a legal right to these charges, surely it would have sought to enforce that right at this Commission. But it has never done so.

And CenturyTel's unilateral action to suspend service is not the equivalent of enforcing its right to charges. Moreover, that unilateral declaration of its intent to suspend services is not consistent with the terms of the Agreement. Section 12 of the Agreement, which sets forth the terms by which a party may be deemed in default, does not consider a party's refusal to pay charges that are properly disputed to be a default of the Agreement. Because Charter has properly disputed all charges assessed by CenturyTel, the refusal to pay such charges does not put Charter in default of the Agreement and thus does not give CenturyTel the right to suspend the provision of any or all services under the Agreement. It is therefore clear that the dispute has continued to this day, and that Charter has continued to provide notice to CenturyTel of its intention not to pay the charges (consistent with the terms of the Agreement) going forward.

It is also clear that Charter has satisfied its obligations under the Agreement to notify CenturyTel of its dispute of charges, and the basis for such dispute. Once that dispute is properly made, the burden *shifts* to the billing party to demonstrate that the billed charges are lawful and appropriate. CenturyTel has never demonstrated that its charges are lawful, or appropriate. Despite the Parties' negotiations in 2004, there was no resolution to the Parties' dispute, and Charter continued to dispute these charges. Thus, Charter has clearly met its burden under the Agreement, which means that the burden shifts to CenturyTel to demonstrate its charges are proper. This it has not done.



2. *The Agreement Specifically Authorizes This Form of Action Against CenturyTel's Charges and Contains No Conditions Precedent to Filing Complaints*

Regardless of the exact requirements of the bill dispute and dispute resolution provisions of the Agreement, Charter's complaint is specifically authorized under another provision of the Agreement that supersedes the bill dispute and dispute resolution provisions. Specifically, Section 5 of the Pricing Attachment provides:

Notwithstanding any other provision of this Agreement, each Party reserves its respective *rights to institute an appropriate proceeding* with the FCC, the Commission or other governmental body of appropriate jurisdiction: (a) with regard to the Charges for its Services ...; and (b) *with regard to the Charges of the other Party* (including, but not limited to, a proceeding to obtain a reduction in such Charges and a refund of any amounts paid...).

Pricing Attachment, at § 5.

Thus, this provision of the Agreement expressly authorizes the Complaint filed by Charter. Further, by its own terms ("Notwithstanding any other provision of this Agreement") this provision supersedes any other provisions of the Agreement that might be read as implicitly requiring a certain process prior to either Party filing an action concerning rates and charges. That is precisely what this provision rejects, in that it expressly provides a right by either Party to file a complaint with this Commission. CenturyTel is therefore incorrect to assert that the Commission's jurisdiction to adjudicate this matter is somehow limited by the bill dispute provisions of the Agreement.

Furthermore, it would be fruitless for this Commission to force the Parties back into additional dispute resolution negotiations. Because this dispute is well developed, both parties have clearly defined legal positions, and the inevitable result would simply be further impasse. At which point Charter would simply have to file another enforcement complaint, and the Parties would be back before the Commission forty-five to sixty days from now.

3. *The Commission Has Jurisdiction Over this Complaint Pursuant to the Authority Granted by Federal Law and Missouri Statutes*

Notwithstanding CenturyTel's arguments about the satisfaction of the dispute provisions, the question of whether this Commission has the jurisdiction and legal authority to hear this complaint is governed by the law, not the Agreement. CenturyTel asserts that the Commission lacks such jurisdiction, because the dispute resolution provisions have not been satisfied. *Motion* at 8.

But CenturyTel cites no legal authority in support of its claim, and clearly fails to acknowledge that the Commission has jurisdiction to approve, interpret, and *enforce* interconnection agreements pursuant to 47 U.S.C. § 252. The federal courts have ruled that Section 252 vests state commissions with the authority to approve interconnection agreements, and the authority to interpret and enforce such agreements.<sup>6</sup>

Furthermore, this Commission has the jurisdiction to hear and adjudicate complaints under 386.410 RSMo. Supp. 1998, and Commission rule 4 C.S.R. 240-2.070(3), which vests in the Commission the jurisdiction to hear formal complaints "setting forth any act or thing done or omitted to be done by any person, corporation or public utility, including any rule or *charge established or fixed* by ... [such] corporation or public utility." *Id.* (emphasis added). Thus, the Commission is vested with the jurisdiction, and authority, under federal and state law to adjudicate Charter's Complaint.

B. Charter's Complaint Demonstrates that There is No Contractual Basis for CenturyTel's Charges

Despite its repeated claims that the charges are justified, CenturyTel has failed to identify any language within the Agreement that authorizes CenturyTel to assess number porting charges. Under Missouri law if a contract is unambiguous, the construction of the contract is limited to

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<sup>6</sup> See *Southwestern Bell Tel. Co. v. Connect Commun. Corp.*, 225 F.3d 942, 947 (8<sup>th</sup> Cir. 2000).

the four corners of the document.<sup>7</sup> In addition, “no implied provision can be inserted as against the express terms of the contract, or to supply a covenant upon which it was intentionally silent.”<sup>8</sup> Section 15.1 of the Agreement unambiguously establishes that the Parties’ shall provide number portability in accordance with rules and regulations prescribed by the FCC. In contrast, there is no language that authorizes either Party to assess associated charges associated with that number porting functionality. Thus, the Agreement clearly requires that the Parties provide number porting to each other; and that they do so without charge.

CenturyTel’s basic argument in support of its charges is that the Agreement should be construed to broadly incorporate other documents (what CenturyTel calls other “agreements”) that contain certain language and charges which may, or may not, be relevant to Charter. *Motion* at 13-14. Specifically, CenturyTel argues that the definition of the term “tariff” in the Agreement should be construed to incorporate two separate documents for purposes of this dispute: (1) CenturyTel’s local exchange tariff, and (2) CenturyTel’s so-called “service guide.” *Id.* at 14. According to this line of arguments, the local exchange tariff contains two different rates, \$23.44 and \$23.48 that apply when a “business places an initial order for a discreet service.” *Id.* And, second, the service guide contains language stating that all orders are subject to charges. *Id.*

Thus, CenturyTel asks the Commission to look beyond the four corners of the Parties’ contract to find authority for CenturyTel’s charges. To do so, the Commission must read as one single contract this series of documents (first the Agreement, then the local exchange tariff, then

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<sup>7</sup> See *Spirtas Co. v. Div. of Design and Construction*, 131 S.W.3d 411, 416 (Mo. App. 2004) (citing *City of Harrisonville v. Pub. Water Supply Dist. No. 9 of Cass County*, 49 S.W.3d 225, 231 (Mo. App. 2001)).

