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Witness: Steven E. Watkins
Sponsoring Party: CenturyTel of Missouri, LLC
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CENTURYTEL OF MISSOURI, LLC

REBUTTAL TESTIMONY OF STEVEN E. WATKINS

CASE NO. TO-2009-0037

TABLE OF CONTENTS

INTRODUCTION	1
<u>Issue 1</u>	
Issue 1	Should the proposed Agreement cover all “IP-enabled Traffic?”2
<u>Issue 8</u>	
Issue 8	(a) Should the billed Party be entitled to receive interest from the billing Party on amounts paid to the billing Party in error and which are later returned to the billed Party?7
<u>Issue 9</u>	
Issue 9	If CenturyTel builds interconnection plant or facilities at Charter’s request and Charter fails to use such plant or facilities within six (6) months, may CenturyTel reserve the right to assess a stranded interconnection plant/facility charge on Charter?.....15
<u>Issue 16</u>	
Issue 16	Should the Agreement contain a provision providing that CenturyTel is solely responsible for the costs and activities associated with accommodating changes to its network that are required due to Charter’s modifications to its network?.....21
<u>Issue 18</u>	
Issue 18	What terms and conditions that govern the Point of Interconnection (POI) and trunking arrangements should be included in the Interconnection Agreement?.....26
<u>Issue 19</u>	
Issue 19	Should the Agreement between the Parties limit the voluntary utilization of third party transit arrangements to a DS1 level of traffic?43
<u>Issue 20</u>	
Issue 20	How long should the Agreement provide the Parties to negotiate cost-based rates for such facilities before they may seek Commission intervention?50

Issue 21

- Issue 21 (a) Under what terms and conditions should one-way trunks be used for the exchange of traffic within the scope of this Agreement?53
- (b) Regardless of whether one-way or two-way trunks are deployed, where should Points of Interconnection (POIs) be located and what are each Party's responsibilities with respect to facilities to reach the POI?53

Issue 22

- Issue 22 Should the Parties utilize reasonable projections of traffic volumes in addition to actual traffic measurement in their determination of whether the threshold has been reached for purposes of establishing dedicated end office trunks versus after-the-fact traffic measurement solely for such determination?56

Issue 23

- Issue 23 (a) Where Charter is the N-1 carrier for calls to ported numbers of third party carriers, should Charter be responsible for data base queries and the proper routing of its calls to third party carriers?58
- (b) For calls that Charter fails to fulfill its N-1 carrier obligations and are routed improperly to a CenturyTel end office, what should Charter be required to pay to CenturyTel for the completion of such calls to third parties?58

Issue 27 and Issue 40

- Issue 27 When Charter submits an LSR requesting a number port, should Charter be contractually required to pay the service order charge(s) applicable to such LSR?61
- Issue 40 Should the Pricing Article include Service Order rates and terms?61

Issue 33 and Issue 39

Issue 33	Is Charter entitled to lease CenturyTel facilities for the purpose of connecting Charter's network to CenturyTel's 911 networks? If so, is Charter entitled to lease such facilities at TELRIC rates?65
Issue 39	Should CenturyTel be entitled to assess certain additional 911-related fees and assessments upon Charter?65

SCHEDULES: Rebuttal Schedule SEW-1

1 **DIRECT TESTIMONY**

2 **OF**

3 **STEVEN E. WATKINS**

4 **CASE NO. TO-2009-0037**

5
6 **INTRODUCTION**

7 **Q. Please state your name, business address, and telephone number.**

8 A. My name is Steven E. Watkins. My business address is 2154 Wisconsin Avenue, N.W.,
9 Suite 290, Washington, D.C., 20007. My business phone number is (202) 333-5276.

10 **Q. On whose behalf are you testifying?**

11 A. I am testifying on behalf of CenturyTel of Missouri, LLC (to be referred to as
12 “CenturyTel”).¹

13 **Q. Did you file Direct Testimony in this proceeding?**

14 A. Yes. I filed Direct Testimony with the Public Service Commission of the State of
15 Missouri (“Commission”) on September 30, 2008 in this proceeding.

16 **Q. What is the purpose of your Rebuttal Testimony?**

17 A. The purpose of my Rebuttal Testimony is to respond to the Direct Testimonies of Robert
18 Gyori (“Gyori Direct”), Peggy Giaminetti (“Giaminetti Direct”), Timothy Gates (“Gates
19 Direct), and James Weber (“Weber Direct”) all filed on September 30, 2008 in this

¹ The Parties have continued to negotiate since the filing of the Petition and it is anticipated that the Parties will continue negotiations following the filing of the Revised Statement of Unresolved Issues on September 2, 2008 (“Revised DPL”). If there are any discrepancies between this rebuttal testimony and the Revised DPL, this rebuttal testimony and my direct testimony are intended to be controlling as it represents the most current state of CenturyTel’s position there under. In an effort to assist the Panel with the status of the proceeding, CenturyTel retains the right to file an updated and current interconnection agreement and DPL prior to submission of this matter for decision.

proceeding on behalf of Charter Fiberlink-Missouri, LLC (“Charter”). I will respond to the same subset of issues as I addressed in my Direct Testimony.

Q. Before we begin on the specific issues, do you have any initial reactions to the testimonies of the Charter witnesses?

A. Yes. The direct testimonies of the four witnesses did not add significantly to the substance of the disputed issues beyond that which Charter had already indicated in its Petition and the Revised DPL. Therefore, most of the positions and arguments set forth by the four witnesses has already been addressed and rebutted in my Direct Testimony. As a result, I will use this Rebuttal Testimony to respond to some of the four witnesses’ points, as necessary, and will in some cases merely refer to the discussion in my Direct Testimony which I refer to as “Watkins Direct.”

DISCUSSION OF ISSUES

Issue 1 Should the proposed Agreement cover all IP-Enabled Traffic?

Q. What is Charter’s position about how Internet protocol-enabled traffic should be defined in the Agreement?

A. Primarily at pages 4-6 of his direct testimony, Mr. Gyori sets forth his testimony on this issue that, when examined closely, suggests only that Charter’s proposed definition is consistent with those services that Charter currently provides. As a result, Mr. Gyori’s testimony fails to address how the Parties should assure that *all* forms of Internet Protocol (“IP”)-related traffic are defined and how all such forms of traffic should be completely and properly addressed in the Agreement, notwithstanding the fact that Mr. Gyori’s testimony suggests that Charter provides only a subset of IP-enabled services. As a

1 result, through Mr. Gyori's direct testimony, Charter provides no explanation whatsoever
2 as to why CenturyTel's more complete and precise definition intended to address all IP-
3 Enabled Traffic should not be used or how its use could possibly have any adverse effect
4 on either Party.

5 **Q. Does the Charter testimony address the essence of this issue under arbitration here?**

6 A. No. The testimony misses the point. The fact that Charter's current services may satisfy
7 Charter's narrow definition does not address or resolve the issue. The fact that Charter's
8 proposed definition may address the subset of services (and traffic) that is within the
9 FCC's definition of "Interconnected VoIP" is not the relevant issue here. The real issue
10 is whether the definition in the Agreement defines all possible forms of traffic that could
11 arise with IP-enabled services, not just the subset that Charter currently provides or the
12 subset that Charter would propose to capture within its proposed definition.

13 **Q. How does the use of the FCC's "Interconnected VoIP" definition, as suggested by**
14 **Charter (Gyori Direct at pp. 4-6), miss the point of this issue?**

15 A. The FCC's use of the terminology "Interconnected VoIP" is not intended to define the
16 full scope of traffic that may arise with IP-Enabled service applications. As I explained
17 at page 7 of my direct testimony, the use of that terminology was intended to define a
18 particular type of service provider to which E911 requirements apply; it was not for the
19 purpose of exhaustively defining all potential types of traffic between carriers that
20 involve IP technology. In addition to this "service" versus "traffic" mismatch, I also
21 demonstrated at pages 6 to 8 of my direct testimony that Charter's proposed use of the
22 term "Interconnected VoIP" would not encompass the entire scope of IP-related traffic
23 because Interconnected VoIP Services Traffic (Charter's defined term) is only a subset of

1 VoIP services traffic, and VoIP services are only a subset of IP-Enabled services. As a
2 result, and as I demonstrated at page 7 of my direct testimony, only IP-Enabled Voice
3 Traffic (CenturyTel's defined term) defines the entirety of possibilities.

4 **Q. Would Charter's approach address all possible IP-related traffic that could arise?**

5 A. No. First, nothing prevents Charter from expanding its current service operation beyond
6 what it provides today to include other forms of IP-related service traffic. If Charter
7 expands its service offerings, that expansion would make its "interconnected VoIP"
8 definition deficient. Equally, nothing would prevent CenturyTel from providing services
9 that would be beyond Charter's deficient definition. In both cases, if the Agreement did
10 not include such traffic, there would be extreme uncertainty about the proper intercarrier
11 compensation treatment of that traffic, particularly since I understand that Charter has
12 refused to expressly state in the Agreement that it will not exchange any IP-enabled
13 traffic under the Agreement except for that which falls within its own proffered
14 definition.

15 Second, Charter incorrectly presumes that the Agreement is designed exclusively
16 to address Charter's subset of services. Upon approval of the Agreement, the terms and
17 conditions would be available for adoption by other Competitive Local Exchange
18 Carriers ("CLECs") that may not conform to the same set of services that Charter
19 provides. Therefore, the need for a complete and precise definition exists with respect to
20 other CLECs that may adopt the Agreement regardless of what services Charter may
21 currently provide. Charter omits any recognition of this fact.

22 **Q. Would CenturyTel's proposed definition address the scope of Charter's anticipated**
23 **services?**

1 A. Yes, because CenturyTel's approach to the defined term would address a wider scope of
2 traffic that may arise with IP-related applications. The traffic that arises under Charter's
3 current service offerings (which Charter apparently anticipates is the only traffic it needs
4 to address) would fall within the CenturyTel definition.

5 **Q. What possible effect would the use of CenturyTel's definition have on Charter?**

6 A. No effect. As I have demonstrated at page 5 of my direct testimony, if the traffic that
7 arises under Charter's current service offerings is included within the definition, and the
8 treatment of that traffic is already agreed to by the Parties, the more complete definition
9 has no effect on Charter. In Mr. Gyori's testimony, Charter has not explained any
10 concerns regarding the effects of using CenturyTel's more comprehensive approach,
11 *because there are none.*

12 **Q. Are there dangers in using a definition of IP-Enabled Traffic that does not**
13 **encompass all possible forms of such traffic?**

14 A. Yes. To the extent that some other form of traffic related to some other form of IP-
15 enabled application is not within a narrow definition, the Parties to the Agreement would
16 be left with no terms and conditions to address this traffic. As I indicated at pages 8 to 10
17 of my direct testimony, some CLECs may attempt to design an IP-enabled application
18 outside of Charter's narrow "Interconnected VoIP" terminology, deliver traffic to the
19 other party, claim that such traffic does not fit within the defined terms of the Agreement,
20 and conclude that such CLEC does not owe compensation for such traffic as would
21 otherwise apply under the Agreement. Accordingly, any party to the Agreement,
22 including other CLECs that may adopt the Agreement through the "opt-in" process, may
23 attempt to exploit the hole left by Charter's narrow definition.

1 Therefore, for all of these reasons, there is no rational basis not to address now the
2 scope of the applicable IP-enabled traffic definition that will be subject to the
3 compensation terms already agreed upon by the Parties. Doing so will avoid disputes
4 later, and avoid arguments by other carriers (including potentially Charter and
5 CenturyTel) seeking to exploit arbitrage opportunities presented by Charter's narrow
6 definition. CenturyTel's more complete definition allows service expansion by both
7 Parties and does not suggest a static service platform for either.

8 **Q. Would the Parties to the Agreement be exposed to potential harm under Charter's**
9 **narrow definition?**

10 A. Yes. The language would make any Party to the Agreement vulnerable to termination of
11 non-local traffic without proper compensation. For traffic that is "IP-Enabled" but
12 outside the scope of Charter's "Interconnected VoIP," a Party would likely have no initial
13 choice but to accept such traffic, including non-local traffic, but not be able to charge for
14 such traffic. As such, Charter's narrow definition would cause harm to a Party to the
15 Agreement if the result is the provision of terminating service for non-local traffic
16 without compensation. No one should be able to exploit a loophole in order to receive
17 free service, particularly when that loophole can be addressed and closed by the adoption
18 of the CenturyTel language.

19 **Q. How should Issue 1 be resolved?**

20 A. For the reasons set forth in my testimony, the Commission should reject Charter's narrow
21 definition and adopt CenturyTel's more comprehensive definition of IP-related traffic as
22 set forth in CenturyTel's proposed language in the Agreement.

1 **Issue 8 (a) Should the billed Party be entitled to receive interest from the billing**
2 **Party on amounts paid to the billing Party in error and which are later**
3 **returned to the billed Party?**
4

5 **Q. Do you have any initial reaction to the Charter Witness' testimony on Issue 8(a)?**

6 A. As I explained in my direct testimony at pages 10-14, Charter's proposals and response in
7 the Revised DPL on this issue is confusing. Unfortunately, Charter Witness Giaminetti
8 merely adds to that confusion. Regardless, there should not be terms and conditions that
9 create a disincentive for a Party to review its monthly invoices promptly and to timely
10 dispute those amounts for which it has a good faith basis to conclude are in dispute. This
11 is the core concern that CenturyTel has with respect to Issue 8(a). Charter's proposed
12 language creates a disincentive to review bills on a timely basis and has the perverse
13 effect of potentially rewarding the billed party for that conduct.

14 **Q. Now that you have seen the first round of Charter testimony, is the nature of the**
15 **dispute more readily apparent?**

16 A. Yes. The provision that Charter would like to add to Section 9.4.2 of the Agreement is
17 significantly problematic and counter productive in several ways.

