

*Exhibit No.:*  
*Issues:* 1, 8(a), 9, 16, 18, 19, 20, 21, 22,  
23, 27, 33, 39, and 40.  
*Witness:* Steven E. Watkins  
*Sponsoring Party:* CenturyTel of Missouri, LLC  
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CENTURYTEL OF MISSOURI, LLC

DIRECT TESTIMONY OF STEVEN E. WATKINS

CASE NO. TO-2009-0037

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1           Prior to the beginning of 2006, I worked for client companies in association with  
2           the law firms of Kraskin, Lesse & Cosson, LLC and Kraskin, Moorman & Cosson, LLC.  
3           Prior to my association with these law firms, I was the senior policy analyst for the  
4           National Telephone Cooperative Association (“NTCA”), a trade association whose  
5           membership consists of approximately 500 small and rural telephone companies. While  
6           with NTCA, I was responsible for evaluating the then proposed revisions to the Act as  
7           well as the proceedings of the Federal Communications Commission (“FCC”)  
8           implementing the 1996 revisions to the Act. I was also directly involved in NTCA’s  
9           efforts with respect to the advocacy of provisions and rules addressing the issues  
10          specifically related to rural companies and their customers. Prior to my work at NTCA, I  
11          worked for 8 years with the consulting firm of John Staurulakis, Inc. in Maryland doing  
12          similar work for small LECs.

13 **Q. Have you prepared and attached further information regarding your background**  
14 **and experience?**

15 A. Yes, this information is included as Schedule SEW-1 to this testimony.

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

17 A. I am testifying on behalf of CenturyTel of Missouri, LLC (to be referred to as  
18 “CenturyTel”).<sup>1</sup>

19 **Q. What is the purpose of your opening testimony?**

20 A. The purpose of my opening testimony is to set forth the positions of CenturyTel with

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<sup>1</sup> 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 testimony and CenturyTel’s Disputed Points List filed in this Docket on August 25, 2008 (the “CenturyTel DPL”), this testimony is 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.

1 regard to specific arbitration issues that remain unresolved between Charter Fiberlink-  
2 Missouri, LLC (“Charter”) and CenturyTel. I will refer to Charter and CenturyTel  
3 individually as a “Party” and collectively as “Parties” where appropriate.

4 At the outset, I note that CenturyTel has restated and/or expanded the issue  
5 statements in those instances where Charter’s representation does not accurately describe  
6 the issue or omits some fundamental aspect of the unresolved issue between the Parties.  
7 While some elements of these issues may also be addressed by other CenturyTel  
8 witnesses, I will address the following unresolved issues (including CenturyTel’s  
9 restatement): Issue Nos. 1, 8(a), 9, 16, 18, 19, 20, 21, 22, 23, 27, 33, 39, and a portion of  
10 40.

## 11 12 **DISCUSSION OF ISSUES**

### 13 **Issue 1 Should the proposed Agreement cover all IP-Enabled Traffic?<sup>2</sup>**

#### 14 **Q. How would you summarize the essence of this issue?**

15 A. This issue involves the need of both Parties to set forth unambiguously within the terms  
16 of the Agreement (as used in this testimony, the term “Agreement” refers to the  
17 interconnection agreement being negotiated/arbitrated by the Parties), the necessary  
18 language that defines *precisely* and *completely* the scope of Local Traffic that is subject  
19 to the terms of the interconnection agreement arising from this proceeding and the scope  
20 of that traffic which is not Local Traffic and is subject to access charges. These two  
21 types of traffic – Local Traffic subject to the terms of local interconnection and that  
22 traffic subject to access charges – are mutually exclusive of each other. Moreover, and as

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<sup>2</sup> Charter contends that Issue 1 should be framed as follows: “Should the Parties’ Agreement use the definition of Interconnected VoIP Service traffic as defined, and codified in federal regulations?”

1 a result of the use of multiple transport technologies including Time Division Multiplex  
2 (“TDM”) and Internet Protocol (“IP”), both of these technologies need to be addressed in  
3 the Agreement. As a result, and as explained by CenturyTel in its Response to the  
4 Petition for Arbitration filed by Charter, and CenturyTel’s Disputed Points List attached  
5 thereto, and more specifically within the Revised DPL outlining the current areas of  
6 disagreement between the Parties, the Agreement necessarily must include language to  
7 address all potential traffic that is related to IP transport.

8 **Q. How would you summarize the dispute between the Parties?**

9 A. At base, the dispute is whether the Agreement should address all IP traffic types or only a  
10 limited subset of the potential traffic. For example, Charter’s language is derived from a  
11 single, specific FCC action which attempts to define a subset of carriers using a form of  
12 IP technology that are, in turn, subject to E911 regulatory requirements. As such, the  
13 FCC action did not define specific traffic types and did not address all potential IP traffic  
14 that could arise between the Parties.

15 Accordingly, Charter’s proposed language is too narrow and creates uncertainty.  
16 As a result, CenturyTel’s language is intended to address all IP-related traffic between the  
17 Parties that will be exchanged or may be exchanged and, in doing so, uses language that  
18 is not subject to potential confusion. Thus, CenturyTel’s approach avoids disputes over  
19 proper compensation and the treatment of various forms of IP traffic that Charter’s  
20 language leaves unaddressed or ambiguous. For these reasons, CenturyTel’s language is  
21 superior and should be adopted.