<sup>8</sup> *Conservative Federal Savings & Loan Ass’n v. Warnecke*, 324 S.W.2d 471, 479 (Mo. App. 1959) (explaining that “[i]t is not enough to say that the implied covenant is necessary to make the agreement fair, or that without such covenant it would be improvident or unwise, or that the contract will operate unjustly.”).

the service guide) as specifically authorizing the charges at issue here. Essentially, CenturyTel asks this Commission to interpret the Agreement by finding an implied authorization to assess number porting charges, contrary to Missouri law.

CenturyTel's proposed construction of this Agreement is contrary to law and contrary to common sense. First, CenturyTel attempts to incorporate by reference a series of extraneous documents as a basis for imposing number porting charges on Charter. However, under Missouri law, documents may be incorporated by reference *only* if the agreement makes clear reference to a *specific* document, and describes that document in such terms that its "*identity may be ascertained beyond doubt.*"<sup>9</sup> The language of the Agreement does not identify or describe with the requisite level of specificity the tariff that CenturyTel attempts to incorporate here: the CenturyTel of Missouri, LLC Local Exchange Tariff No. 1 ("Local Exchange Tariff"). Nor does the language in the Agreement identify or describe with any specificity CenturyTel's service guide.

Instead, the Agreement simply purports to incorporate "the Tariffs of each Party." Agreement at § 1.1. And "tariffs" are defined as "*any applicable* Federal or state tariff of a Party." Agreement, Glossary at § 2.85 (emphasis added). Thus, the Agreement purports to incorporate "any applicable" tariff. That language does not meet the standard under Missouri law for incorporation by reference, which requires clear and unequivocal reference to a *specific* document. Thus, CenturyTel's assertion that the Commission should construe the term "tariff" broadly to incorporate any and all of its tariffs, as well as the service guide, must be rejected because such a construction would be unreasonably broad and contrary to governing law.

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<sup>9</sup> See *Intertel, Inc. v. Sedgwick Claims Management Services, Inc.*, 204 S.W.3d 183, 196 (Mo. App. 2006) (emphasis added).

The rule of construction under Missouri law must be applied here, because CenturyTel improperly attempts to incorporate documents in a manner that would render the terms of the actual contract meaningless. Under CenturyTel's approach, the Agreement could be construed to incorporate any number of CenturyTel's unilaterally created documents, which would undermine the basic premise of a contract, and belie the purpose of negotiating the terms of an interconnection agreement under the provisions of the Telecommunications Act in the first place. Indeed, to construe the Agreement in such an open-ended manner would enable CenturyTel to unilaterally revise or alter previously negotiated terms, and thereby render the express terms of the Agreement meaningless in violation of Missouri contract law.<sup>10</sup>

Further, even if the Agreement were construed to allow the incorporation of some tariff, it can not reasonably be construed to incorporate the tariff CenturyTel points to: its local exchange tariff. The Agreement (and definitions section) purport to incorporate "any *applicable* Federal or state tariff of a Party." CenturyTel's local exchange tariff, which sets forth rates, terms, and conditions for end user customers that purchase telephone service from CenturyTel is clearly *not* applicable to Charter. Charter is not an end-user of services (but is instead a co-carrier), and does not purchase local telephone service from CenturyTel.

There can be no dispute that the Local Exchange Tariff is intended to establish rates for the provision of local telephone service to end-users. Specifically, a "customer" is defined as the "individual, partnership, association or corporation which contract for *telephone service*..."<sup>11</sup> And "service charge" is defined as the "nonrecurring charge a customer is required to pay for establishing *telephone service* or subsequent modification of that service."<sup>12</sup> Service charge

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<sup>10</sup> See *City of Harrisonville*, 49 S.W.3d at 231 ("All terms are given their plain, ordinary, and usual meanings, and terms should be construed to avoid rendering other terms meaningless").

<sup>11</sup> Local Exchange Tariff No.1, Section 3, Sheet 3 (emphasis added).

<sup>12</sup> *Id.* at Section 3, Sheet 10 (emphasis added).

orders are “applicable for work done in receiving, recording, and processing information necessary to execute each customer request for connections of [telephone] service.”<sup>13</sup> A plain reading of the tariff makes it very clear that the “service” at issue in the Local Exchange Tariff is, in fact, “telephone service” to end-users. The Local Exchange Tariff makes no reference to the provision of number portability, nor does the document purport to establish rates for the fulfillment of the parties’ number porting obligations. Thus, it would be illogical to apply the rates from Local Exchange Tariff to the provision of number portability because Charter is not an end-user, and it does not buy local telephone service from CenturyTel.

Interestingly, despite the fact that CenturyTel urges the Commission to incorporate the Local Exchange Tariff to establish rates for number porting, the rates that it quotes (*i.e.*, \$23.44 in noncompetitive exchanges and \$23.48 in competitive exchanges) were not the rates assessed to Charter at the time of the events leading up to this dispute. In fact, CenturyTel attempted to impose a charge of \$19.78 for each number porting request submitted by Charter over a period of approximately four years. This demonstrates that although CenturyTel has cobbled together some spurious legal theories in defense of these charges now, CenturyTel did not actually use the Local Exchange Tariff as a basis for determining the charges for number porting, and only now attempts to retroactively substantiate these charges.<sup>14</sup>

Moreover, the language that CenturyTel cites is also insufficient to incorporate the service guide into the Agreement. Indeed, the Agreement does not actually reference the service guide; rather, it merely defines the term “tariff” to also include “any standard agreement or other document, as amended from time-to-time, that sets forth the generally available terms, conditions

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<sup>13</sup> *Id.* at Section 5, Sheet 1 (emphasis added).

<sup>14</sup> CenturyTel conveniently attempts to argue that it erroneously billed Charter at the rate of \$19.78 for local service requests over the past four years. Charter finds this admission curious at best, and disingenuous, at worst.

and prices under which a Party offers a Service.”<sup>15</sup> Contrary to CenturyTel’s interpretation, this expansive language cannot reasonably be construed as satisfying the level of specificity required under Missouri law. First, there is no clear reference to the service guide in the Agreement. Instead, the Agreement does nothing more than set broad parameters of which any number of unidentified documents could possibly satisfy. As discussed above, construing the Agreement in this way would lead to an absurd result as Charter would have no reasonable means of staying apprised of, much less agreeing to, its contractual obligations, thereby defeating the purpose of entering into an agreement with express terms. Thus, the Service Guide is not incorporated by reference, and accordingly, the local service request provision contained therein is unenforceable. The proper construction of the express language in the Agreement is that the parties intended to provide number portability in accordance with applicable law and regulations, without charges to the other party.

CenturyTel argues that the Pricing Attachment authorizes it to assess number porting charges as the attachment makes clear that any service ordered by Charter will be subject to a service charge. This reasoning is flawed as it assumes that the fulfillment of the parties’ federally mandated obligation to provide number portability constitutes a “service.” Fulfilling a legal obligation pursuant to a process established by federal law does not mean that CenturyTel is providing a service to a co-carrier. Simply stated, the Parties have a duty to port numbers under federal law. Although that duty is merely memorialized in the Agreement, that does not transform the performance of the duty into a service. Thus, the Pricing Attachment can not be construed as authorizing a charge because CenturyTel is not providing a “service” to Charter when it carries out its number porting obligations set forth under federal law.