18 First, this provision would allow Charter to pay the bill after failing to review the
19 bill, to dispute the bill many months later, and to seek refunds and large amounts of
20 interest for a period of time many months prior to the point in time when it provides
21 notice of the dispute. If interest were to be rewarded to Charter for periods between the
22 time it pays a bill and some time later when it might decide to dispute a bill, the effect
23 would be to provide disincentives for Charter to review bills on a timely basis. This
24 perverse incentive would deny CenturyTel the reasonable expectation that a dispute of a
25 bill would be raised on a timely basis so as to minimize ultimate adjustments between the

1 Parties. The perverse effect is further exacerbated by the interest rate that Charter seeks.
2 By allowing time to elapse between billing and the dispute notification, and if Charter
3 were to receive interest during that period, Charter would be unjustly rewarded each time
4 it delayed notification, and CenturyTel would be unjustly penalized and denied a
5 reasonable opportunity to minimize the effects of disputes.

6 Second, contrary to Charter witness Giaminetti's claim on page 25 of her direct
7 testimony that Charter seeks symmetry in the process, Charter's proposal is nothing of
8 the sort. Ms. Giaminetti relies on Section 9.3 of the Agreement, but that section relates
9 to *undisputed* charges which means that the bill must be paid because service has been
10 rendered. That is not the same issue being addressed here. Section 9.4.2 relates to
11 *disputed* charges which arise between the Parties. Disputed charges are identified, based
12 on a claim by the billed Party that a service was not provided or that the service provided
13 was not properly billed. In this case, and as intended by CenturyTel, the dispute
14 resolution process should determine the ultimate settlement including past amounts owed,
15 and any time cost of money for appropriate past periods, consistent with applicable law.
16 Accordingly, Ms. Giaminetti's claim on page 22 of her testimony that "Charter only
17 seeks the same opportunity for refunds of overpayments, at the same interest rate, that
18 CenturyTel seeks for underpayments" is conceptually wrong.

19 **Q. Based on the Giaminetti direct testimony on Issue 8(a), does Charter's position defy**
20 **common sense?**

21 A. Yes. Take as an example a situation where a credit card company sends you a bill, and
22 you pay more than the billed amount or even for an incorrectly posted charge. It is your
23 mistake to have paid more than you owe. You discover the mistake some time later and

1 seek a refund. In this situation, you would never expect a refund of the overpayment *with*
2 *interest*. Moreover, even if you did receive interest on the overpayment -- which is
3 doubtful -- no one would suggest that the credit card company owes you interest *from the*
4 *time you made payment* until the time you notified the credit card company of your
5 mistake. If the credit card company refunds the overpayment with interest at all, the most
6 you would receive is interest *from the time you notified the credit card company of the*
7 *overpayment*. This example is analogous to this arbitration issue. If Charter fails to
8 responsibly review its bills on a timely basis (thereby denying CenturyTel the ability to
9 have notice and to resolve as quickly as possible any aspects in dispute), pays that bill,
10 but later decides that it wants to dispute that bill, CenturyTel should not be responsible
11 for Charter's mistake; *i.e.*, failure to review the bill on a timely basis. Moreover,
12 CenturyTel certainly should not be responsible for Charter's mistake -- *i.e.*, through the
13 imposition of an obligation to pay interest -- during any period in which it has not been
14 placed on notice by Charter that such an overpayment actually is being claimed.
15 CenturyTel's obligation to resolve a dispute does not even arise until there is notice of a
16 dispute. CenturyTel is not responsible for the period of time between the bill payment
17 (when Charter failed to review its bill on a timely basis) and the later point in time when
18 it finally decides that it wants to lodge a dispute.

19 **Q. Is Charter suggesting in Issue 8(a) that the billing party return an overpayment**
20 **prior to a dispute being resolved?**

21 A. No. I incorrectly made that assumption on, for example, page 11 of my direct testimony.
22 Nonetheless, all of my remaining observations and conclusions contained in my direct
23 testimony are still valid and applicable for the reasons stated.

1 **Q. Is there any reason to suggest that the terms and conditions that apply to**
2 **nonpayment of amounts not in dispute should be the same as those that apply to**
3 **good faith disputes?**

4 **A.** No. Ms. Giaminetti confuses the need for mutually exclusive terms and conditions that
5 apply to the billing and payment of *undisputed charges* from those terms and conditions
6 that apply to *disputed charges*. As I explained at page 11 of my direct testimony, Issue
7 8(a) *only* involves disputed charges and *only* involves the situation where bills have been
8 paid *without* dispute and a dispute arises later. Confusion arises because Ms. Giaminetti
9 combines what are two distinct sets of circumstances.

10 Therefore, and by way of example, Ms. Giaminetti's discussion at page 25 and
11 page 27 of her direct testimony regarding Section 9.3 of the terms and conditions that
12 apply to underpaid billed amounts that are not in dispute is not within the scope of this
13 issue and is not relevant to this issue. If there is underpayment, and the charges are not in
14 dispute, then the terms and conditions logically treat that underpayment differently from
15 those if the billing were in dispute. It is only logical to treat the situations differently or
16 we create the incentive to never timely dispute a charge.

17 **Q. As suggested by Ms. Giaminetti at pages 25 and 27 of her direct testimony, does**
18 **Charter have any legitimate concern over “being made whole” in the event that it**
19 **prevails in the resolution of a billing dispute?**

20 **A.** No. As I have explained above, any return of overpayments of *disputed* amounts after
21 the completion of dispute resolution will make either Party whole, including any
22 consideration of the time cost of money, as part of the dispute resolution process. It will
23 be the resolution of the dispute that will determine the exact manner in which each Party

1 is made whole as I explained at pages 13 to 14 of my direct testimony. Therefore, Ms.
2 Giaminetti's discussion of being "made whole" in circumstances where Charter prevails
3 in a billing dispute at pages 25 and 27 of her direct testimony is consistent with the
4 already proposed terms and is not relevant to the specific provision – Section 9.4.2 – that
5 is the subject of Issue 8(a). In fact, CenturyTel's proposed terms do not and cannot be
6 interpreted to suggest that either Party would not be "made whole" following the
7 resolution of a dispute. And, as I have explained in my direct testimony at pages 11 to
8 14, Charter wants a provision that will undermine incentives to prudently and reasonably
9 review bills on a timely basis so that the Parties can resolve disputes as quickly as
10 possible.

11 **Q. What response do you have to the questions and responses on pages 26 and 27 of the**
12 **Giaminetti direct testimony?**

13 A. As an initial matter, there are two consecutive questions and answers for which the
14 question simply asks "Please Explain" without a clear explanation as to what witness
15 Giaminetti is intending to explain. Accordingly, it is difficult to determine exactly what
16 it is that Ms. Giaminetti is explaining. Apart from this confusion and logical flaw, Ms.
17 Giaminetti makes statements that are factually incorrect.

18 **Q. Can you explain some of the factual inaccuracies that Ms. Giaminetti makes?**

19 A. First, she suggests on lines 8-9 of page 26 that "CenturyTel presumes that Charter has
20 otherwise non-working cash assets to dedicate to the scheme that CenturyTel imagines."
21 No such presumption was made by CenturyTel. Rather, the illogical outcome of
22 Charter's language is that if it pays an invoice without checking it first, it would be
23 rewarded for that failure by having that money refunded with interest. Second, Ms.

1 Giaminetti claims on page 26, lines 12-13 of her direct testimony that Charter has “never
2 engaged in the activity CenturyTel has dreamed up” However, in an attachment to
3 the direct testimony of CenturyTel’s Witness Miller in this proceeding (Schedule GEM-1
4 filed on September 30, 2008), CenturyTel sets forth several examples of a pattern of
5 conduct by Charter demonstrating that it tends to invoke the bill dispute process many
6 months after the issuance of the invoice. Regardless of what Charter’s motives or history
7 may be, its pattern of conduct undermines its statement that it has “never engaged in the
8 activity.”

9 Moreover, if Charter does not engage in such activity, then there should be no
10 problem with the proposed language because the language in question would not apply.
11 However, other CLECs may adopt the terms and conditions of the anticipated approved
12 Charter/CenturyTel Agreement, so the proposed provisions need to remain to address this
13 eventuality with other carriers.

14 **Q. What response do you have to Ms. Giaminetti’s statement at page 26, lines 22-23,**
15 **that “it is in Charter’s interest to resolve billing disputes within a reasonable period**
16 **of time?”**

17 **A.** This statement both defies the facts and supports CenturyTel’s position on this issue. As
18 I explained above, Schedule GEM-1 provides examples that indicate that Charter has
19 used the billing disputes in a manner that demonstrates that it has no intent of resolving
20 these matters in short course. Regardless of Charter’s motives in those examples, if
21 Charter were sincere in its statement here that it wants to resolve billing disputes on an
22 expedited basis, then Charter would support CenturyTel’s language. When the billed
23 Party fails to review a bill on a timely basis and then disputes an invoice many months

1 later after payment of the invoice, both Parties are necessarily delayed in their resolution
2 of the dispute as I have explained at page 12 of my direct testimony. Thus, if Charter
3 reviews bills on a timely basis, and disputes bills prior to the payment due date, the
4 resolution of any dispute can proceed immediately. Moreover, as I explained on page 13
5 of my direct testimony, if Charter reviews bills on a timely basis, the provision of the
6 proposed agreement that is under dispute would never apply to Charter, and therefore, it
7 has no issue. Again, even if the provision that is under review never applies to Charter,
8 and for all of the policy and common sense reasons that I set forth in my direct testimony
9 at pages 11-14, the proposed provision should remain in the event that other carriers
10 adopt the Agreement.

11 **Q. What response do you have to Ms. Giaminetti's comment on page 27, lines 3-6, of**
12 **her direct testimony?**

13 A. Let me dissect her statements. At page 27, lines 2-5, Ms. Giaminetti concludes that if
14 Charter prevails in a billing dispute, it follows that Charter should not have paid the
15 amount in the first place. Of course, that conclusion supports CenturyTel's position here.
16 Consistent with page 13 of my direct testimony, if Charter timely reviews its bills and
17 disputes those charges that it determines are not appropriate, it does not have to pay the
18 bill in the first place. Therefore, if Ms. Giaminetti's testimony is accurate that Charter
19 only wants to pay what it should pay, Charter can achieve that result by timely reviewing
20 its invoices, and Charter's proposed addition to Section 9.4.2 can be eliminated as well as
21 the issue it raises. Put another way, if Ms. Giaminetti's statement is taken at face value,
22 she agrees with CenturyTel's objective of wanting Charter to review and dispute bills on

1 a timely basis, a result that is encouraged by CenturyTel's language but that is otherwise
2 undermined by Charter's proposed language.

3 **Q. Do you have any additional observations with respect to Ms. Giaminetti's testimony**
4 **on page 27?**

5 A. Yes. Her statement at page 27, lines 4-5, suggesting that CenturyTel would have had free
6 use of Charter's payment if Charter prevails in a dispute resolution is simply incorrect.
7 The resolution of any dispute will take into account, as I have stated above, making both
8 Parties whole, including the consideration of any time cost of money for previously not
9 paid or paid amounts for the appropriate periods of time. That is the result of the dispute
10 resolution process.

11 **Q. Based on her testimony, is Ms. Giaminetti explaining what Charter really is**
12 **seeking?**

13 A. No. What Charter really wants is something much different than what Ms. Giaminetti
14 claims. Charter does not want to commit to review its bills on a timely basis so that both
15 Parties can pursue and attempt to resolve disputes as soon as possible. Likewise, Charter
16 does not want to commit to review its bills on a timely basis so that if there is a dispute, it
17 can decide not to pay the bill in the first place. Instead, after not reviewing its bills on a
18 timely basis and making payment, Charter wants, as much as one year later, for
19 CenturyTel to be forced to act as if Charter did not pay and had provided notice of
20 dispute a year earlier. As I have explained at pages 13 and 14 of my direct testimony,
21 that result is irrational. For all of the common sense reasons set forth in my direct
22 testimony, this conduct should not be encouraged. The CenturyTel proposed language

1 promotes an efficient and reasonable approach between the Parties and should be
2 adopted.

3
4 **Issue 9 If CenturyTel builds interconnection plant or facility at Charter's request**
5 **and Charter fails to use such plant or facility within six (6) months, may**
6 **CenturyTel reserve the right to assess a stranded interconnection**
7 **plant/facility charge on Charter?**
8

9 **Q. Do you have any initial comments in response to the Charter Witnesses testimony**
10 **on Issue 9?**

11 A. Yes. It appears that my direct testimony already anticipated Charter's confusion and
12 arguments about this issue.

13 **Q. Is Mr. Gates correct when he states that Issue 9 involves "forecasts?"**

14 A. No. He makes these statements several times (for example at page 11, lines 30 and 31;
15 page 12, lines 2, 12-15). However, his repetition of the statement does not change the
16 fact that Issue 9 is not addressing simply forecasts or the effects of either Party's actions
17 based on forecasts. Rather, and as I have explained at pages 17 to 18 of my direct
18 testimony, the issue involves several conditions regarding a definitive *order* from
19 Charter, the fact that CenturyTel *has built plant or facilities based on that order*, and
20 Charter has not utilized the subject facilities or plant within six (6) months after
21 deployment of same. Other network services and arrangements that may be planned and
22 are related to forecasts between the Parties, but do not constitute an actual order, are not
23 relevant to Issue 9. Any suggestion to the contrary made by Mr. Gyori or Mr. Gates is
24 simply wrong and demonstrates that these Charter witnesses have not read or understood
25 the language CenturyTel proposes for Article III, Section 11.6. Moreover, as I stated in
26 my direct testimony at page 17, the stranded investment provision is not intended to

1 undermine the cooperative effort and forecast planning already agreed to by the Parties.
2 As a result, CenturyTel's proposal and reasoning underlying it are clearly defined and
3 entirely reasonable.

4 **Q. What response do you have to Mr. Gates' claim (Gates Direct at page 12, lines 2-4,**
5 **and page 13, lines 4-16) that the proposed provision would act to "penalize"**
6 **Charter?**

7 A. This notion of a penalty to Charter is a distortion of the facts. It amounts to nothing more
8 than an attempt to divert attention from the issue before the Commission. In fact, I
9 already anticipated this Charter tactic and addressed the misleading notion of a so-called
10 "penalty" in my direct testimony. If the proposed provision were omitted, the result
11 could only be the opposite of what Mr. Gates claims. Specifically, and as I explained at
12 pages 14-16 of my direct testimony, omitting the provision would subject CenturyTel to a
13 penalty by requiring CenturyTel to act in good faith in response to an order from Charter,
14 and to incur costs to construct facilities or plant solely to meet that Charter request, and
15 then to assume the risk that those costs will not be recovered.