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<sup>15</sup> Agreement, Glossary, § 2.85.2.

C. CenturyTel's Charges Are Prohibited by Federal Law

It is important that the Commission keep in mind the context of this dispute. The dispute arises because Charter and CenturyTel have engaged, and continue on a daily basis to engage, in a process that ensures Missouri consumers can port their telephone numbers between services providers. That simple functionality, which Congress and the FCC has stated is vitally important to telephone competition, is at the heart of this dispute. Congress and the FCC have recognized that "the inability of customers to retain their telephone numbers when changing local service providers hampers the development of local competition."<sup>16</sup> Specifically, Charter and CenturyTel are competing for the provision of customers in Missouri, and in so doing rely on each other to ensure that consumers can port their telephone numbers between carriers. Thus, almost every time that Charter wins a customer from CenturyTel, or CenturyTel wins a customer from Charter, they must work together to ensure that the number is ported from one network to another.

That process is relatively simple, and has been clearly established under FCC regulations and guidelines. At its core, it involves the submission of a notice by the "winning carrier" to the other carrier that the subscriber that is switching carriers intends to port their telephone number to the winning carrier. Once the "losing carrier" receives that notice (which is delivered on a form that CenturyTel calls an "LSR"), then that carrier must actually port the number within a certain period of time.

This entire process is mandated by Section 251(b)(2) of the Telecommunications Act, and is specifically regulated by the FCC. In other words, it is a federal legal obligation that both carriers must adhere to. Thus, when a losing carrier completes the porting process in response to

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<sup>16</sup> See H. COMMERCE COMM. REP. NO. 104-204, pt. 1, at 72 (1995); and *In re Telephone Number Portability*, First Report and Order & Further Notice of Proposed Rulemaking, 11 FCC Rcd. 8352, 8367-68 (1996).



notice from the winning carrier, the losing carrier does so because it is *required to do so* by federal law (47 U.S.C 251(b)(2) and 47 C.F.R 52.23), not because it is providing a “service” to the other carrier. With that context in mind, the Commission must consider the legal regime established by the FCC for recovering the costs of fulfilling these duties, or as the FCC puts it, the cost of implementing number portability.

FCC regulations state that carriers are only allowed to recover their cost of providing number portability through a tariffed charge on end users, not other carriers.<sup>17</sup> Moreover, the FCC has specifically prohibited ILECs from imposing these types of interconnection charges or “add-ons” to interconnection charges to their carrier “customers.”<sup>18</sup> Thus, the FCC has specifically prohibited the very charges CenturyTel attempts to impose upon Charter here.

CenturyTel tries to avoid this binding FCC precedent by arguing that the charges have nothing to do with number portability, and are simply administrative order processing costs. Implicit in this argument is that if these costs are not tied to the implementation of number porting, they are not governed by the FCC authorities which Charter relies upon. However, the FCC has held that the cost of implementing number portability *do include* the costs of transferring telephone numbers to other carriers, which involves the exchange of porting orders between carriers.

Specifically, the FCC has stated that the costs of establishing number portability include the “ongoing costs of providing number portability, such as the costs involved in *transferring* a

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<sup>17</sup> 47 C.F.R. § 52.33. There are limited exceptions to this general rule, which arise if the ILEC is reselling local service, providing UNE switch ports to a CLEC, or providing a number porting “query” service. Charter is a facilities-based carrier that does not resell services, or purchase UNE switch ports from CenturyTel. Nor are “query” services at issue here. Thus, these limited exceptions to the general rule of cost recovery do not apply in this instance.

<sup>18</sup> *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578, at ¶ 62 (2002).

telephone number to another carrier...”,<sup>19</sup> which reasonably includes preparing and processing *internal* service orders. The FCC concluded that the term “porting telephone numbers from one carrier to another” specifically includes the process of “transmitting porting *orders* between carriers.”<sup>20</sup> To argue, as CenturyTel does, that the FCC’s definitions exclude the processing of porting requests from Charter defies logic.

Thus, these decisions establish that the FCC has ruled that part of the costs of providing number portability that CenturyTel must bear is the cost of *transferring* telephone numbers from its network to the network of other LECs, which includes the cost of *sending and receiving* porting orders to the other LECs. In other words, the very same function that CenturyTel claims are unrelated to porting —receiving and responding to porting orders from Charter in order to transfer telephone number— are *specifically* covered by the FCC’s cost recovery regulations. Accordingly, CenturyTel’s claim that its charges are unrelated to number porting, and therefore outside the scope of the FCC’s regime, are contrary to the FCC’s conclusions. The Agreement requires the Parties to comply with all federal regulations, rules and administrative decisions.<sup>21</sup> CenturyTel’s failure to comply with FCC regulations prohibiting these types of charges constitutes yet another breach of the Agreement.

D. The Existence of An Express Contract Between The Parties Precludes As A Matter of Law Any Claim by CenturyTel Grounded In Quantum Meruit

CenturyTel asserts, *Motion* at 16, that, despite the fact that the Agreement contains no provision authorizing the imposition of charges for performance of a party’s number porting obligations, and despite the fact that the FCC has expressly prohibited the imposition of charges

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<sup>19</sup> *Id.* at ¶ 5 (emphasis added). See also *In the Matter of Telephone Number Portability*, Third Report & Order, 13 FCC Rcd 11701, at ¶ 72 (1998).

<sup>20</sup> *In the Matter of Telephone Number Portability Cost Classification Proceeding*, Memorandum Opinion and Order, 13 FCC Rcd 24495, at ¶ 14 (1998) (emphasis added).

<sup>21</sup> Agreement, Interconnection Attachment at § 15.1.

by one telecommunications carrier on another for performance of the mandated number porting functions, CenturyTel should nonetheless be permitted to impose charges on Charter for performing number porting functions on grounds of equity. This claim, which is, at bottom, an implied contract claim for *quantum meruit*, must be rejected as a matter of Missouri law.

As a preliminary matter, CenturyTel's factual premise for its claim is false. CenturyTel contends that the Agreement lacks provisions authorizing the imposition of charges for performing number porting functions because the Agreement was negotiated "at a time when number porting was in its infancy." *Motion* at 15. But the Agreement was negotiated - over an extended period of time - in 2001 and 2002, years after the FCC mandated availability of permanent number porting and years after the telecommunications industry had in fact begun implementing number porting. There is simply no basis to conclude that the parties to the Agreement were unfamiliar with number porting at the time the ICA was negotiated and approved.

There is also no legal merit to CenturyTel's claim for *quantum meruit* based upon some purported implied contract between the parties. A claim for *quantum meruit* can lie in Missouri only where no valid express contract exists between the parties concerning the subject matter.<sup>22</sup> Here, the parties negotiated and signed an Agreement that expressly provides for number porting *and* expressly excludes any price or charge for performance of number porting functions. Any mention of a charge for performance of number porting functions is excluded from the Agreement despite the fact that the Agreement contains and establishes prices for various other services and functions to be rendered by the parties.<sup>23</sup> Thus, the parties have expressly and

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<sup>22</sup> *Houck v. Bridwell*, 28 Mo. App. 644, 1888 WL 1416, \*3 (Mo. App. 1888) ("No contract can be implied where an express contract exists in reference to the same subject matter.") *See also Olathe Millwork Co. v. Dulin*, 189 S.W. 3d 199, 205-6 (Mo. App. W.D. 2006).

<sup>23</sup> *See* Agreement, Pricing Attachment at §§ 1-5.

unambiguously established terms and conditions for the provision of number porting functions to each other at no charge. This specific, substantive, contractual obligation of the parties cannot be negated by the doctrine of *quantum meruit* - a generic equitable doctrine that addresses only circumstances where no contract exists. This is true as a matter of Missouri law.<sup>24</sup>

Further, there is no factual or legal merit to CenturyTel's claim, *Motion* at 15, that Charter - and Charter alone - has received some unintended benefit that Charter - and Charter alone - must pay for. *Both* Charter and CenturyTel are required by federal law, and by contract, to perform the co-carrier functions necessary to support number porting when a customer elects to switch telecommunications providers and chooses to retain his existing telephone number while doing so. *Both* CenturyTel and Charter discharge their legal duties under federal law and pursuant to contract when they fulfill their respective co-carrier obligations to support number porting. Thus, the provision of number porting co-carrier support constitutes the performance of a legally mandated function, on a mutual basis, by *both* parties to the Agreement, rather than a service rendered to one party alone, as CenturyTel falsely claims.

Moreover, each and every time that an end user customer chooses to switch from the Charter network to CenturyTel network for the provision of telecommunication services, and to retain his existing telephone number while doing so, Charter performs number porting functions for CenturyTel *at no charge*. Charter does so at no charge despite the fact that Charter incurs costs to perform these number porting functions. With respect to number porting, Charter is requesting, and is legally entitled to receive, nothing more and nothing different than what Charter is obligated to do for CenturyTel under analogous circumstances. Thus, Charter is no more unjustly enriched by CenturyTel's performance of its mandated number porting obligations

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<sup>24</sup> See *Houck*, 28 Mo. App. At 644; *Olathe*, 189 S.W. 3d at 199.

than CenturyTel is unjustly enriched by Charter's performance of its mandated number porting obligations.

Finally, Charter notes that CenturyTel's Motion to Dismiss is essentially a Motion for Summary Disposition under 4 CSR 240-2.117. The Motion seeks summary determination of the Charter Complaint, and in that way is precisely the type of request for disposition of a contested case as contemplated by 4 CSR 240-2.117.<sup>25</sup>

However, the CenturyTel pleading does not satisfy the substance of that rule, in that it does not "state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue" as is required by subsection (B) of the rule. In other words, CenturyTel's Motion fails to specifically identify facts that are not contested, which is a necessary predicate for this Commission to summarily dismiss the Charter Complaint. Because CenturyTel has not identified which facts are contested, and not contested, the Commission can not grant CenturyTel's motion for summary disposition because there are clearly facts in dispute. Thus, adjudication of the Charter Complaint is necessary, and the Commission must deny CenturyTel's Motion.

### **III. CONCLUSION**

For the foregoing reasons, Charter respectfully requests that the Commission deny CenturyTel's Motion to Dismiss, adjudicate the claims set forth in Charter's Complaint, and grant the relief requested therein.

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<sup>25</sup> See *In the Matter of the Application of Aquila, Inc. for Permission and Approval and a Certificate of Public Convenience and Necessity*, 2006 WL 1210882 (Mo. PSC 2006) ("Rule 4 CSR 240-2.1117 is the Commission's rule on Summary Disposition, and is a more appropriate rule to use to decide [] motions to dismiss...").

Respectfully submitted,

**Charter Fiberlink-Missouri, LLC**

By: 

Laurence G. Christopher MO # 41214

Carrie L. Cox

Clifford K. Williams

**CHARTER FIBERLINK-MISSOURI, LLC**

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202-973-4499 (fax)

*Its Attorneys*

Dated: October 26, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of October, 2007, I served the foregoing Charter Fiberlink-Missouri, LLC, Reply to the Motion to Dismiss on the following persons via electronic mail and via US Mail. Because this document was filed electronically it is being served both electronically and by hard copy, on the persons listed below, consistent with Commission rules and practice.

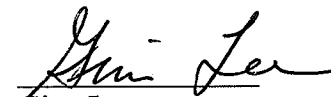
Mr. Kevin Thompson  
General Counsel  
Missouri Public Service Commission  
200 Madison Street  
P.O. Box 360  
Jefferson City, Missouri, 65101

Lewis Mills  
Office of the Public Counsel  
200 Madison  
P.O. Box 7800  
Jefferson City, Missouri

Mr. Guy Miller  
CenturyTel, Inc.  
100 CenturyTel Drive  
Monroe, Louisiana 71203

Larry W. Dority  
Fischer & Dority, P.C.  
101 Madison, Suite 400  
Jefferson City, Missouri 65101

Tyler Peters  
Payne & Jones, Chartered  
11000 King  
P.O. Box 25625  
Overland Park, KS 66210

  
Gina Lee

Dated: October 26<sup>th</sup>, 2007

**EXHIBIT A: Charter Bill Dispute  
Statements**



**Menu**[Main Page](#)[Start Order](#)[Search Orders](#)**Service Guide**[Billing Dispute](#)[Billing Dispute Report](#)

Dispute ID: 2396  
 Ban #(s): 405601334  
 Submitted: 2007-07-31 20:20:45  
 CTL Processed: 0000-00-00 00:00:00  
 Bill Date: 07/06/2007  
 CLEC Representative: Sandra Leezy  
 Contact TN: 3145435813  
 Contact Email: Sandra.Leezy@Chartercom.com

	CLEC	Centurytel
ATN:	6366253438	6366253438
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

	CLEC	Centurytel
ATN:	6366391110	6366391110
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

	CLEC	Centurytel
ATN:	6366391864	6366391864
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

	CLEC	Centurytel
ATN:	6366396850	6366396850
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

	CLEC	Centurytel
ATN:	6366399711	6366399711
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

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	CLEC	Centurytel
ATN:	6369700157	6369700157
Page #:	1	1
Amount:	\$23.44	\$0.00

This is not applicable. There is no SO charge in  
Comments: ICA for porting a TN from Century Tel to Charter  
for this NPA/NXX. It is in the Rural Agreement.

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	CLEC	Centurytel
ATN:	6369700248	6369700248
Page #:	1	1
Amount:	\$23.44	\$0.00

This is not applicable. There is no SO charge in  
Comments: ICA for porting a TN from Century Tel to Charter  
for this NPA/NXX. It is in the Rural Agreement.