16 **Q. What response do you have to Mr. Gates' suggestion (Gates Direct at page 12, line**
17 **18, through page 13, line 1) that the proposed provision should provide a "bonus" if**
18 **Charter under orders?**

19 A. As I just discussed, CenturyTel is not seeking to impose a penalty on Charter; CenturyTel
20 seeks to avoid getting stuck with unrecovered costs which are incurred at Charter's
21 request. Moreover, the opposite notion that somehow Charter deserves a "bonus" if it
22 orders insufficient facilities borders on the ridiculous. There is neither a penalty nor
23 bonus suggested by the proposed language. The proposed language merely recognizes

1 that Charter (or some other CLEC that may adopt this Agreement) may be ordering
2 facilities from CenturyTel (but not the reverse), and that CenturyTel may be called upon
3 to incur costs to build those facilities to meet that order. CenturyTel expects that it
4 should be able to rely on an order as a bona fide request. (Not that it is part of this issue,
5 but if the ordering Party requests insufficient facilities for its purposes, it will suffer later
6 by having to order more facilities and incur greater non-recurring costs than if it ordered
7 correctly in the first place.) The only point here, for this Issue 9, is that CenturyTel and
8 its customers should not be left to shoulder the costs of facilities ordered by Charter, built
9 by CenturyTel, but not used by Charter.

10 **Q. What response do you have to Mr. Gates' comments (Gates Direct at page 11, line**
11 **32, through page 12, line 1, and page 13, lines 4-11) about the Act and planning of**
12 **facilities?**

13 A. His comments about what he thinks the Act requires, and his implication that terms and
14 conditions that would address stranded investment that is the result of an order by a
15 requesting CLEC are somehow not allowed by the Act, do not hold water. First, he
16 provides no reference to the Act or rules to support his assertions because there are none.
17 Mr. Gates overlooks the fact that the Act's Section 251 structure leaves to the Parties to
18 negotiate those interconnection terms and conditions that each Party believes necessary to
19 address its business needs. In fact, none of the general terms and conditions typically
20 within an interconnection agreement are specifically identified in Section 251 of the Act
21 and, therefore, under Mr. Gates' purported logic all of those terms should be eliminated
22 as well.

1 Moreover, this issue is not addressing the coordination that takes place between
2 interconnecting carriers. It is addressing stranded investment that satisfies specific
3 conditions. Further, the terms proposed by CenturyTel are commonplace terms that are
4 both reasonable and consistent with common sense and the public interest as I have
5 explained on pages 16-19 of my direct testimony. The Act certainly allows reasonable
6 terms and conditions between parties that assure proper and fair risks.
7 The vast majority of standard terms and conditions in interconnection agreements are
8 there to address the Parties' relationship logically, fairly, and reasonably (as does any
9 contract). Neither the Act nor the FCC's rules prescribe or prohibit those specific
10 provisions. CenturyTel's proposed provision addresses this particular risk in a more than
11 fair manner.

12 I also note that these contract terms are similar in concept to those that Charter
13 has in its own tariffs with its own customers. For example, in Section 1.9.1, on page 47,
14 of the Charter Fiberlink-Missouri, LLC "Local Exchange Tariff" that was effective on
15 September 13, 2007 (copies of relevant pages are attached to this rebuttal testimony as
16 Rebuttal Schedule SEW-1), Charter states that additional construction and facilities are
17 furnished at the customer's expense. Under those tariff terms, the customer is
18 responsible for payment for special construction prior to activation of service or at
19 cancellation of service.

20 **Q. What response do you have to Mr. Gates' apparent conclusion (Gates Direct at page**
21 **14, lines 5-11) that the CenturyTel proposed provision addressing the risks of**
22 **unused and stranded facilities would not, if included, modify Charter's behavior?**

1 A. The proposed provision places on Charter (or another CLEC that may adopt this
2 Agreement) the risk of ordering facilities that are not subsequently used and consequently
3 cause stranded investment for CenturyTel. Charter may never order facilities that it does
4 not use. But the provision is there to maximize the avoidance of stranded facilities. As I
5 have explained at pages 16-17 of my direct testimony, the inclusion of the provision
6 provides valuable public policy incentives for carriers to ensure that their requests are
7 genuine and do not result in unnecessary costs. Mr. Gates' suggestion that inclusion of
8 this language would not have any effect on a carriers' diligence in ordering facilities
9 (either Charter or any other CLEC that adopts the terms) is simply contrary to common
10 sense.

11 Even if, as Mr. Gates suggests, Charter's conduct with respect to ordering
12 facilities is exemplary, and Mr. Gyori's description (Gyori Direct at page 7, lines 12-14)
13 of past Charter behavior with respect to facility use continues, the issue that Mr. Gates
14 and Mr. Gyori ignore is CenturyTel's detrimental reliance on orders that Charter may
15 place (or those from any other CLEC that may opt-in to the Agreement). There is no
16 plausible or rational basis for Charter or some other CLEC to avoid the responsibility for
17 and the consequences of its actions. Therefore, Mr. Gates' rhetoric through his use of the
18 term "penalty" is misplaced. The proposed provision by CenturyTel is nothing of the
19 sort. CenturyTel's proposed language properly allocates responsibility to Charter in a
20 specific instance in which CenturyTel is required to rely on Charter's actions. And, if
21 Mr. Gates is correct with respect to Charter's ordering expertise, Charter should not be
22 concerned with this provision because it should never come into play. However, that
23 does not mean that CenturyTel's proposed Agreement language should not be included

1 because it creates the proper incentive for other CLECs exercising their opt-in rights that
2 may not exhibit the same conduct.

3 **Q. What response do you have to Charter’s concern about “To Be Determined” (TBD)**
4 **rates for the proposed provision?**

5 A. The incentives presented by the provision and the proper assignment of risk make the
6 proposed provision a valuable and more than reasonable term. The rate proposal
7 regarding “TBD” or “To-Be-Determined” rates is entirely appropriate. In practice,
8 implementation of the provision will require the application of a number of factors that
9 would relate to the specific circumstances and conditions: the nature of the order; the
10 facilities built; the cost of those facilities; and any remaining unrecovered costs. These
11 factors are not known until the facilities are built and the conditions in the Agreement are
12 met. More importantly, the Parties have already agreed on how “TBD” prices are to be
13 established. Article III, Section 46.1 (“TBD Prices”), which is not in dispute, provides
14 that the Parties will meet and confer to establish a TBD price. Given that any dispute
15 regarding the establishment of that price is subject to the dispute resolution provisions in
16 the Agreement, Charter has the ability to seek redress in any instance in which it believes
17 CenturyTel is acting inappropriately or contrary to the terms of the Agreement.

18 **Q. Do you have any reaction to Mr. Gates’ quote (Gates Direct at page 14, line 17**
19 **through page 15, line 5) from paragraph 15 of the FCC’s *First Report and Order* and**
20 **the conclusion he draws from it?**

21 A. Yes. Mr. Gates’ quote adds nothing to the analysis required under Issue 9. First, he
22 omits the last line of the quote from the paragraph indicating that the FCC statement was
23 being made in the context of Section 251(c)(3) unbundled network elements (“UNEs”):

1 “We adopt rules herein to implement these requirements of Section 251(c)(3).” Section
2 11.6 of the Agreement is not limited to any UNE-based facilities. Second, Mr. Gates’
3 reliance on the FCC quote also fails to note that the dispute resolution process can be
4 used by Charter with respect to a Section 11.6 issue and that dispute resolution process
5 anticipates *full Commission involvement* in any implementation of that section if the
6 Commission is called upon. Therefore, any concern regarding unequal bargaining
7 position is misplaced.

8 **Q. How should this issue be resolved?**

9 A. CenturyTel and its customers should not take on the risk of costs that may be incurred for
10 facilities that Charter does not use and for which CenturyTel would have no other cost
11 recovery. The provisions of the Agreement should encourage, and not avoid, incentives
12 for CLECs to order facilities that will avoid stranded investment that is of no benefit to
13 anyone. The CenturyTel-proposed terms serve these purposes and should be adopted.

14
15 **Issue 16 Should the Agreement contain a provision providing that CenturyTel is**
16 **solely responsible for the costs and activities associated with accommodating**
17 **changes to its network that are required due to Charter’s modifications to its**
18 **network?**

19 **Q. Do you have any initial reactions to the Charter witness testimony on this issue?**

20 A. Yes. There are three basic fallacies that pervade Mr. Gates’ testimony on this issue.
21 First, Mr. Gates’ assertion that the proposed language could make Charter responsible for
22 CenturyTel’s costs is totally without basis; there is no proposed provision that even
23 suggests such result. There is no provision that would require Charter to compensate
24 CenturyTel for CenturyTel’s cost of upgrades to CenturyTel’s network even though Mr.
25 Gates devotes more than a page in his direct testimony to this irrelevant point – from

1 page 25, line 19 through page 26, line 22. Second, Mr. Gates is simply wrong (Gates
2 Direct at page 24, line 21 through page 25, line 2; at page 27, lines 1-2; and at page 28,
3 lines 4-9) that the Act prescribes either a mutual or symmetrical framework for
4 interconnection between an incumbent and a CLEC as his testimony and Charter's
5 proposal suggest. It is only the CLEC that requests and obtains interconnection with the
6 incumbent's network, not vice versa, as indicated in my direct testimony at pages 20-22.
7 Third, contrary to the suggestions in his testimony (Gates Direct at page 24, line 25,
8 through page 25, line 2), nothing in the Agreement or CenturyTel's proposed terms limits
9 Charter's right to do anything it wants within its own network provided that Charter
10 complies with the terms of the Agreement. Again, I made this point clear in my direct
11 testimony at page 25.

12 **Q. Would the CenturyTel-proposed provision require Charter to compensate**
13 **CenturyTel for CenturyTel's costs?**

14 A. No. Mr. Gates testimony at pages 26 and 27 prefaces his question on an entirely
15 incorrect supposition. As Mr. Gates' own testimony at pages 24, lines 16-18 indicates,
16 the provision under review simply makes clear that Charter is solely responsible for costs
17 "in its own network." No where is there any provision that even suggests that Charter
18 would be responsible for any costs *other than those costs that arise in Charter's own*
19 *network*. Therefore, this entire line of discussion by Mr. Gates is irrelevant to Issue 16.

20 **Q. Even though he prefaces his discussion with the erroneous notion that Charter may**
21 **be responsible for CenturyTel's network costs, what response do you have to Mr.**
22 **Gates observation that he has never in 12 years seen language similar to that which**
23 **is under review in this proceeding?**

1 A. Once again, Mr. Gates (at page 26, lines 15-17) relies upon an incorrect premise – that
2 CenturyTel’s proposal is one “that would require one carrier to pay for upgrades required
3 by another carrier” – and then attempts to build upon that false premise to suggest an
4 issue that does not exist. As a result, this testimony is nonsensical. Of course, there are
5 no such terms and none are being proposed in this case. However, I also note that his
6 statement could be construed to suggest that Mr. Gates has not, in 12 years, seen
7 language similar to that proposed by CenturyTel in the context of this issue. And, if this
8 alternative reading of his statement is the intended one, that reading would be misleading
9 and incorrect.

10 **Q. Do you have any basis to suggest that this alternative reading of Mr. Gates’**
11 **testimony would be misleading and incorrect?**

12 A. Yes. The existing interconnection agreement in effect between the Parties contains the
13 following provision:

14 42. Technology Upgrades

15 Notwithstanding any other provision of this Agreement, Verizon
16 shall have the right to deploy, upgrade, migrate and maintain its network
17 at its discretion. The Parties acknowledge that Verizon, at its election, may
18 deploy fiber throughout its network and that such fiber deployment may
19 inhibit or facilitate Lightcore's ability to provide service using certain
20 technologies. Nothing in this Agreement shall limit Verizon's ability to
21 modify its network through the incorporation of new equipment or
22 software or otherwise. Charter shall be solely responsible for the cost and
23 activities associated with accommodating such changes in its own
24 network.

25 This paragraph is essentially identical to the proposed CenturyTel provision. Moreover,
26 it is my understanding that Charter has very similar language in place in its
27 interconnection agreement with AT&T in Missouri. For example, in Section 3.1 of the
28 General Terms and Conditions, there is discussion of no limits on a party’s ability to

1 upgrade its network and the requirements of network disclosure. Also, in Section 2.25.3
2 of the UNE Attachment of the Charter interconnection agreement with AT&T in
3 Missouri, the parties have also agreed:

4 2.25.3 Nothing in this Agreement will limit either Party's ability to modify its
5 network through the incorporation of new equipment, new software or otherwise.
6 Each Party will provide the other Party written notice of any such upgrades in its
7 network which will materially impact the other Party's service consistent with the
8 timelines established by the 47 CFR FCC §§ 51.325-335. CLEC will be solely
9 responsible, at its own expense, for the overall design of its telecommunications
10 services and for any redesigning or rearrangement of its telecommunications
11 services which may be required because of changes in facilities, operations or
12 procedure of SBC MISSOURI, minimum network protection criteria, or operating
13 or maintenance characteristics of the facilities.
14

15 Apparently, Mr. Gates is unfamiliar with the terms under which his own client now
16 operates in Missouri. In any event, the existence of the above-referenced terms in
17 Charter's existing interconnection agreements undermines Mr. Gates' hyperbole.