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	CLEC	Centurytel
ATN:	6369700811	6369700811
Page #:	1	1
Amount:	\$23.44	\$0.00

This is not applicable. There is no SO charge in  
Comments: ICA for porting a TN from Century Tel to Charter  
for this NPA/NXX. It is in the Rural Agreement.

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	CLEC	Centurytel
ATN:	6369700909	6369700909
Page #:	1	1
Amount:	\$23.44	\$0.00

This is not applicable. There is no SO charge in  
Comments: ICA for porting a TN from Century Tel to Charter  
for this NPA/NXX. It is in the Rural Agreement.

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	CLEC	Centurytel
ATN:	6369702021	6369702021
Page #:	1	1
Amount:	\$23.44	\$0.00

This is not applicable. There is no SO charge in  
Comments: ICA for porting a TN from Century Tel to Charter  
for this NPA/NXX. It is in the Rural Agreement.

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	CLEC	Centurytel
ATN:	6369702599	6369702599
Page #:	1	1
Amount:	\$23.44	\$0.00

This is not applicable. There is no SO charge in  
Comments: ICA for porting a TN from Century Tel to Charter  
for this NPA/NXX. It is in the Rural Agreement.

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	CLEC	Centurytel
ATN:	6369703291	6369703291
Page #:	1	1
Amount:	\$23.44	\$0.00

This is not applicable. There is no SO charge in  
Comments: ICA for porting a TN from Century Tel to Charter  
for this NPA/NXX. It is in the Rural Agreement.

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	CLEC	Centurytel
ATN:	6369780138	6369780138
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

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	CLEC	Centurytel
ATN:	6369780297	6369780297
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

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	CLEC	Centurytel
ATN:	6369781912	6369781912
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

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	CLEC	Centurytel
ATN:	6369785358	6369785358
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

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	CLEC	Centurytel
ATN:	6369785850	6369785850
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

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	CLEC	Centurytel
ATN:	6369785930	6369785930
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

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	CLEC	Centurytel
ATN:	6369786475	6369786475
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

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	CLEC	Centurytel
ATN:	6369786601	6369786601
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

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	CLEC	Centurytel
ATN:	6369787216	6369787216
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

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	CLEC	Centurytel
ATN:	6369788748	6369788748
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

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	CLEC	Centurytel
ATN:	6369788762	6369788762
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

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	CLEC	Centurytel
ATN:	6369788780	6369788780
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

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	CLEC	Centurytel
ATN:	6369788874	6369788874
Page #:	1	1
Amount:	\$23.44	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

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	CLEC	Centurytel
ATN:	6369800002	6369800002
Page #:	1	1
Amount:	\$23.40	\$0.00
Comments:	This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.	

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	CLEC	Centurytel
ATN:	6369801517	6369801517
Page #:	1	1
Amount:	\$23.44	\$0.00

Comments: This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.

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	CLEC	Centurytel
ATN:	6369801815	6369801815
Page #:	1	1
Amount:	\$23.44	\$0.00

Comments: This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.

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	CLEC	Centurytel
ATN:	7152845105	7152845105
Page #:	1	1
Amount:	\$40.00	\$0.00

Comments: This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.

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	CLEC	Centurytel
ATN:	7351671647	7351671647
Page #:	1	1
Amount:	\$8.42	\$0.00

Comments: The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351671647 because TN required all numerals, however, F351671647 was printed on the bill.

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	CLEC	Centurytel
ATN:	7351671647	7351671647
Page #:	1	1
Amount:	\$8.42	\$0.00

Comments: The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351671647 because TN required all numerals, however, F351671647 was printed on the bill.

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ATN:	CLEC 7351671647	Centurytel 7351671647
Page #:	1	1
Amount:	\$29.47	\$0.00
Comments:	<p>The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351671647 because TN required all numerals, however, F351671647 was printed on the bill.</p>	
ATN:	CLEC 7351671647	Centurytel 7351671647
Page #:	1	1
Amount:	\$25.26	\$0.00
Comments:	<p>The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351671647 because TN required all numerals, however, F351671647 was printed on the bill.</p>	
ATN:	CLEC 7351671647	Centurytel 7351671647
Page #:	1	1
Amount:	\$67.36	\$0.00
Comments:	<p>The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351671647 because TN required all numerals, however, F351671647 was printed on the bill.</p>	
ATN:	CLEC 7351671647	Centurytel 7351671647
Page #:	1	1
Amount:	\$16.84	\$0.00
Comments:	<p>The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or</p>	

Comments: directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351671647 because TN required all numerals, however, F351671647 was printed on the bill.		
ATN:	CLEC 7351671647	Centurytel 7351671647
Page #:	1	1
Amount:	\$12.63	\$0.00
Comments: The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351671647 because TN required all numerals, however, F351671647 was printed on the bill.		
ATN:	CLEC 7351671647	Centurytel 7351671647
Page #:	1	1
Amount:	\$37.89	\$0.00
Comments: The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351671647 because TN required all numerals, however, F351671647 was printed on the bill.		
ATN:	CLEC 7351671647	Centurytel 7351671647
Page #:	1	1
Amount:	\$33.68	\$0.00
Comments: The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351671647 because TN required all numerals, however, F351671647 was printed on the bill.		

CLEC Centurytel  
ATN: 7351671647 7351671647  
Page #: 1 1  
Amount: \$16.84 \$0.00

The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351671647 because TN required all numerals, however, F351671647 was printed on the bill.

CLEC Centurytel  
ATN: 6362728268 6362728268  
Page #: 1 1  
Amount: \$0.24 \$0.00

Comments: Charter does not do B&C for any IXC. Previous claims filed have been adjusted.

**Totals**

Initial Amount	CTL Initial Amount	Redispute Amount	CTL Redispute Amount
\$953.33	\$0.00	\$0.00	\$0.00





<b>Menu</b>	Dispute ID: 2397		
	Ban #(s): 405601334		
<b>Main Page</b>	Submitted: 2007-07-31 20:43:08		
	CTL Processed: 0000-00-00 00:00:00		
<b>Start Order</b>	Bill Date: 07/06/2007		
<b>Search Orders</b>	CLEC Representative: Sandra Leezy		
	Contact TN: 3145435813		
	Contact Email: Sandra.Leezy@Chartercom.com		
<b>Service Guide</b>			
<b>Billing Dispute</b>	CLEC		Centurytel
	ATN: 7351841188		7351841188
<b>Billing Dispute Report</b>	Page #: 1		1
	Amount: \$4.21		\$0.00
	The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351841188 because TN required all numerals, however, F351841188 was printed on the bill.		
	CLEC		Centurytel
	ATN: 7351838545		7351838545
	Page #: 1		1
	Amount: \$12.63		\$0.00
	The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351838545 because TN required all numerals, however, F351838545 was printed on the bill.		
	CLEC		Centurytel
	ATN: 7351835693		7351835693
	Page #: 1		1
	Amount: \$16.84		\$0.00
	The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or		

Comments: directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351835693 because TN required all numerals, however, F351835693 was printed on the bill.