18 **Q. Do incumbent LECs such as Verizon and AT&T typically include these provisions**
19 **in their interconnection agreements with CLECs?**

20 A. Yes. They include these provisions for the reasons that I set forth in my direct testimony
21 at pages 20 to 22. CLECs request and obtain interconnection with the incumbent LEC's
22 network. The provision addresses terms and conditions related to the CLEC's
23 interconnection with the LEC's incumbent network. An incumbent LEC has no right and
24 does not obtain interconnection with the CLEC's network. Therefore, as I explained in
25 my direct testimony at page 25 to page 26, provisions that would address upgrades to the
26 CLEC's network are not relevant to the relationship. Therefore, all of Mr. Gates'
27 discussion that suggests notions of "symmetry" (for example, Gates Direct at page 24,
28 line 21, through page 25, line 2) or concerns about "mutuality" or the "one-sided nature"
29 of the proposed provision (*e.g.*, at page 27, lines 1-2, and at page 28, lines 4-9) is

1 irrelevant because the concepts are completely inconsistent with the framework of the
2 Act that focuses solely on the incumbent's network, as I have explained in my direct
3 testimony at pages 20 to 25. Finally, and while it does not support his contention
4 regarding Issue 9, Mr. Gates sets forth a quote at pages 14 and 15 of his direct testimony
5 from a FCC rulemaking. His quote recognizes that a non-symmetrical relationship is
6 "distinct from bilateral commercial negotiations" and that the new entrant presents "little
7 or nothing the incumbent LEC needs or wants." This is consistent with my explanation
8 of the relationship that a CLEC has with an incumbent at set forth on pages 21 through 23
9 of my direct testimony. In that testimony, and as further explained herein, it is only the
10 CLEC that can request interconnection of the ILEC (and not vice versa), thus creating a
11 non-symmetrical relationship. Likewise, since CenturyTel has an established network,
12 there is nothing from a network perspective that CenturyTel needs from Charter.

13 **Q. Is there any language in the proposed agreement that "would directly or indirectly**
14 **prohibit one party from undertaking any plan or program to implement**
15 **modifications to its network" as Mr. Gates suggests at page 24, line 25, through page**
16 **25, line 2, in his direct testimony?**

17 A. No. Charter can point to no proposed provision that would affect either Party's rights or
18 plans to upgrade its network provided that the Parties comply with their obligations in the
19 Agreement. As such, Charter's testimony on Issue 16 is a confusing and unnecessary
20 portrayal of the scope of the issue, consistent with my observations regarding Charter's
21 DPL position as reflected on page 25 of my direct testimony.

22 **Q. Do you agree with Mr. Gates' direct testimony at page 28, lines 10 to 17, regarding**
23 **the result of applying the disputed provision to Charter?**

1 A. No. He suggests that if the provision was “mutual” there would be no negative impact
2 upon CenturyTel. For all of the reasons I have stated above, as well as those included in
3 my testimony, Mr. Gates’ statement and conclusion have no basis. While his general
4 statements of “principles of nondiscrimination, and just and reasonable terms” do, in fact,
5 apply to Charter, these standards do not overrule the fact that Charter sought
6 interconnection with CenturyTel’s network, CenturyTel cannot seek interconnection from
7 Charter, and the FCC’s rules regarding network changes apply to CenturyTel only (see 47
8 C.F.R. §§ 51.325-335).

9 **Q. How should the Commission resolve this Issue 16?**

10 A. The Commission should reject Charter’s proposed modifications because they are
11 inconsistent with the interconnection framework between an incumbent LEC and a
12 CLEC. The CenturyTel language should be adopted as consistent with that framework.

13
14
15 **Issue 18 What terms and conditions that govern the Point of Interconnection (POI)**
16 **and trunking arrangements should be included in the Interconnection**
17 **Agreement?**
18

19 **Q. Do you have any initial response to Mr. Gates’ Direct Testimony on this Issue 18?**

20 A. Yes. Mr. Gates’ view of what the Commission is required to consider in resolving this
21 issue is in error. Mr. Gates’ testimony suggests that the Commission’s sole focus with
22 respect to resolving Issue 18 is technical feasibility. However, while “technical
23 feasibility” is *one* of the considerations to be addressed in resolving Issue 18, it is not the
24 only one. Rather, the Commission must address *each* aspect of Section 251(c)(2) of the
25 Act, and those Section 251(c)(2) criteria also include that the Point of Interconnection
26 (“POI”) must be within the incumbent LEC’s network and the interconnection

1 arrangement that results must not be more than equal to what the incumbent does for
2 itself or with others. In other instances, his testimony cites rules that are irrelevant
3 because the Parties already comply with those rules, and there is no implication of those
4 rules, otherwise, with respect to this issue. Finally, Mr. Gates (and thus Charter) fails to
5 provide any specificity with respect to the location and form of interconnection that
6 Charter will need arising from the Agreement to be entered into at the end of this
7 proceeding.

8 **Q. Is Mr. Gates correct to suggest (Gates Direct at pages 33-35) that Charter is**
9 **“entitled to choose a single POI per LATA under the governing rules and orders?”**

10 A. No. Mr. Gates theory relies on two FCC actions: the *SWBT Texas 271 Order* referenced
11 at page 34, footnote 18 of his direct testimony and the FCC’s *Unified Intercarrier*
12 *Compensation Regime NPRM* which Mr. Gates references at page 33, footnote 17 of his
13 direct testimony. For the same reasons I explained in my direct testimony at pages 38-39,
14 neither of these proceedings applies to the CenturyTel issue in this arbitration. First, like
15 the *Unified Intercarrier Compensation Regime FNPRM* (which is a subsequent action in
16 the same proceeding that Mr. Gates cites), the *Unified Intercarrier Compensation Regime*
17 *NPRM* is still only a proposal from the FCC for comment, and there has been no decision
18 on the issues that are relevant in the Commission’s resolution of Issue 18. Second, as I
19 explained at pages 37 to 39 of my direct testimony, the *SWBT Texas 271 Order* is a
20 decision that addresses the removal of line-of-business restrictions on a Bell Operating
21 Company (“BOC”) that are the result of an antitrust action against that BOC. Moreover,
22 the *SWBT Texas 271 Order* references, as its basis, a specific section of an
23 interconnection agreement between Southwestern Bell and MCI Worldcom, and as

1 demonstrated on page 38 of my direct testimony, the decision's relevance must be
2 considered in light of the fact that it was derived from the disposition of the line-of-
3 business restrictions on that BOC. Ultimately, however, a thorough review of the
4 derivation of the statements contained in Mr. Gates' direct testimony reveals that the sole
5 basis for the single POI in a LATA concept is derived from a single contract provision
6 which cannot be applicable to CenturyTel since it is not a party to that contract, and
7 which cannot be considered a rule of general applicability. Further, the *SWBT Texas 271*
8 *Order* was a Section 271 proceeding for a BOC. Section 271 does not apply to
9 CenturyTel, and CenturyTel is not a BOC.

10 **Q. Even if the *Unified Intercarrier Compensation Regime NPRM* and the *Unified***
11 ***Intercarrier Compensation Regime FNPRM* were applicable, does the discussion in**
12 **those pending rulemaking proceedings support Mr. Gates' position?**

13 A. No. The issues are not settled in the FCC's proposed rulemakings, including under what
14 conditions POIs and trunking should be established between competing carriers and
15 whether the requesting carrier should pay for the facilities to connect from its POI to the
16 areas in which traffic is exchanged. Moreover, the outcome of the resolution of these
17 issues in the FCC rulemaking proceeding may very well be consistent with the
18 CenturyTel position on POIs as well as CenturyTel's concerns regarding obligations and
19 responsibility for potential extraordinary costs.

20 **Q. Do you agree with Mr. Gates' attempted explanation (Gates Direct page 33, line 1,**
21 **through page 34, line 3) of Section 251(c)(2) of the Act and the FCC's related rules?**

22 A. No. The cited Gates testimony discusses a number of issues related to the specific
23 criterion of technically feasible points of interconnection. However, as I noted above,

1 Mr. Gates fails to address the fact that “technical feasibility” is only one of the relevant
2 criterion to be evaluated under Section 251(c)(2). While “technical feasibility” is one
3 aspect of Section 251(c)(2) of the Act, it is not the only aspect of Section 251(c)(2)
4 required for resolving POI-related issues. Rather, as I explained in detail in my direct
5 testimony at pages 29 to 33, the Commission must also address the fact that the POI is
6 required to be within the CenturyTel network and must not result in a form of “superior”
7 interconnection that United States Court of Appeals for the 8th Circuit decisions properly
8 found to be unlawful (which I referenced in my direct testimony as “*IUB I*” and “*IUB*
9 *II*”). As the courts concluded in *IUB I* and *IUB II*, CenturyTel does not have to cater to
10 every desire of connecting carriers.

11 **Q. Could Mr. Gates’ direct testimony suggest that Charter is attempting to impose a**
12 **“superior” form of interconnection upon CenturyTel?**

13 A. Yes, it could because of the lack of specificity included in the Gates Direct in this regard.
14 Accordingly, to the extent that Mr. Gates testimony suggests that Charter is requesting to
15 establish a POI and/or connecting trunking arrangements with CenturyTel for the
16 exchange of local competitive traffic and the requested arrangement would require
17 extraordinary trunking and/or switching beyond that which is required of CenturyTel for
18 the exchange of Local traffic with itself or with other neighboring carriers, Charter’s
19 request would be contrary to the Section 251(c)(2) “no more than equal to” criterion as I
20 explained on page 33 of my direct testimony.

21 Further, as I explained at pages 32 to 33 of my direct testimony, even though the
22 courts invalidated the attempt by the FCC to impose interconnection arrangements on
23 incumbents beyond the “no more than equal” condition, the FCC nevertheless recognized

1 that the requesting carrier should be responsible for the extraordinary costs. In contrast
2 here, Charter's position is apparently that it can demand a more than equal
3 interconnection arrangement by choosing a single POI per LATA for which Charter will
4 not have any cost responsibility for the extraordinary costs that such arrangement would
5 create.

6 **Q. Must this discussion recognize the distinction between CenturyTel and a BOC?**

7 A. Yes. Mr. Gates ends this section of his direct testimony on page 34 with his conclusion
8 that an incumbent LEC is relieved of the single POI concept only if it can prove that a
9 point is technically infeasible. Of course, he admits that the basis for his statement is the
10 same *SWBT Texas 271 Order* that applies to a BOC. Nonetheless, his conclusion is
11 incorrect because the *SWBT Texas 271* decision does not and cannot apply or be binding
12 upon CenturyTel for the reasons I stated above.

13 **Q. Is it logically correct to claim, as Mr. Gates does on page 33 of his direct testimony**
14 **and then again on page 34, that a single POI within a LATA is presumed technically**
15 **feasible?**

16 A. No. Mr. Gates discussion further confuses a BOC's status with non-BOC companies.
17 His statements also blindly suggest conclusions that are not necessarily logically correct.
18 For example, he appears at page 33, lines 14-17 to conclude that any single POI per
19 LATA would always be technically feasible. Setting aside the issue of impropriety of
20 imposing a "superior" form of interconnection upon an incumbent LEC, there can be no
21 assurance, as a matter of technical feasibility, that every point in a LATA is available for
22 interconnection for competition in every other point in a LATA. Even if there are single
23 points within a LATA that may be technically feasible for a BOC based on that BOC's

1 network, I have already explained at pages 27 through 29 of my direct testimony, that
2 expectation does not follow for application to non-BOC ILECs which have not deployed
3 the type of ubiquitous networks as the BOCs have done.

4 **Q. What response do you have to Mr. Gates quote on pages 34-35 from the FCC's**
5 **original local interconnection order regarding what is meant by "technical**
6 **feasibility?"**

7 A. Once again, the quoted material can only apply in conjunction with the *IUB II* decision.
8 That decision made clear that while Section 251(c)(2) includes the criterion of technically
9 feasibility, the requirements also take into account the equally important condition that an
10 incumbent is not required to provide all forms of interconnection just because a CLEC
11 makes a request and that the interconnection requirement can be no more than what the
12 incumbent does with itself and with other carriers. Moreover, the FCC statement quoted
13 by Mr. Gates was made at a time prior to the court's conclusions and the full recognition
14 of all of the requirements of Section 251(c)(2) of the Act. Finally, any conclusion or
15 statement about technical feasibility is confined to that single criterion, and does not
16 address the "no more than equal" criteria or the companion criteria found within Section
17 251(c)(2) that the POI must be within the ILEC's network.

18 **Q. Did Mr. Gates explain in his testimony where the POI between Charter and**
19 **CenturyTel would be for the anticipated competitive local service traffic exchange**
20 **between the Parties?**

21 A. No. As I have indicated, without a specific proposal to evaluate, any discussion of the
22 POI issue and what the resulting trunking and interconnection arrangements would be is
23 relegated to a discussion of hypothetical possibilities and positions. As I have

1 demonstrated at pages 39 through page 41 of my direct testimony, the determination of
2 the POI and trunking arrangements which may be needed by the Parties depends on
3 several factors which CenturyTel has set forth in the contract proposal.

4 While Mr. Gates states that Charter may want to connect at a single point on
5 CenturyTel's network within a LATA, Mr. Gates does not state specifically where
6 Charter intends the location of the POI to be or what trunk group arrangements Charter
7 actually intends the Parties to use in the context of the Agreement. Because of the
8 hypothetical discussion of Issue 18 by Charter and Mr. Gates, neither the Commission
9 nor the Parties know whether Charter's intended POI would be accommodated within the
10 contract language proposed by CenturyTel. And, while it may be true in some locations
11 that CenturyTel may have network facilities as Mr. Gates suggests at page 32 lines 15 to
12 16 of his direct testimony, the analysis of any network interconnection discussion cannot
13 be made in the abstract as Mr. Gates and Charter have attempted to do. In contrast,
14 CenturyTel's proposed language will require the Parties to concentrate on the specific
15 and relevant areas in which Charter intends to compete. In this way, the Parties can focus
16 their evaluation of the issues on the real world requirements that arise with POI. As
17 result, Charter's apparent efforts to have the Agreement to address all theoretically
18 possible options in a statewide agreement should be rejected if for no other reason than
19 Charter's approach necessarily brings into question all of the existing network
20 possibilities and issues that I have discussed in my testimony.

21 Moreover, it is my understanding that Charter already has established POIs with
22 CenturyTel, but Charter and Mr. Gates provide no indication of whether those POIs
23 would continue to apply under the CenturyTel proposed language. With respect to this

1 Issue 18, Charter may not really have any issue, or at least Mr. Gates has not explained
2 how Charter's current arrangements or its future expectations would not be consistent
3 with CenturyTel's proposed language.

4 **Q. How do your points above translate with respect to the incumbent network of**
5 **CenturyTel in Missouri?**

6 A. There are an infinite number of possible choices that Charter may intend for its single
7 POI per LATA concept. Therefore, it is impossible to identify all new and extraordinary
8 trunking arrangements that would be required to accommodate any particular single POI
9 per LATA request. This is particularly true since Charter has not identified the location
10 of a single POI on CenturyTel's incumbent network that it would select for a single
11 LATA for each CenturyTel company. However, the fact remains that there is typically
12 no single point on CenturyTel's network within a LATA that has existing trunking
13 facilities linking every exchange area served by CenturyTel in that LATA. Therefore, it
14 is reasonable to assume under Charter's proposal that new and additional local traffic
15 trunking, beyond that which CenturyTel does for its own local traffic and with other
16 connecting carriers, would be required.

17 In other instances, where there may be some facilities connecting locations in the
18 CenturyTel network, those facilities likely have been provisioned for interexchange
19 access traffic with relatively lower volumes of long distance service traffic. Such
20 interexchange service trunking routes were not designed for, are not used for, and
21 generally do not carry the generally much higher per end user volume of Local traffic.
22 Charter's proposal may result in large volumes of local traffic calls, that originate and
23 terminate in some specific exchange area that is distant to the interconnection point,

1 being transported over the access facilities. As a result, and as I have explained on pages
2 39 to 41 of my direct testimony, the volume of local traffic would grow to exhaust the
3 originally designed capacity on these trunking routes. Please also note that this
4 discussion omits the fact that this transport would, in the first instance, be beyond the
5 interconnection requirements to the extent that Charter's requested POI results in the
6 transport of local traffic in a manner that is superior to what CenturyTel does with Local
7 traffic for itself and with other carriers.

8 **Q. Is Mr. Gates' claim at page 32, lines 15-17 of his direct testimony correct that**
9 **"CenturyTel already has a ubiquitous network throughout many areas of the State**
10 **..." that can be used to originate and terminate local interconnection traffic?**

11 A. He is incorrect. As I discussed above, while there may be some areas within the State of
12 Missouri where CenturyTel operates contiguous exchange areas, it does not follow that
13 local traffic trunking to and from every CenturyTel exchange in that LATA exists for the
14 single points within each LATA where Charter may connect. As I have already
15 explained, CenturyTel cannot analyze every possible arrangement that Charter may
16 propose. But the observations that I made above nevertheless apply -- there is likely no
17 local traffic connecting facilities available between all possible points, and even where
18 there are some connecting transport facilities, CenturyTel does not use these facilities for
19 local traffic transport. Without any indication of an exact POI of Charter to examine, Mr.
20 Gates' statement is, at best, speculation for the reasons stated. Moreover, Mr. Gates'
21 testimony is inconsistent.

22 **Q. How is Mr. Gate's direct testimony inconsistent?**

1 A. On page 50 of his direct testimony, he recognizes that SBC “is the only carrier capable of
2 providing transit service connecting all carriers, primarily because of the ubiquitous local
3 network it has deployed.” CenturyTel has no ubiquitous local network in each LATA.

4 **Q. Is Mr. Gates correct when he claims for example at page 39, lines 10-15, page 40,**
5 **lines 17-18, and page 43, lines 1-3, that CenturyTel’s proposals would result in**
6 **inefficiency and are an attempt to shift costs to Charter?**

7 A. No. While Mr. Gates suggests that CenturyTel’s proposals are an attempt to shift costs
8 from CenturyTel to Charter, in actuality, it is exactly the opposite. Charter wants the
9 right to designate a single POI within a LATA, to connect only at that point, and then
10 force CenturyTel to transport, back and forth, local traffic that originates and terminates
11 within an exchange that could be hundreds of miles away from the point where Charter
12 connects. This would allow Charter to minimize its investment and costs, and to shift to
13 CenturyTel the cost of transporting local calls between points that no other CenturyTel-
14 handled local calls are transported, all just to accommodate Charter’s self-serving
15 proposal. Apparently, Mr. Gates (and thus Charter) wants the Commission to conclude
16 that “efficiency” is the same concept as “convenience” when it comes to Charter’s
17 incurring costs while the shifting of costs to CenturyTel (in the form of an unlawful
18 superior form of interconnection) is permissible regardless of whether it is inefficient and
19 costly for CenturyTel. In actuality, it is only convenient for Charter in that Charter’s
20 proposal, at no cost to Charter, would transfer Charter’s transport costs directly to
21 CenturyTel for Charter’s sole competitive benefit and CenturyTel’s competitive
22 detriment.

1 **Q. Could you explain the basis for your statement that it is only convenient for Charter**
2 **in that Charter's proposal would transfer Charter's transport costs directly to**
3 **CenturyTel for Charter's sole competitive benefit?**

4 A. Yes. For the exchange of local traffic in the areas where Charter actually competes with
5 CenturyTel, Charter expects CenturyTel to haul local traffic to and from Charter's
6 convenient choice of network locations. This means that Charter intends to shift its
7 transport costs associated with that local traffic to CenturyTel and, to the extent that
8 Charter is somehow able to convince the Commission that this cost shifting is proper,
9 Charter enjoys an otherwise improper advantage by imposing costs on its competitor.
10 Therefore, under Charter's approach, CenturyTel would be asked to finance the
11 extraordinary transport cost so that Charter can minimize its relative network obligations
12 compared to those of CenturyTel. So, when Mr. Gates says on page 32, lines 21-22 of
13 his direct testimony that this issue presents "significant competitive cost and operational
14 implications for Charter", he means that Charter wants to maximize its competitive
15 advantage by requiring CenturyTel to be responsible for Charter's costs.

16 **Q. Is Mr. Gates correct when he infers at page 37, lines 22-24 of his direct testimony**
17 **that CenturyTel's position is tantamount to having Charter replicate CenturyTel's**
18 **network?**

19 A. No. Mr. Gates' cited testimony is misplaced. Charter is responsible for the network costs
20 associated with transporting its traffic to and from the POI as Mr. Gates acknowledges on
21 page 30, lines 11-12, of his direct testimony. Any attempt to confuse that responsibility
22 by suggesting that CenturyTel has some control over Charter's investment decision (as
23 suggested at page 38 of the Gates Direct) has no basis in fact.

1 **Q. What is the proper approach to resolving Issue 18?**

2 A. In the end, the proper approach, and the one required by the Act as the *IUB II* court
3 confirmed, is that CenturyTel is required to provide use of its network for transporting
4 local traffic to and from network points only to the same degree that it uses that network
5 to transport local traffic for itself and with other carriers. To the extent that Charter seeks
6 more, the additional transport and the costs associated with that request are Charter's
7 responsibility and not CenturyTel's responsibility. Put another way, to the extent that
8 CenturyTel would transport local traffic to and from a POI that is solely convenient for
9 Charter, the extraordinary costs would be Charter's responsibility. And, even if
10 CenturyTel was willing to undertake that transport to benefit Charter, under the FCC's
11 original rules those extraordinary costs would be the responsibility of the requesting
12 carrier as I have indicated on pages 32 and 33 of my direct testimony.

13 **Q. Does Mr. Gates' reference to Rule 703(b) at page 31 of his direct testimony have any**
14 **relevance to this arbitration issue?**

15 A. No. I assume that Mr. Gates is referring to 47 C.F.R. § 51.703(b) of the FCC rules which
16 states "a LEC may not assess charges on any other telecom carrier for the telecom traffic
17 that originated on the LEC's network." CenturyTel is not proposing to charge Charter
18 for traffic that CenturyTel originates. As a result, Charter has confused the issue and
19 there is no need to address Section 51.703(b).

20 **Q. How has Charter confused the issue by Mr. Gates' reference to Section 51.703(b) of**
21 **the FCC's Rules?**

22 A. First, to the extent that Charter wants a single POI, and that choice would result in
23 extraordinary transport costs to accommodate that POI, CenturyTel has no

1 interconnection obligation to provision such arrangement in the first place. As I have
2 explained several times, Charter's request goes beyond the Act's "no more than equal"
3 requirement as found in Section 251(c)(2) and that applies to CenturyTel. While it
4 cannot be imposed upon CenturyTel, if CenturyTel did want to accommodate Charter's
5 distant and/or single POI request, Charter would be responsible for the extraordinary
6 costs (as the FCC originally concluded). It would be wrong to suggest that this amounts
7 to charges for "telecom traffic" originated by CenturyTel when, in fact, it would really
8 represent an obligation for which Charter is fundamentally responsible; *i.e.*, the
9 extraordinary costs that are the result of accommodating the "more than equal"
10 interconnection arrangement Charter seeks. In any event, Section 51.703(b) of the FCC's
11 rules does not trump the *IUB II* conclusions.

12 **Q. Is Mr. Gates' suggestion on page 45 of his direct testimony correct that Charter**
13 **should not be responsible for any additional costs that may arise to accommodate**
14 **Charter's single POI?**

15 A. No. Mr. Gates is wrong. Mr. Gates, as I explained above, attempts to confuse two
16 distinct concepts: (1) the traffic termination framework with (2) the different issue of
17 facility and service costs that could arise to accommodate a POI that results in an
18 interconnection arrangement that goes beyond what CenturyTel does for itself or other
19 carriers for the exchange of local traffic. The extraordinary costs that arise under the
20 second point are a category unto themselves, and would go beyond the framework and
21 requirements noted as the first point.

22 In any event, Mr. Gates' attempt is nothing more than an effort to revive the
23 "superior interconnection arrangement" requirement that the FCC originally ordered but

1 the courts rejected, and Mr. Gates wants to selectively resurrect only those portions of the
2 FCC's original decision that benefit Charter. As I have explained previously, the FCC at
3 paragraphs 224 to 225 of its *First Report and Order* (issued within its local
4 interconnection proceeding) originally concluded, with respect to superior
5 interconnection rule subsequently rejected by the courts, that the requesting CLEC should
6 nevertheless be required to be responsible for the extraordinary costs that arise to fulfill
7 an otherwise superior interconnection request. Regardless, as I have also explained at
8 page 32 of my direct testimony, the *IUB I* Court concluded that CLECs should have
9 access "only to an incumbent LEC's existing network -- not to a yet unbuilt superior one"
10 and the nondiscrimination provision in Section 251(c)(2) of the Act "does not mandate
11 that incumbent LECs cater to every desire of every requesting carrier."

12 **Q. What response do you have to Mr. Gates' assertion at page 40, lines 1-13 that it is**
13 **now more important to CLECs that they be granted a single POI per LATA because**
14 **the CLEC industry is in decline?**

15 A. This amounts to nothing more than a last ditch effort to suggest that Charter somehow
16 should succeed on Issue 18. His comments have no relevance here. To the extent that
17 Charter is proposing an unfair form of competition where it attempts to make CenturyTel
18 responsible for the transport of local traffic between points at great distances just so
19 Charter can avoid equivalent network costs, then his comments do not trump the manner
20 in which the Act is intended to apply -- CenturyTel's obligations to its competitors is
21 effectively no more than what it does for itself. There is no sound public policy basis to
22 justify the arbitrary transfer of financial resources to a new entrant in a manner that

1 would not be the result of a fair and open market. Charter is seeking just that form of
2 non-competitive resource transfer from CenturyTel to Charter.

3 In any event, CLECs have succeeded and failed for many reasons. Regardless of
4 those reasons, however, it does not follow that a form of unfair competition should be
5 applied to CenturyTel and it does not follow that the requirements of Section 251(c)(2)
6 should be overridden to prop up CLECs.

7 **Q. Would CenturyTel's proposed approach for this issue result in a requirement for**
8 **Charter to duplicate CenturyTel's network as Mr. Gates claims on page 40, lines 8-**
9 **10 of his direct testimony?**

10 A. No. Charter is attempting to require CenturyTel to begin, for the first time, to provision
11 facilities (transport and the additional necessary switching) to transport local traffic to a
12 POI in a manner that could result in the unlawful imposition of a superior form of
13 interconnection upon CenturyTel. As I have explained, in many cases, there simply does
14 not exist facilities to transport local traffic to and from every possible point that Charter
15 may request. In those instances, there can be no "duplication" of network as Mr. Gates
16 suggests because no such facilities currently exist. The facts are that Charter is seeking
17 inefficient transport of local traffic that originates and terminates within a relatively
18 confined area, and Charter wants to have CenturyTel transport that traffic to and from
19 distant points to accommodate Charter's limited network deployment. If Charter is going
20 to compete as a facilities-based carrier in a particular exchange served by CenturyTel,
21 and if local traffic is going to be exchanged between Charter and CenturyTel that
22 originates and terminates in that confined local calling area, it defies common sense how
23 it is efficient to haul such traffic to and from some distant point just because Charter has

1 not deployed equivalent functions (or is not willing to use facilities) within that area.
2 Charter's approach is designed to reward Charter directly -- a form of arbitrary transfer of
3 "wealth" from CenturyTel to Charter.

4 **Q. Is Mr. Gates' suggestion on pages 42 through 44 correct that Charter's proposal**
5 **would be more efficient and cost effective for CenturyTel?**

6 A. No. As he does in other instances in his testimony, Mr. Gates states a false conclusion in
7 the preface to his questions and then responds to it as if the conclusion to which he is
8 responding is true. As a result, Mr. Gate's responses to his false conclusions have no
9 basis. Having to provision a new form of transport, far from the local calling area where
10 local calls originate and terminate in order to haul local calls to and from a Charter
11 designated POI at a distant location presents no efficiency or cost savings for CenturyTel.
12 With respect to page 43 of the Gates Direct, there may be instances where Charter's
13 choice of POI is already accommodated within the existing CenturyTel network and fiber
14 or other circuits exist that would be efficient and convenient for both Parties. But
15 because Charter has not set forth any specific POI proposal to determine whether
16 CenturyTel's existing local traffic network exists that would accommodate that proposal,
17 we are left to evaluate an abstract, theoretical discussion. Where there is a location that
18 does not have CenturyTel network for the handling of local traffic between it and a
19 Charter-proposed distance POI, there is no cost effective solution for CenturyTel other
20 than to provision extraordinary facilities for an interconnection arrangement, even though
21 such a requirement would go beyond the "no more than equal" limit in the Act.

22 **Q. What response do you have to the discussion on pages 45 to 47 of his direct**
23 **testimony where Mr. Gates makes claims about cost causation and the manner in**

1 **which CenturyTel should be responsible for facilities related to Charter's choice of**
2 **POI?**

3 A. Most of his lengthy discussion is misplaced theory that is premised on the incorrect
4 presumption that CenturyTel should be responsible for the extraordinary costs that are the
5 result of Charter's intended POI. I have already sufficiently discredited that assumption.
6 His discussion, at best, merely confuses the actual issue.