	CLEC	Centurytel
ATN:	7351832881	7351832881
Page #:	1	1
Amount:	\$4.21	\$0.00

Comments: The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351832881 because TN required all numerals, however, F351832881 was printed on the bill.

	CLEC	Centurytel
ATN:	7351829746	7351829746
Page #:	1	1
Amount:	\$4.21	\$0.00

Comments: The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351829746 because TN required all numerals, however, F351829746 was printed on the bill.

	CLEC	Centurytel
ATN:	7351826550	7351826550
Page #:	1	1
Amount:	\$4.21	\$0.00

Comments: The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351826550 because TN required all numerals, however, F351826550 was printed on the bill.

CLEC  
ATN: 7351823089 Centurytel  
Page #: 1 7351823089  
Amount: \$4.21 \$0.00

The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351823089 because TN required all numerals, however, F351823089 was printed on the bill.

CLEC  
ATN: 7351819709 Centurytel  
Page #: 1 7351819709  
Amount: \$33.68 \$0.00

The purpose of this research was for listing information to facilitate Charter customer listings in DA and directory; however, CenturyTel failed to process resulting Charter LSR/DSR ino and did not include Charter customers in DA or directory. Charter has to furnish galleys to accomplish this. CenturyTel will not provide a Customer Service Record to Charter without Charter having a blanket LOA in place. We have only ever submitted LSRs to CenturyTel to port - no research involved. Entered 7351819709 because TN required all numerals, however, F351819709 was printed on the bill.

**Totals**

Initial Amount	CTL Initial Amount	Redispute Amount	CTL Redispute Amount
\$84.20	\$0.00	\$0.00	\$0.00



<b>Menu</b> <hr/> <a href="#">Main Page</a> <hr/> <a href="#">Start Order</a> <a href="#">Search Orders</a> <hr/> <a href="#">Service Guide</a> <a href="#">Billing Dispute</a> <a href="#">Billing Dispute Report</a>	Dispute ID: 2398 Ban #(s): 00301644892 Submitted: 2007-07-31 21:13:57 CTL Processed: 0000-00-00 00:00:00 Bill Date: 07/10/2007 CLEC Representative: Sandra Leezy Contact TN: 3145435813 Contact Email: Sandra.Leezy@Chartercom.com								
	<table border="0"> <tr> <td>CLEC</td> <td>Centurytel</td> </tr> <tr> <td>ATN: 0301644892</td> <td>0301644892</td> </tr> <tr> <td>Page #: 1</td> <td>1</td> </tr> <tr> <td>Amount: \$23.44</td> <td>\$0.00</td> </tr> </table> <p>Comments: This is not applicable. There is no SO charge in ICA for porting a TN from Century Tel to Charter for this NPA/NXX. It is in the Rural Agreement.</p>	CLEC	Centurytel	ATN: 0301644892	0301644892	Page #: 1	1	Amount: \$23.44	\$0.00
	CLEC	Centurytel							
	ATN: 0301644892	0301644892							
	Page #: 1	1							
	Amount: \$23.44	\$0.00							
	<table border="0"> <tr> <td>CLEC</td> <td>Centurytel</td> </tr> <tr> <td>ATN: 0301644892</td> <td>0301644892</td> </tr> <tr> <td>Page #: 1</td> <td>1</td> </tr> <tr> <td>Amount: \$14.36</td> <td>\$0.00</td> </tr> </table> <p>Comments: Charter does not do B&amp;C for any IXC. Previous claims filed have been adjusted.</p>	CLEC	Centurytel	ATN: 0301644892	0301644892	Page #: 1	1	Amount: \$14.36	\$0.00
	CLEC	Centurytel							
	ATN: 0301644892	0301644892							
	Page #: 1	1							
Amount: \$14.36	\$0.00								
<b>Totals</b> <table border="1"> <tr> <th>Initial Amount</th> <th>CTL Initial Amount</th> <th>Redispute Amount</th> <th>CTL Redispute Amount</th> </tr> <tr> <td>\$37.80</td> <td>\$0.00</td> <td>\$0.00</td> <td>\$0.00</td> </tr> </table>	Initial Amount	CTL Initial Amount	Redispute Amount	CTL Redispute Amount	\$37.80	\$0.00	\$0.00	\$0.00	
Initial Amount	CTL Initial Amount	Redispute Amount	CTL Redispute Amount						
\$37.80	\$0.00	\$0.00	\$0.00						

**EXHIBIT B: Correspondence from  
Charter to CenturyTel Dated  
July 26, 2004**

**COLE, RAYWID & BRAVERMAN, L.L.P.**

K.C. HALM  
ADMITTED IN DC AND MARYLAND  
DIRECT DIAL  
202-659-9750  
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TELEPHONE (310) 643-7999  
FAX (310) 643-7997

July 26, 2004

**VIA FEDERAL EXPRESS & E-MAIL**

Mr. Guy Miller  
CenturyTel Service Group  
Corporate Director – Carrier Relations  
P.O. Box 4065  
100 CenturyTel Drive  
Monroe, LA 71211-465

**Re: Explanation of Charter Fiberlink Dispute of CenturyTel Charges**

Dear Guy:

As you know on Wednesday, June 23, 2004, representatives from Charter Fiberlink and CenturyTel met, via teleconference, to discuss the various disputed billing matters between the two companies.

During that call Charter provided to CenturyTel a detailed explanation of the different categories of improper charges, dates on which the charges were rendered, descriptions of improperly applied credits/adjustments, and additional information concerning problems with CenturyTel's billing systems. On the teleconference Charter's representatives also explained Charter's basis for disputing these charges, and the reasons that CenturyTel's disputed charges are improper. In addition, prior to that meeting, I also delivered to you and other CenturyTel representatives a spreadsheet which identified, in detail, the categories, dates and improper charges described above. Thus, there can be little doubt that Charter has provided a significant amount of information to CenturyTel concerning these disputed charges.

Nevertheless, at your request, Charter has agreed to summarize these charges in a letter to CenturyTel. As such, this letter will provide a detailed summary of each of the charges that Charter has disputed.

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**I. CATEGORY 1: Non Recurring Charges of \$19.78 Each (Total Billing of \$66,512.78 to Date)**

As previously explained, CenturyTel has assessed a non-recurring charge ("NRC") of \$19.78 on every occasion that Charter submits a local service request ("LSR") to facilitate an end user subscriber's request to port a local telephone number from CenturyTel to Charter. The total amount of these NRCs, to date, is \$66,512.78.

There is no charge identified for porting a telephone number in the Interconnection Agreement ("Agreement"). Section 15 of the Interconnection Attachment, which prescribes the Parties' obligations with respect to local number portability ("LNP"), contains no reference to authorized charges for any functions associated with either carrier's obligations to perform certain functions associated with the provision of LNP. Indeed, there is no provision in the parties' current Agreement authorizing the charges described above.