7 Nonetheless, on one specific point that Mr. Gates raises on page 46, lines 1-4, I
8 note that if Charter properly establishes a POI as required by Section 251(c)(2) of the Act
9 and the courts, there will be no extraordinary costs incurred by CenturyTel, and Charter
10 will not be responsible for facilities on CenturyTel's side of the POI as Mr. Gates
11 incorrectly suggests. Each Party is responsible for its facilities on its side of POI
12 provided that Charter requests a proper POI in the first place consistent with the actual
13 requirements that I have explained in my testimony. There is nothing in the Agreement
14 to suggest otherwise.

15 **Q. Is Mr. Gates' discussion of transit issues on page 47 of his direct testimony relevant**
16 **to this Issue 18?**

17 A. No. Issue 18 has nothing to do with a transit arrangement. Regardless, the requirements
18 for the establishment of a proper POI as have been defined by application of Section
19 251(c)(2) of the Act (that the POI be technically feasible, that the POI be located within
20 the incumbent network of CenturyTel, and that the interconnection arrangement not be
21 any more than equal to what CenturyTel does with its existing network) do not change
22 depending on whether competing carriers exchange local traffic over interconnection that
23 is direct or indirect as explained at pages 48 to 50 of my direct testimony.

1 **Q. How should the Commission resolve Issue 18?**

2 A. Charter's approach should be rejected because it would go beyond the requirements of
3 the Act. The CenturyTel approach to the establishment of proper POIs is consistent with
4 the defined and clarified requirements of Section 251(c)(2) of the Act. For these reasons,
5 CenturyTel's proposed language regarding establishment of POIs should be adopted.

6
7 **Issue 19 Should the Agreement between the Parties limit the voluntary utilization of**
8 **third party transit arrangements to a DS1 level of traffic?**
9

10 **Q. Does the Charter testimony provided by Mr. Gates add anything new on this Issue**
11 **19 beyond that which Charter included previously in its Arbitration Petition and**
12 **the Revised DPL?**

13 A. No. I already anticipated the Charter arguments and effectively rebutted those arguments
14 in my direct testimony.

15 **Q. Could you reiterate what the area of dispute is that is being addressed by Issue 19?**

16 A. As I explained on page 43 of my direct testimony, the issue is the determination of the
17 conditions under which the Parties would migrate from a purely voluntary form of transit
18 offered by CenturyTel that relies on a third party carrier using commingled traffic
19 trunking (*i.e.*, trunking that mixes multiple carriers' traffic and multiple jurisdictional
20 types of traffic onto one set of facilities) to a form of interconnection that uses dedicated
21 trunks (*i.e.*, trunking that is used solely between Charter and CenturyTel). CenturyTel
22 has offered voluntarily to utilize an indirect transit arrangement under conditions that
23 limit the arrangement to low volumes of traffic.

24 **Q. Has Charter agreed that transit arrangements should be limited in traffic volume?**

1 A. Yes. At page 54 of his direct testimony, Mr. Gates states that Charter has proposed to
2 allow indirect interconnection only until the volume of traffic between the Parties'
3 respective networks exceeds 240,000 minutes per month, for three (3) consecutive
4 months.

5 **Q. Is this acknowledgement by Mr. Gates sufficient?**

6 A. No, but his statement of Charter's position appears to narrow the scope of disagreement
7 between the Parties. Nonetheless, his statement is somewhat misleading in that a transit
8 arrangement is not the only form of indirect interconnection. He appears to lump all
9 forms of indirect interconnection into one, with the presumption that a transit
10 arrangement is the only arrangement synonymous with indirect interconnection. It was
11 this potential mismatch of concepts that led to the need by me at pages 44 to 45 of my
12 direct testimony to make sure that the concepts of "indirect" and "direct" forms of
13 interconnection were properly defined because the concepts of "transit" and "indirect
14 interconnection" are not synonymous.

15 **Q. How are the concepts of "transit" and "indirect" not exactly synonymous?**

16 A. While transit arrangements may be considered one form of indirect interconnection, if the
17 Parties do not utilize a transit arrangement, CenturyTel wants to make clear that it does
18 not follow that they must be directly connected. There are other ways to be indirectly
19 interconnected other than a transit arrangement. For example, a party can be
20 interconnected indirectly with another party by using a third-part carrier's dedicated
21 facilities.

22 Consistent with the drawbacks and problems associated with transit arrangements
23 that I explained in my direct testimony at pages 55 to 63, CenturyTel only offers to utilize

1 a transit arrangement subject to the traffic limits. The limitation applies solely to the use
2 of *transit* arrangements with third party tandem providers and does not address or limit
3 the use of other indirect interconnection, generally. As I explained on pages 44 to 47 of
4 my direct testimony, even where the conditions proposed by CenturyTel are met and the
5 Parties move away from the third-party commingled-traffic transit arrangement,
6 CenturyTel does not prohibit Charter's ability to connect indirectly. Charter can utilize
7 the facilities of another carrier to connect indirectly with dedicated trunking to a properly
8 established POI on the incumbent network of CenturyTel. The proposal in the
9 Agreement addresses the vagaries of the use of a transit arrangement and the need to
10 migrate away from that arrangement as the volume of traffic increases.

11 **Q. So what is the difference in the positions of the Parties?**

12 A. Based on the entirety of the Gates Direct on Issue 19, it would appear that the only
13 operational difference that stands in the way of resolving this issue is the specific
14 criterion to be used to determine when there is a sufficient amount of traffic between the
15 Parties to migrate away from the third party transit arrangement. I note that Mr. Gates
16 makes statements, for example at pages 51 to 52, regarding some legal right to use some
17 transit arrangement, but I have already demonstrated the fallacy of that position at pages
18 50-55 of my direct testimony. Regardless, Mr. Gates at pages 53 and 54 of his direct
19 testimony confirms that Charter agrees that there should be a limitation on traffic for a
20 transit, indirect form of interconnection.

21 **Q. Can you explain the operational difference between the Parties?**

22 A. Yes. Charter does not want to explicitly acknowledge that the threshold should be related
23 conceptually to a DS-1 level of traffic, but instead simply proposes 240,000 MOUs per

1 month as the threshold without any reference to the DS-1 relevance. CenturyTel's
2 position is that the DS-1 concept and level of traffic is the appropriate criterion and
3 proposes, to avoid disputes later, that a DS-1 level be defined as 200,000 MOUs per
4 month. As I noted on page 60 of my direct testimony, Charter has previously agreed to
5 the 200,000 MOU level as representative of a DS-1 threshold, but deviated from that
6 number in its arbitration petition. That deviation remains unexplained.

7 **Q. Is CenturyTel willing to address Mr. Gates' comments at page 52 of his direct**
8 **testimony that concludes that CenturyTel's proposal would require the Parties to**
9 **migrate away from a transit arrangement at a "DS-1 equivalency" or where the**
10 **transit costs paid to a third party exceed \$200 per month suggest anything new?**

11 A. Yes. Considering his comments, and as a means to bring the Parties closer together,
12 CenturyTel is willing to remove the secondary \$200 per month transit charge condition
13 and to rely solely on the DS-1 equivalency threshold condition within the CenturyTel
14 referenced language. This brings CenturyTel's proposal very close in terms of monthly
15 MOUs to that which Mr. Gates has already confirmed for Charter; *i.e.*, 240,000 MOUs
16 per month.

17 Also, in an effort to avoid any possible confusion, I note that the language should
18 state explicitly that the total volume of traffic to be considered for the threshold
19 determination should be the total of Local Traffic and ISP-Bound Traffic as those terms
20 are defined in the Agreement. Even if Charter does not have ISP-Bound Traffic, other
21 CLECs that opt into the Agreement may, and therefore, the proper threshold should
22 include the combination of the traffic to be exchanged between the competing providers'
23 networks.

1 **Q. Is a DS-1 equivalency in terms of MOUs the right threshold to use?**

2 A. Yes. The CenturyTel proposed DS-1 threshold has, as its basis, the recognition that for
3 some level of traffic the use of the incremental trunking capacity of a DS-1 facility is the
4 relevant network building block. Therefore, the use of a DS-1 equivalency would be
5 related to the reality of network design and trunk deployment of telecommunications
6 carriers. Finally, based on its experience, it is CenturyTel's position that 200,000 MOUs
7 per month is a workable representation of the DS-1 transmission building block. Charter
8 has not challenged that approach. Despite Charter's silence, it is very likely that its
9 proposed limitation on the transit form of indirect interconnection of 240,000 MOUs has
10 the same DS-1 concept as its original basis.

11 **Q. Did you mention Mr. Gates' statements about Section 251(a) rights?**

12 A. Yes. Mr. Gates suggests on pages 51 to 52 of his direct testimony that Section 251(a) of
13 the Act provides Charter with the right to demand that CenturyTel rely upon a third party
14 transit provider for indirect traffic purposes.

15 **Q. Does Section 251(a) of the Act provide Charter with that right?**

16 A. No. As I explained on pages 50 to 55 of my direct testimony, Section 251(a) *does not*
17 *create rights* for Charter to demand that CenturyTel must accept traffic on a commingled
18 basis from a third party tandem operator, *does not allow* Charter to dictate that
19 CenturyTel must utilize and pay a third party tandem provider simply because Charter
20 demands such arrangement, *does not mandate* that CenturyTel must send its local traffic
21 through a third party tandem operator, and *does not negate the fact* that CenturyTel is not
22 required to provision interconnection at a level that is more than what CenturyTel does
23 with itself or with other carriers.

1 **Q. Do you agree with Mr. Gates' discussion on pages 54 to 55 of his direct testimony**
2 **regarding the need to retain the option of indirect interconnection even though**
3 **Charter and CenturyTel are already connected on a direct and dedicated trunking**
4 **basis?**

5 A. No. Again, Mr. Gates uses this terminology loosely. The issue is not "direct versus
6 indirect," it is "transit versus dedicated trunking." A dedicated trunking interconnection
7 between Charter and CenturyTel may be accomplished directly or indirectly. With that
8 clarification, to the extent that the Parties have already deployed dedicated trunking
9 arrangements in Missouri where they compete, then those arrangements should continue
10 to be used by the Parties. CenturyTel does not agree that Charter should be allowed to
11 migrate from an already existing and established dedicated trunking basis to a transit
12 arrangement with its attendant problems and drawbacks. That backwards movement
13 would not be in the public interest and may allow Charter to shift costs to CenturyTel in
14 an anticompetitive manner as I explained on pages 56-64 of my direct testimony.

15 Alternately, to the extent that Charter begins to compete in areas not related to
16 those in which it has already established dedicated interconnection with CenturyTel, then
17 the provisions proposed by CenturyTel would apply. In other words, a transit
18 arrangement is offered voluntarily until the threshold level of traffic (i.e., 200,000 total
19 minutes of use, per month, between the Parties) is reached in that new and unrelated area.

20 **Q. What is your reaction to Mr. Gates' discussion of a prior Commission decision**
21 **involving Socket Telecom, LLC?**

22 A. On page 53 of his direct testimony, Mr. Gates references a decision regarding Socket
23 Telecom, LLC. That decision says what it says, and based on the quoted language that

1 Mr. Gates has provided regarding it, the decision may not be addressing the distinction
2 between “direct versus indirect” forms of interconnection that I have made clear are
3 required to properly resolve this issue. As a result, it is doubtful that the Commission had
4 before it the full position that I have expressed on this Issue 19 and, therefore, my
5 testimony and this rebuttal testimony amply demonstrate that the resolution proposed by
6 CenturyTel to resolve Issue 19 should be adopted.

7 **Q. Do you have any final conclusions on this Issue 19?**

8 A. Yes. The use of a transit arrangement means that: (1) CenturyTel would be required to
9 rely on a third party involuntarily with anticompetitive implications; (2) CenturyTel
10 would be required to deliver local traffic beyond what the controlling rules require (*i.e.*,
11 beyond a properly established POI on its incumbent network); and (3) CenturyTel would
12 be required to provision an interconnection arrangement for the exchange of local traffic
13 that is more than equal to what it does for itself or with other carriers. As I explained on
14 pages 48 to 50 of my direct testimony, CenturyTel’s obligation is only to deliver its local
15 traffic to POI within its incumbent network, and its responsibilities end at that point.
16 CenturyTel’s voluntary proposal that limits the arrangement to a DS-1 equivalency
17 already goes beyond the requirements. For these reasons, CenturyTel’s proposed
18 provisions should be adopted that limit transit arrangements to the sole criterion of no
19 more than 200,000 MOUs of total Local Traffic and ISP-Bound Traffic exchanged
20 between the Parties pursuant to the language proposed by CenturyTel.

1 **Issue 20** **How long should the Agreement provide the Parties to negotiate cost-based**
2 **rates for such facilities before they may seek Commission intervention?**
3

4 **Q.** **Has the Charter witness accurately described the extent of the disagreement**
5 **between the Parties on Issue 20?**

6 A. No. The only issues that are in dispute and before the Commission in this arbitration
7 proceeding are: (1) how long should the Parties be afforded to negotiate cost-based rates,
8 and (2) to the extent the Parties cannot resolve cost-based rates during the negotiation,
9 what dispute resolution terms should apply. These are the issues that Mr. Gates discusses
10 on page 59 of his direct testimony, and these are the only issues before the Commission.

11 **Q.** **Does Mr. Gates discuss issues that are not before the Commission at his time?**

12 A. Yes. As I stated on page 67 of my direct testimony, the Parties have already agreed that
13 “cost-based rates pursuant to Section 251(c)(2)” of the Act will guide their negotiations.
14 This concept is not before the Commission in this arbitration; the Parties will resolve the
15 proper application of this phrase during the course of their negotiations. For these
16 reasons, Mr. Gates’ discussion of the meaning of “cost-based” on pages 56 and 58 is not
17 yet before the Commission in this proceeding, and that discussion is not relevant to this
18 arbitration issue. Without waiver of its rights to address the inappropriateness of Mr.
19 Gates’ testimony in this regard and with the full reservation of its rights to do so, it is
20 apparent that the Parties have agreed to negotiate cost-based rates pursuant to Section
21 251(c)(2) of the Act and does not necessarily accept or reject the arguments set forth by
22 Mr. Gates regarding what that phrase may mean. Again, the Parties will negotiate that
23 result as they have agreed. The whole purpose of agreeing to negotiate this issue after the
24 effective date of the Agreement was to avoid inclusion of this aspect in this arbitration
25 and a lengthy and detailed debate prior to the time the Parties have set aside to further

1 negotiate this point. Mr. Gates testimony attempts to negate that purpose, and prejudice
2 the issue. Accordingly, Mr. Gates' direct testimony in this regard should be rejected
3 outright by the Commission.

4 **Q. Is Mr. Gates' claim at pages 59 and 60 of his direct testimony correct that the**
5 **Parties disagree on what interim rates should apply?**

6 A. There is no difference of opinion. Mr. Gates at lines 15-16 of page 59 of his testimony
7 states that Charter proposes to use "CenturyTel's tariffed rate" for interim purposes.
8 Two lines later in his testimony, he states that CenturyTel proposes "to use the current
9 tariffed rates." Moreover, the Charter proposed language in the DPL for Issue 20 also
10 states that the CenturyTel tariff rates set forth in the pricing attachment of the Agreement
11 shall apply. There is no difference. Any further issues regarding the framework for the
12 application of the rates for facilities are already contained in the terms and conditions of
13 the Agreement and are not in dispute.

14 **Q. What response do you have to Mr. Gates proposal that the tariff rate be reduced by**
15 **50 percent based on traffic as he suggests on page 59 of his direct testimony?**

16 A. That is a novel proposal. Regardless, the suggestion is conceptually flawed and, as
17 explained below, is inconsistent with the terms of the Agreement with which Charter has
18 already agreed and about which Mr. Gates has provided testimony.

19 **Q. How is the suggestion about the relative use factor inconsistent with the already**
20 **agreed to terms and conditions?**

21 A. In Section 2.2.3 of Article V of the Agreement, each Party has agreed to be fully
22 responsible for the facilities on its side of the POI. According to that section of the
23 Agreement, each Party is responsible for the appropriate sizing, operation, maintenance

1 and cost of the transport facility to the POI. To the extent that Charter must lease
2 facilities from CenturyTel to get to the properly established POI, Charter is responsible
3 for 100 percent of these costs, as the Agreement states.

4 **Q. How is the fifty (50) percent factor inconsistent with Mr. Gates testimony?**

5 A. Mr. Gates also states at page 25, lines 10-12 and lines 15-18, that each Party is
6 responsible for the costs of facilities on its side of the POI. But it appears that Charter
7 wants to avoid this conclusion by arbitrarily reducing its responsibility by 50 percent for
8 facilities costs on its side of the POI at CenturyTel's expense. If that were appropriate (it
9 is not), then CenturyTel would also want to avoid 50 percent of the facilities costs on its
10 side of the POI, at Charter's expense. Charter's percent factor proposal here must be
11 rejected. Considering that Mr. Gates recognizes that each Party is responsible for the
12 facilities and costs on its respective side of the POI, his proposal to apply a 50 percent
13 reduction is nothing more than an arbitrary and unilateral reduction, based on a misplaced
14 conceptual approach.

15 **Q. Will the ultimate determined rates between the Parties for facilities lease be applied**
16 **with the effective date of the Agreement?**

17 A. Yes. That is the intent of CenturyTel's proposed language -- the rate is effective with the
18 effective date of the Agreement. Section 2.3.1.1 of Article V states that once new rates
19 are established, such new rates shall apply retroactively to the Effective Date of the
20 Agreement, and shall be trued-up accordingly. As I explained on page 68 of my direct
21 testimony, the interim rate is used on an interim basis, but the actual rate is effective with
22 the effective date of the Agreement. Therefore, Mr. Gates is not correct on page 59 of his

1 direct testimony to suggest that there will not effectively be a true up to reflect the
2 ultimate rate relative to the effective date.

3 **Q. Did Charter provide any testimony regarding the process to be employed if the**
4 **Parties do not successfully resolve the rates pursuant to the agreed to negotiation?**

5 A. No. It is not clear whether Charter has an issue with the process to be employed in the
6 event that the Parties' negotiation is not successful. As I explained on page 68 of my
7 direct testimony, the standard dispute resolution provisions in the Agreement should be
8 the applicable process. Charter has not disputed the use of this process.

9 **Q. Did Charter provide any testimony that supports its view that allowing only three**
10 **(3) months for the Parties to resolve their negotiation would be better than allowing**
11 **six (6) months?**

12 A. No. In contrast, CenturyTel set forth its arguments at pages 67-68 of my direct testimony
13 as to why six (6) months is a more prudent time period for the Parties to resolve the
14 negotiation. The Commission should adopt the more prudent six (6) month period for the
15 reasons I have stated.

16 **Q. Is this the resolution of Issue 20 that CenturyTel seeks?**

17 A. Yes.
18
19

20 **Issue 21 (a) Under what terms and conditions should one-way trunks be used for the**
21 **exchange of traffic within the scope of this Agreement?**

22
23 **(b) Regardless of whether one-way or two-way trunks are deployed, where**
24 **should Points of Interconnection (POIs) be located and what are each Party's**
25 **responsibilities with respect to facilities to reach the POI?**
26

27 **Q. Are there any points about which Charter and CenturyTel agree on this issue?**

1 A. Yes. Mr. Gates states on page 62 of his testimony that Charter expects to routinely utilize
2 two-way trunks which he concludes “are often more efficient for this type of
3 interconnection.” I concluded on pages 69-70 of my direct testimony that there would
4 not seem to be any practical or cost reason not to deploy two-way trunking. Therefore,
5 the Parties agree on the preferred use of two-way trunks.

6 **Q. Do you agree with Mr. Gates’ claims on page 62 of his direct testimony that one-way**
7 **or two-way trunks are a matter for the CLEC to decide and then only subject to the**
8 **issues of technical feasibility?**

9 A. No. The interconnection requirements, as I have discussed at length in my direct
10 testimony and above in this rebuttal testimony in Issue 18, depend on several criteria for
11 which technical feasibility is only one. I explained these criteria at pages 71 through 75
12 of my direct testimony as they relate to this issue. The interconnection requirements that
13 apply to an incumbent LEC are conditioned by the concept of “no more than equal to
14 what the incumbent provides for itself or with other carriers.” Moreover, the framework
15 for interconnection for the exchange of traffic between competing carriers is premised on
16 the establishment of a proper POI within the incumbent network area of the incumbent
17 LEC. In the context of Issue 21, Mr. Gates avoids any discussion of these criteria even
18 though they are equally relevant and important conditions.

19 **Q. Do there remain concerns about Charter’s intended result regarding one-way and**
20 **two-way trunks?**

21 A. Yes. I set forth CenturyTel’s concern on page 71 of my direct testimony in that Charter’s
22 proposal could be construed to suggest that it expects CenturyTel to be responsible for
23 one-way facilities extending both beyond the properly established POI and beyond the

1 incumbent service area of CenturyTel. Mr. Gates does not address these issues other than
2 a cryptic comment on page 63 of his testimony that somehow, without explanation,
3 CenturyTel is attempting to shift facility cost to Charter. Of course, that Charter
4 suggestion is exactly the opposite of the facts.

5 **Q. Did Mr. Gates elsewhere in his direct testimony reflect on the facility responsibilities**
6 **of the Parties relative to the POI?**

7 A. Yes. As I referenced above, Mr. Gates correctly observes on page 25 of his direct
8 testimony that each Party “is responsible for the costs on its side of the point of
9 interconnection or ‘POI’.” On page 30, he states that the “POI is also the financial
10 demarcation point that defines where one party’s financial obligations end and the other
11 party’s begin.” He further states on page 31 that “the financial responsibilities for
12 interconnection for the exchange of traffic should be borne solely by each carrier on its
13 side of the POI.”

14 **Q. Do you agree with these statements?**

15 A. Yes, but *only* to the extent these statements from Mr. Gates also reflect that the full set of
16 interconnection requirements and conditions that I explained above are included. If there
17 is a properly establish POI within the incumbent area of CenturyTel and the resulting
18 interconnection arrangement satisfies the requirement that it is no more than what the
19 incumbent currently does for itself or with other carriers, then each Party is responsible
20 for the facilities on its side of the POI. Nonetheless, CenturyTel is concerned that
21 Charter does not intend to place the POI in a location that complies with these
22 requirements, and that somehow through the use of one-way trunks will attempt to
23 impose requirements more than what Mr. Gates claims them to be.

1 **Q. Do you have any comments on Mr. Gates' citation on page 63 to a decision involving**
2 **Socket Telecom LLC?**

3 A. Much like before on Issue 19, the decision speaks for itself. However, just as before, it is
4 doubtful that the Commission had the full extent of the record developed on this Issue 21
5 before it and, based on the CenturyTel testimony in this regard, even if there would be an
6 inclination to look to the decision being referenced by Mr. Gates, that decision should not
7 define how this Issue 21 should be resolved for the reasons I have provided herein and in
8 my direct testimony. The justification of CenturyTel's position on this issue in this
9 proceeding is contained in my testimony and the record in this proceeding.

10 **Q. Do you have any final comment about this issue?**

11 A. Yes. If Charter really believes that two-way trunks are most likely to be the preferred
12 and efficient approach for both carriers, and if it is Charter's intent not to stretch the
13 interconnection requirements under Charter's one-way trunks proposal to require
14 CenturyTel to be responsible for delivery of local traffic to a POI beyond points required
15 by the Act, then there does not seem to be any issue. For these reasons, the CenturyTel
16 language should be adopted.

17
18 **Issue 22 Should the Parties utilize reasonable projections of traffic volumes in**
19 **addition to actual traffic measurement in their determination of whether the**
20 **threshold has been reached for purposes of establishing dedicated end office**
21 **trunks versus after-the-fact traffic measurement solely for such**
22 **determination?**

23
24 **Q. Does the Charter witness explain the nature of the dispute consistent with**
25 **CenturyTel's restatement of the issue?**

1 A. Yes. Mr. Gates on page 65 of his direct testimony recognizes that the only issue
2 between the Parties on Issue 22 is whether actual traffic volumes should be used or
3 whether actual and/or projected traffic volumes should be used to determine whether the
4 DS-1 level threshold has been reached. As such, Mr. Gates has recognized the narrow
5 area of dispute between the Parties as I noted on pages 76-77 of my direct testimony.

6 **Q. Does the Charter witness's testimony on Issue 22 change the conclusions set forth in**
7 **your direct testimony on this issue?**

8 A. No. CenturyTel's position, as I explained on pages 76 and 77 of my direct testimony, is
9 that it is prudent to use reasonable forecasts of traffic as traffic volumes are growing. Mr.
10 Gates' only counter argument is that forecasts could be subject to dispute and are based
11 on speculation. Moreover, the concept of "speculation" that he raises with respect to
12 forecasting use is troublesome since CenturyTel assumes that each Party would act in
13 good faith to estimate the upcoming volumes of traffic in order to properly estimate what
14 will occur. In any event, forecasts based on good faith estimates are a common industry
15 practice, and Mr. Gates' suggestions, in an effort to undermine their use, should be
16 disregarded as they frustrate the objective that trunking facilities will be deployed on a
17 timely basis to meet anticipated demand.

18 **Q. Is Mr. Gates' concern reasonable?**

19 A. No. Like CenturyTel, Charter should have the same objective as CenturyTel – the
20 provision of a high quality network necessary to ensure that the continued exchange of
21 traffic between the two networks is achieved. As such, and to the extent that forecast
22 information shows that traffic is increasing, Charter should want to deploy trunking in
23 anticipation of that traffic increase and quality service.

1
2
3 **Issue 23** (a) Where Charter is the N-1 carrier for calls to ported numbers of third
4 party carriers, should Charter be responsible for data base queries and the
5 proper routing of its calls to third party carriers?
6

7 (b) For calls that Charter fails to fulfill its N-1 carrier obligations and are
8 routed improperly to a CenturyTel end office, what should Charter be
9 required to pay to CenturyTel for the completion of such calls to third
10 parties?
11

12 **Q. Does the Charter witness recognize the narrow aspect of this issue?**

13 A. Yes. Mr. Gates concludes on page 68 of his direct testimony that this issue is narrow and
14 only involves Charter sending an “unqueried” call to CenturyTel which must be routed to
15 a third party carrier. CenturyTel agrees that the issue is narrowly confined to those
16 conditions as I have previously indicated in great detail in my direct testimony at pages
17 78 to page 81. Nonetheless, as I noted at page 86 of my testimony, any discussion that I
18 may make with respect to the pricing issues raised by Charter in the context of this Issue
19 23 are without waiver of CenturyTel’s right to argue that TELRIC pricing issues for
20 improperly routed transit calls are wholly outside the scope of the applicable Section 251
21 requirements and this arbitration. It is with this specific reservation that any discussion
22 of such issue is provided below.

23 **Q. What does an unqueried call mean?**

24 A. As I explained in my direct testimony on pages 79 to 82, when Charter does not perform
25 its number portability “N-1” obligation and sends a call to CenturyTel for completion to a
26 third party carrier, the call is considered an “unqueried call.”

27 **Q. Does Charter recognize its obligation to perform the N-1 obligation?**

28 A. Yes. On page 69 of his direct testimony (lines 17-23), Mr. Gates exclaims that Charter
29 has never disclaimed its obligation to perform the N-1 obligation. Nonetheless, Mr.

1 Gates then notes that Charter does not always satisfy this obligation and wants to
2 continue to send unqueried calls to CenturyTel and recognizes that CenturyTel will
3 charge for these calls.

4 **Q. Has Charter explained under which conditions it should be relieved of its N-1**
5 **obligation?**

6 A. No. Mr. Gates (and thus Charter) is totally silent as to how, on the one hand, it claims to
7 perform its obligation but, on the other hand, will still route unqueried calls to CenturyTel
8 for which it has not performed its obligation. As I explained in my direct testimony on
9 pages 80-82, Charter simply makes network design mistakes for which it is responsible
10 and then expects CenturyTel to make it right at the demands of Charter and under the
11 terms dictated by Charter. Charter completely omits the fact that if Charter satisfied its
12 obligation and did not make network “mistakes,” there would be no issue here.