In response to Charter's previous requests for the basis of these charges CenturyTel identified a rate in the Agreement which is designated as a Non-Recurring Charge for a specific UNE element, an unbundled switch port. (*See* Agreement, p. 136, price sheet quoting prices for: Local Wholesale Services; Unbundled Port; Exchange – Basic – subsequent (Port Feature)). As explained during our teleconference, and as you acknowledged, Charter is a facilities-based carrier that does not purchase UNE Switch Ports or any UNE elements from CenturyTel or any other LEC. Instead, Charter utilizes its own local loops and its own switches. Thus, there is no reason that Charter would need to purchase a UNE Switch Port from CenturyTel.

Prior to the Parties' conference call on June 23, CenturyTel had asserted that the \$19.78 NRC was applicable to porting a telephone number from CenturyTel to Charter. However, during that teleconference you acknowledged that there is no applicable charge in the Agreement. Instead, you suggested that the \$19.78 charge (which is defined in the Agreement as an NRC for a UNE Switch Port) is a "surrogate" charge for the CenturyTel's costs of porting numbers from CenturyTel to Charter.

You also indicated that if the \$19.78 charge is deemed inappropriate that a separate charge, for approximately \$41.00, would be imposed upon Charter. CenturyTel contends that the basis for this charge is that this rate is contained in other interconnection agreements between CenturyTel and other CLECs that have been approved by the Missouri Public Service Commission. Charter does not agree that this is a proper legal basis to assess such a charge upon Charter.

As explained during our call, the FCC has clearly stated that carriers are required to recover their costs of implementing LNP through tariffed end-user charges. *See Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 111701 (1998), *aff'd*, *Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002). *See also*, *Telephone Number Portability Cost Classification Proceeding*, Memorandum Opinion and Order, 13 FCC Rcd 24495 (CCB 1998).

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In these orders the FCC promulgated its current rule, codified at 47 C.F.R. § 52.33, entitled: "Recovery of carrier-specific costs directly related to providing long-term number portability." As that rule clearly indicates ILECs may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the FCC, certain charges assessed against *end users*. See 47 C.F.R. § 52.33(a)(1)(i), 52.33(a)(3).

FCC rules allow an ILEC to assess charges on another carrier in only very limited circumstances that are not applicable here. Although ILECs may assess a charge on carriers that purchase the ILEC's switching ports as UNEs, or upon carriers that resell the ILECs local service, *see id.* at § 52.33(a)(1)(ii), as previously explained (and acknowledged) Charter is a facilities-based carrier that does not purchase UNEs or resell CenturyTel's service. Nor is the number portability "query-service" charge described in § 52.33(a)(2) applicable to these circumstances.

As you know, this Agreement was in force between Charter and Verizon, prior to the opt-in by CenturyTel upon purchase of the Verizon St. Charles County property. It is instructive to note that under this same agreement, Verizon did *not* bill Charter for porting out a telephone number from Verizon.

In CenturyTel's letter to Charter dated April 27, 2004, CenturyTel makes the following assertion: "Based on conversations/correspondence from Charter personnel, CenturyTel can only surmise that Charter is lodging a billing dispute with CenturyTel per Section 9 of the agreement." Given the detailed disputes that Charter has previously provided to CenturyTel over the past year this comment is surprising. Indeed, as the following chronology shows, Charter has disputed these charges for the entire time that they have been assessed.

Broadly speaking, the following synopsis indicates the numerous occasions on which Charter representatives have presented formal, and informal, disputes and other communications regarding CenturyTel's improper charges:

1. Aug 6, 2003 – After receiving no acknowledgement or response to nine disputes (for LD and Misc charges on bills from Sept '02 through May '03) sent to CenturyTel on June 3, 2003, and receiving no bills since, Julie Lorenz wrote to CenturyTel inquiring about status.
2. August 6, 2003 – CenturyTel advised some credits had been issued and on August 8, 2003, they agreed to mail duplicates of May '03 and June '03 bills, which Charter has never received.
3. Sept, 2003 – Upon seeing this charge billed for the first time (which was never billed on Sept '02, through May '03 bills; and first appeared on June '03 bill identified as "ADD INIT SO CHG – LNP") Julie Lorenz called CenturyTel (Carrie Patrick) to ask what this charge was for. Julie Lorenz explained it was shown for UNE Port in



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Agreement and Charter does not buy UNE elements. Julie Lorenz said it was an incorrect application of this charge to Charter.

4. Sept 17, 2003 – CenturyTel (Carrie Patrick) wrote “I will let you know what I find on the 19.78 port charge, or someone from the Carrier Relations group may contact you.”
5. Oct 22, 2003 – After hearing nothing from anyone at CenturyTel, and seeing more occurrences of \$19.78 billed, Julie Lorenz wrote CenturyTel (Carrie Patrick) “We are still being billed a \$19.78 NRC for porting each TN from Century. This is the charge specified in the Agreement for buying a UNE port, not for porting a telephone number. We do not need to buy a UNE port. We have our own switches and our own local loop to the customer premises. You were looking into this and indicated someone from carrier relations might contact me. I have not heard from anyone and we are billed more of these on our October bill. What is the status of this?”
6. Oct 23, 2003 – CenturyTel (Carrie Patrick) wrote “The NRC’s that you are disputing (both the 19.78 and the 4.21) will have to be disputed with Carrier Relations. I forwarded your request last month to our contact. If she has not replied, you may check with Mark and have him contact Guy.”
7. Oct/Nov, 2003 – Charter (Mark Kraus) called CenturyTel (Guy Miller) to dispute this charge. Guy advised Mark that he would need to take this issue up with the CenturyTel billing department.
8. Oct/Nov, 2003 - Charter (Mark Kraus) called and spoke with the CenturyTel billing department to dispute this charge. Mark was advised he should pursue this issue with Susan Smith, of CenturyTel Carrier Relations.
9. Oct/Nov, 2003 – Charter (Mark Kraus) called and spoke with Susan Smith, disputing the charge. Susan agreed to look into the issue and get back with him.
10. Oct/Nov, 2003 – After hearing nothing further from Susan Smith, Charter (Mark Kraus) called Guy Miller of CenturyTel and explained he had spoken with the billing department in addition to Susan Smith of Carrier Relations, and received no response. When Mark asked Guy for the documentation that was the basis for the charge, Guy referenced the UNE Port NRC in the Agreement. Mark explained that this charge was not applicable to Charter because Charter does not buy UNE Ports or, in fact, any UNE elements from CenturyTel. Guy requested that Mark put the dispute in writing.
11. Nov 14, 2003 – Charter (Mark Kraus) wrote a letter to CenturyTel (Guy Miller) disputing billings of \$19.78. Mark wrote that he had spoken with the billing department at CenturyTel who told him they did not have the authority to credit or make a decision related to the interpretation of the Agreement as to the legitimacy of

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these charges. Mark also stated that he spoke with Susan Smith of CenturyTel a few weeks ago and has not heard back from her.