13 **Q. What is CenturyTel’s position given Charter’s less than complete statement of its**
14 **position that it has an obligation but does not intend to make certain that it fulfills**
15 **that obligation?**

16 A. There is no reason to reward Charter by allowing Charter to dictate terms and conditions.
17 Although there is no reason why CenturyTel should be responsible for Charter’s lack of
18 responsibility, and there is no reason why CenturyTel should be forced to route calls on
19 an extraordinary basis outside the method under which calls are routed to third party
20 carriers through the proper tandem, CenturyTel is willing to complete these calls where
21 reasonably capable provided only that Charter provide full compensation to CenturyTel.
22 As I explained on page 84 of my direct testimony, Charter should not be afforded any
23 special treatment for calls where it has failed to fulfill its responsibility. As such,

1 CenturyTel is willing to route calls provided that Charter provides compensation for each
2 element of network function that must be performed on an extraordinary basis to
3 complete the incorrectly routed Charter calls. As I stated in my direct testimony, there is
4 no competitive implication to Charter: if Charter does not want to pay CenturyTel for
5 these functions for misrouted, unqueried calls, all Charter has to do is to perform its N-1
6 obligation for itself and route these calls as other properly routed transit calls would be
7 routed; *i.e.*, after query and through the proper tandem.

8 **Q. What response do you have to Mr. Gates suggestion that an arbitrary rate of \$0.005**
9 **should be used for payment to CenturyTel for these improperly routed calls?**

10 A. Mr. Gates direct testimony is logically flawed. On page 68 (lines 18-20), Mr. Gates
11 states that “Charter is willing to compensate CenturyTel at that transit rate that
12 CenturyTel has set forth in its position statement in the Joint DPL” If that is
13 Charter’s position, then subject to the objections about Charter not performing its
14 obligation, it is CenturyTel’s position that it will provide the extraordinary transit at the
15 rates proposed and set forth by CenturyTel, and there is no remaining issue. But in the
16 next sentence in Mr. Gates direct testimony on page 68, he effectively states that Charter
17 is not willing to compensate CenturyTel for the misrouted calls at the rates proposed by
18 CenturyTel unless those rates are less than his arbitrary \$0.005 rate. In other words, the
19 first sentence says that Charter would agree to the CenturyTel proposed rates, and in the
20 second, Charter through Mr. Gates says that it will not provide that compensation.
21 Charter provides no explanation for this inconsistency and no justification for its arbitrary
22 \$0.005 rate.

1 **Q. Does the Charter witness discuss any rate implication beyond his arbitrary**
2 **suggestion of \$0.005 and the inconsistency you discussed above?**

3 A. No.

4 **Q. Is CenturyTel willing, as Mr. Gate's requests at page 69, lines 24-26, to make "an**
5 **affirmative statement that when CenturyTel charges Charter for routing this**
6 **unqueried call, CenturyTel will, in fact, route the unqueried call?"**

7 A. Subject to the application of the proper charges outlined in the CenturyTel statement of
8 position on this Issue 23, presuming that routing of the call can be reasonably completed
9 in the extraordinary manner that is the result of Charter's misrouting, and as stated in my
10 testimony and herein, the answer is "yes."

11 **Q. How should the Commission resolve this issue?**

12 A. The Commission should require Charter to determine how it is going to ensure in the
13 future that it will comply with its obligation to perform its N-1 query and route calls for
14 transit to CenturyTel in the manner and through the route intended. In the meantime, to
15 the extent that Charter continues to send this traffic without fulfilling its obligation, it
16 should provide compensation as proposed by CenturyTel.

17
18 **Issue 27 When Charter submits an LSR requesting a number port, should Charter be**
19 **contractually required to pay the service order charge(s) applicable to such**
20 **LSR?**

21
22 **Issue 40 Should the Pricing Article include Service Order rates and terms?**
23

24 **Q. Do you have any initial reactions to the Charter witness testimony on this issue?**

25 A. Yes. Once again, there are basic fallacies within Mr. Gates' testimony on this issue that
26 undermine any basis upon which it can be relied upon to resolve Issues 27 and 40. First,

1 contrary to his discussion at page 71, line 13, of his direct testimony, the charges under
2 review in this proceeding are not for “porting numbers” which are the subject of recovery
3 through the *Special LNP Category* of costs that I discussed at page 89 to page 93 of my
4 direct testimony. Instead, this issue pertains to charges for administrative activities
5 associated with the processing of service orders that are separate and apart from the costs
6 recovered via the *Special LNP Category* charge. Second, Mr. Gates, throughout his
7 direct testimony on these issues, repeatedly confuses the costs of LNP implementation (to
8 be included in the *Special LNP Category*) with the mutually exclusive and separate costs
9 associated with the administrative processing of service orders. As a result, all of his
10 discussion about number porting and the rules related to the *Special LNP Category*
11 charges and costs (such as that contained in his direct testimony at page 31-35) do not
12 address the subject matter of this issue. The administrative costs of processing service
13 orders are not part of the LNP implementation costs discussed at length by Mr. Gates.
14 This was amply demonstrated in my direct testimony at pages 89 to 94.

15 **Q. What response do you have to Mr. Gates’ claim, such as that made by him at page**
16 **76, line 4, through page 77, line 9, of his direct testimony that CenturyTel’s proposal**
17 **to charge for the processing of service orders is “inconsistent with the FCC’s**
18 **regulations . . . ?”**

19 A. His discussion is about the *Special LNP Category* of costs and charges which are separate
20 and apart from the administrative service order costs under review here.

21 **Q. Is Mr. Gates’ discussion at page 77, line 10, through page 78, line 2, of his direct**
22 **testimony (about charges for “switching ports as UNEs,” resale of incumbent LEC’s**
23 **local exchange services, and “query service”) relevant here?**

1 A. No. The discussion of UNEs, resale and query charges has nothing to do with the service
2 order processing charges or the costs associated with the processing of those orders.

3 **Q. Is Mr. Gates correct when he suggests at page 37, lines 3-21, that the FCC prohibits**
4 **charges on other carriers for service order proceeding?**

5 A. No. His discussion may be relevant to the rules related explicitly to the recovery and
6 charges for the *Special LNP Category* of costs – 47 C.F.R. § 52.33(a) -- but there is no
7 general prohibition or rule against recovery of service order processing between carriers.
8 Quite the contrary, as I noted at pages 92 to 93 of my direct testimony, the FCC has been
9 presented issues related to “carrier-to-carrier” charges associated with administrative cost
10 recovery (outside of the costs that qualify for the *Special LNP Category*) and declined
11 specifically to take any action to prohibit such charges. Mr. Gates’ general presumption
12 contained in the question in his direct testimony on page 79, lines 3-4, is both misleading
13 and wrong.

14 **Q. What response do you have to Mr. Gates’ discussion of “cost-causer” concepts at**
15 **page 79, lines 5-21, of his direct testimony?**

16 A. I have two responses. First, his discussion, again, is related to the *Special LNP Category*
17 cost recovery issues. Second, with respect to any costs separate from the *Special LNP*
18 *Category* (such as the costs of processing service orders), his “cost causer” discussion is
19 contrary to the facts. I already explained in my direct testimony at page 33 to 34 why
20 charges between carriers, for service order processing, is consistent with sound cost
21 recovery practices, concepts and common sense. If the former service provider of a
22 customer that has terminated service were required to absorb the costs of service order
23 processing related to that exiting customer, it would be the entire body of remaining

1 customers that would shoulder this cost. The new service provider is the Party making
2 the local service request for its new customer. The new service provider can recover
3 these costs from the end user that has benefited from the activity.

4 **Q. What response do you have to Mr. Gates' discussion on pages 80 and 81 of his direct**
5 **testimony where he explains Charter's "practices" which appear to be a summary**
6 **of the "steps" that Charter takes in porting numbers?**

7 A. His discussion appears to describe what Charter believes are its functions and costs
8 related to number ports and the processing of service orders that result in number ports.
9 It would appear that some, or most, of the functions and the costs he describes are not
10 within the *Special LNP Category* of costs defined by the FCC, but that is not relevant
11 here. I also note that I, along with Mr. Reynolds (another CenturyTel witness), have
12 already outlined the steps that CenturyTel uses for processing its service orders, and it is
13 those steps that outline the costs that are properly to be recovered from the service order
14 charges that CenturyTel proposes.

15 To that end, I note that, while it is not clear what he intends by this testimony at
16 page 81, lines 20-21, it appears that Charter recovers these costs from its end users since
17 he claims that Charter does not charge other providers for such costs. While Charter may
18 want to disregard the cost recovery principles that I described above and in my direct
19 testimony, that decision by Charter does not affect the decision made by CenturyTel.

20
21 **Issue 33 Is Charter entitled to lease CenturyTel facilities for the purpose of**
22 **connecting Charter's network to CenturyTel's 911 networks? If so, is**
23 **Charter entitled to lease such facilities at TELRIC rates?**
24

Issue 39 Should CenturyTel be entitled to assess certain additional 911-related fees and assessments upon Charter?

Q. After your review of the Charter testimony, what are the remaining issues at dispute between the Parties?

A. There are two issues. First, Charter witness Webber at page 27, lines 23-24 of his direct testimony maintains that Charter should be allowed to lease certain 911 facilities from CenturyTel based on a different view of cost-based rates than the cost-based rates that CenturyTel has offered to lease such facilities. Second, Mr. Webber at page 29, lines 16-20, of his direct testimony questions the potential applicability of the set of charges proposed by CenturyTel as set forth in the proposed Article XI (Pricing Attachment). Separate and apart from these two issues, and consistent with my direct testimony on page 100, any discussion of 911 facility rate issues is without waiver of CenturyTel's right to argue that any 911 facility rate issues are wholly outside the scope of CenturyTel's Section 251 obligations and this arbitration. Therefore, like my direct testimony, it is with this specific reservation of rights that my remaining testimony is provided below.

Q. Which charges set forth in Article XI (Pricing Attachment) will apply for Charter's 911 service?

A. As I stated in my direct testimony at page 98, CenturyTel should recover and Charter should pay for any costs of 911 operations related to Charter's 911 service that are used by Charter and are outside those costs that CenturyTel recovers from PSAP jurisdictions. Charter will establish trunks to the relevant CenturyTel selective router locations, and Charter may need to lease facilities in order to connect to those selective router locations. In this context, Charter is responsible for the costs of connecting its network to

CenturyTel's selective router locations. Accordingly, for the connection of trunks, the Section IV.A. trunk charges in Article XI (Pricing Attachment) apply for Charter's connection of its dedicated trunks to the selective router locations. It is my understanding that Charter already has 911 trunks in place in some locations, so there are no new nonrecurring charges for the existing trunks. And, to the extent that Charter may need to use CenturyTel-provided circuit facilities to connect to the selective router locations, Charter would obtain such facilities pursuant to the charges set forth in Section IV.B. in Article XI (Pricing Attachment). To the extent that Charter provides its own circuit facilities to the selective router locations, then only the section A. trunk connection charges would apply.

All costs for the trunks and facilities on the other side of the CenturyTel selective router locations (*i.e.*, from CenturyTel's router to the appropriate PSAP answering point) are recovered from the political subdivision that is operating the PSAP. Therefore, trunking and facilities on that side of the routers do not involve charges to Charter.

Q. Do the Subsection IV.C. charges in Article XI (Pricing Attachment) apply to Charter?

A. Given Charter's use and existing relationship with CenturyTel, the charges in Subsections IV.C.i. and ii. do not apply under current conditions. The specific language contained in Section IV.C. in Article XI (Pricing Attachment) states where charges apply and do not apply (*i.e.*, "if **CLEC uses CenturyTel's E911 Gateway" or "if **CLEC does not utilize CenturyTel's E911 Gateway"). It is my understanding that Charter currently uses CenturyTel's E911 Gateway so only the nonrecurring charge under Subsection IV.C.i.

1 would possibly apply. However, because Charter is already in operation, there are no
2 new nonrecurring charges.

3 Also, Section 3.4.5 of Article VII: E911 Service Connection and Database Access
4 of the Agreement states that updates to E911 DBMS are at “no charge to **CLEC, if
5 **CLEC uses CenturyTel’s E911 gateway.”

6 Finally, the Subsection IV.C.iii. does not apply to Charter based on the existing
7 relationship that Charter has with respect to E911 connectivity. Section 4.4.3 of Article
8 VII: E911 Service Connection and Database Access of the Agreement states that the
9 Frame Relay Access Device connectivity applies to wireless and competitive Local
10 Providers “using a non-CenturyTel Third Party Database **CLEC over a Non-Call
11 Associated Signaling (NCAS) solution” and does not apply to Charter’s current situation.

12 Finally, CenturyTel has reviewed the other charges in Subsection IV.C.iv. and
13 confirms that these charges were designed for arrangements different from Charter’s
14 current relationship and do not apply to Charter. The charges set forth in Subsection
15 IV.A. have effectively superseded the IV.C.iv. rates. The costs associated with
16 connecting trunks to the selective router locations are already reflected in the Subsection
17 IV.A. rates. CenturyTel will correct the Agreement language in a subsequent draft.

18 **Q. What about the Section IV.D. charges in Article XI (Pricing Attachment)?**

19 A. As I explained in my direct testimony at page 98, these charges apply to the extent that
20 Charter obtains additional file copies of the Master Street Address Guide beyond the
21 initial copy.

1 With these clarifications, the applicability or non-applicability of all of the
2 charges set forth in Article XI (Pricing Attachment), Section IV. for “911” are accounted
3 for, and this should address Mr. Webber’s testimony on that question.

4 **Q. What are the facilities charges that CenturyTel proposed to charge?**

5 A. Consistent with my discussion above, the trunk facility charges of Section IV.A. and the
6 circuit facility charges of Section IV.B. apply to the extent that Charter uses these
7 functions and CenturyTel provides the connectivity. For the Section IV.A. charges,
8 CenturyTel has established standard trunk charges as set forth in the pricing attachment.
9 For the Section IV.B. circuit facility charges, and for the reasons set forth in my direct
10 testimony at pages 100 to 105, CenturyTel has proposed the use of private line circuit
11 rates as set forth in Missouri special access (private line) tariffs.

12 **Q. Does this conclude your testimony?**

13 A. Yes, it does.