12. Dec, 2003 – Charter (Mark Kraus) called CenturyTel (Susan Smith) to follow up Charter letter. Susan advised Mark that he would need to discuss this issue with Guy Miller.
13. Feb 3, 2004 Charter (Mark Kraus) called Guy Miller to determine status of dispute, since no response or acknowledgement (written or otherwise) was received. Guy was out of the office, but Pam Hankins of CenturyTel took the call. She and Mark discussed the issue, as she was familiar with the dispute. Pam told Mark that the NRC was actually for changing the account from one CenturyTel billing system to a different CenturyTel billing system. (Numbers that port out of CenturyTel to CLEC's who purchase a CenturyTel UNE Switch port would, indeed, be transferred from the CenturyTel end user billing system to the CenturyTel UNE (presumably CABS) billing system.) However, Mark advised Pam, in the case of Charter where we do not purchase UNE elements, there is no CenturyTel change in billing systems. It would actually be a disconnect of service for CenturyTel. Mark then requested that Pam send a letter responding to our dispute, saying that they disagreed with our position and the basis for the disagreement. Nothing was received.
14. April 28, 2004 (Via Overnight Mail) Charter received a letter addressed to Senior Counsel saying among other things that CenturyTel "could only surmise that Charter is lodging a billing dispute....."

**II. CATEGORY 2: NRC for Customer Record Search of \$4.21 Each (Total Billing of \$6811.61 to Date)**

Charter sent these customer record requests to establish customer listing information in order to send accurate directory information on DSRs to CenturyTel. Customer listing information received from customer record searches was used to populate directory information on DSR's submitted to CenturyTel, for inclusion in directory assistance records and CenturyTel telephone directory.

However, CenturyTel did not maintain Charter customers for directory assistance or book publication. As a result, Charter had to prepare and furnish galleys for Charter customers to be listed in the CenturyTel book at publication time, because CenturyTel had not processed the DSR's to maintain this information.

Consequently, the record research expense and DSR submission effort was to no avail, as CenturyTel did not process and include the resulting submitted DSR's in directory assistance or telephone directory records.

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On several occasions Charter indicated to CenturyTel that the customer information was requested in order to obtain accurate customer listing information from CenturyTel records. Pertinent discussion of this issue is highlighted in the following e-mail excerpts:

1. **May 19, 2003** – from CenturyTel (Carrie Patrick) wrote:  
*"These are the requests that we receive that are causing the charges of 4.21 on the bill. They are considered customer service records request. We will usually get these prior to receiving a port request. After we receive the port request, we have been getting directory requests. I believe we are now getting some directory request on the same request as the ports. With our other CLECs they order the cust records to verify the customer information such as name/address/auth users/features for pricing info and directory info to make sure that they request that the directory is set up the same way once ported."*
2. **May 22, 2003** - from CenturyTel (Carrie Patrick) wrote:  
*"On the CSR, all CLEC's who request a Customer Service Record are billed for the CSR. The CSR is not related to the actual port or port request that we receive. It is I believe optional for the CLEC's to request this information to use for filling out the LSR, or relying on the customer provided information for filling out the LSR. So far, the only info that has been requested on Charters CSR's has been for directory information. Directory information would not effect the ability for us to port/release a TN to Charter. The other CLEC's have been requesting CSR's the only difference is that they are requesting more info than just directory. The charges began to show in February because they was a change in the CenturyTel structure that moved the CLEC group from Wisconsin to Monroe LA. I am not sure what/why the Wisconsin group was billing, but now that it is in Monroe, we are billing for the different items that are billable (such as CSR's hot cuts, expedites, etc.) This has been for all the CLEC's that we are doing business with."*

**III. CATEGORY 3: Monthly Recurring Charges for Non Pub, Non List & Additional Listing Items (Total Billing of \$792.15 to Date)**

Monthly charges for these items are for, as follows: (1) "Non Pub," the special appearance and handling in directory assistance records and exclusion from the directory; (2) "Non List," an appearance in directory assistance records and exclusion from the directory; (3) and, "Additional Listing," an additional name listed in directory assistance records and inclusion in the directory.

CenturyTel did not process Charter customer DSR's for directory assistance records nor for directory listings. As explained previously, Charter had to furnish galleys of our customer listings for the CenturyTel book publisher at directory publication time. Therefore, because CenturyTel did not perform the functions associated with these services for which the rates are applicable, Charter does not believe they are entitled bill for services they did not perform.

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#### IV. CONCLUSION

##### A. Resolution of Each Category Not Tied to Resolution of All Categories

Each of the disputed category of charges discussed above are unique. The charges relate to different services, and the reasons that Charter disputes the charges are also different. Therefore, Charter believes it appropriate to address each bill dispute category separately, such that the resolution of one issue is not necessarily tied to the resolution of other issues. Charter believes this approach will allow the Parties to work simultaneously to resolve each of the disputed issues without delaying the resolution of any one particular category of charges.

##### B. Charter's Past Efforts to Resolve These Disputed Issues

In addition to the detailed description provided above, attached to this letter as Exhibits 1, 2 and 3 are copies of previous correspondence between Charter and CenturyTel on these disputed charges.

##### C. Notice of Charter's Prospective Dispute of All Categories

Pursuant to Section 9.3 of the Parties' current, effective interconnection agreement Charter hereby disputes prospectively, via this notice, each of the classes of charges described herein.

##### D. Final Resolution

This letter represents but one of Charter's many attempts to resolve these disputed charges. Indeed, as evidenced by the attached exhibits, these disputed issues were presented by Charter billing and carrier relations personnel over the course of the last year in various e-mails, letters and telephone conversations with you and your staff. In addition, during our conference call of June 23, 2004 Charter presented the factual and legal bases for its dispute of these charges. Finally, at your request, Charter prepared this letter, which summarizes the detailed disputes that Charter has already provided to CenturyTel.

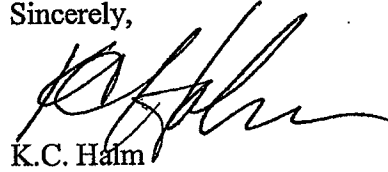
Thus, it is quite clear that Charter has satisfied its obligation to work in good faith to resolve disputed billing issues. It is now time for CenturyTel to satisfy *its obligation* to work in good faith to resolve these disputes. For that reason, Charter expects a prompt response from CenturyTel concerning these issues. Absent prompt resolution of these issues Charter will pursue all available remedies, including those available before the Missouri Public Service Commission.

Please let me know when we can expect to hear from CenturyTel regarding a final resolution of these issues.

COLE, RAYWID & BRAVERMAN, L.L.P.

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Sincerely,

A handwritten signature in black ink, appearing to read 'K.C. Halm', written over the printed name.

K.C. Halm

Encl.

cc: Carrie Cox, Charter Fiberlink  
Carrick Inabnet, CenturyTel  
Christopher W. Savage, Cole Raywid & Braverman, LLP