22 **Q. Are the Parties in agreement about the scope of traffic that is “Local?”**

23 A. Yes. However, CenturyTel is concerned that, if Charter’s language were to be adopted,



1 the ambiguity arising from the scope of traffic could be exploited beyond the narrow  
2 definition used by Charter, as a means to avoid access charge treatment of non-local  
3 traffic.

4 **Q. How have the Parties defined the scope of Local Traffic?**

5 A. Article II, Section 2.89 defines Local Traffic as traffic that is originated by a caller and  
6 terminated by another caller where both Parties to the call are in the same local calling  
7 area. Local Calling Area is defined as calls within an exchange and between exchanges  
8 for which Extended Area Service (“EAS”) is provided, as defined by CenturyTel’s  
9 incumbent local exchange carrier (“ILEC”) services in Missouri. In other words, the  
10 definition is intended to exactly parallel the same scope of traffic that CenturyTel treats  
11 as “local traffic” for its own customers and its own local services. Moreover, the Parties  
12 have agreed that *both* the traffic that may be deemed Telecommunications Traffic as well  
13 as that traffic that may be deemed to be Information Access Traffic is considered Local  
14 Traffic for interconnection purposes when both the originating and terminating points are  
15 within a Local Calling Area. To that end, I note that Article V, Section 4.2.1.1 elaborates  
16 on the definition of “Local Traffic.” Section 4.2.1.3 reflects the Parties’ agreement that  
17 non-local calls related to IP-based service shall be subject to access charges, and in  
18 Section 4.2.2 the Parties have agreed that the end-to-end points of a call determine the  
19 jurisdiction (*i.e.*, local or access), and thus the compensation terms and conditions  
20 between the Parties that will apply to the traffic.

21 **Q. Has the FCC addressed various forms of Internet-related voice communications?**

22 A. Yes. In 2004, the FCC initiated a proceeding to examine “IP-Enabled Services.” *Notice*  
23 *of Proposed Rulemaking*, In the Matter of IP-Enabled Services, WC Docket No. 04-36,

1 released March 10, 2004 (“*IP-Enabled NPRM*”). The term “IP-Enabled Services” is the  
2 most encompassing terminology used by the FCC in addressing these new forms of  
3 communications utilizing IP transmission technologies. IP-Enabled Services include,  
4 but are not limited to, Voice over Internet Protocol (“VoIP”) services. *Id.* at para. 1, and  
5 footnotes 1, 2 and 3. Therefore, the FCC has recognized that VoIP is a subset service of  
6 the more inclusive term “IP-Enabled Services.”

7 **Q. Does CenturyTel propose using the term “IP-Enabled Services”?**

8 A. Yes, and CenturyTel’s use of the term “IP-Enabled Voice Traffic” is intended to capture  
9 the scope the FCC intended by its comprehensive term “IP-Enabled Services.”

10 **Q. Are there other concerns with respect to the scope of Charter’s proposed language?**

11 A. Yes. Not only are VoIP services a subset of IP-Enabled Services, but Charter’s language  
12 utilizes the further confining term “Interconnected VoIP Service.” Interconnected VoIP  
13 Service is a further subset of VoIP services. *See First Report and Order and Notice of*  
14 *Proposed Rulemaking*, In the Matters of IP-Enabled Services and E911 Requirements for  
15 IP-Enabled Service Providers, released June 3, 2005 in WC Docket Nos. 04-36 and 05-  
16 196 at para. 1, and footnotes 1, 2 and 5. In this order, the FCC defined a subset of VoIP  
17 providers for purposes of applying requirements for E911 service.

18 My point here is simple. Charter attempts to use a term based on services that are  
19 only a subset of VoIP, and VoIP is only a subset of IP-Enabled Services. CenturyTel, on  
20 the other hand, intends for the more inclusive term – IP-Enabled Services – to apply in  
21 defining traffic pursuant to the terms of the Agreement.

22 **Q. Did the FCC define different types of traffic in the context of its June 3, 2005 E911**  
23 **requirements order in which it addressed “Interconnected VoIP Services”**

1           **providers?**

2    A.    No. Based on the FCC’s discussion in its decision, the thrust of that order was to define a  
3           scope of providers to which the E911 requirements would apply. That order does not  
4           explicitly address traffic scope definition issues for all IP-related voice calls. Rather, the  
5           traffic scope definition issues are the subject of the FCC’s more inclusive IP-Enabled  
6           Services proceeding.

7    **Q.    Does CenturyTel believe it is appropriate to utilize the definition that the FCC used**  
8           **for E911 rules?**

9    A.    No. The FCC’s VoIP E911 rules were promulgated specifically for the purpose of  
10           identifying carriers utilizing VoIP for which E911 requirements should apply. While this  
11           approach may be appropriate for the interim measures that the FCC has taken for E911  
12           purposes, it is not sufficient or appropriate to be used for the Agreement. The FCC’s  
13           E911 approach limits and confines the definition to only that type of traffic that requires a  
14           broadband connection from the user’s location. As the FCC admits, IP-Enabled services  
15           could also “ride on narrowband facilities.” *IP-Enabled NPRM* at para. 2 and footnote 2.

16   **Q.    Has the FCC addressed other forms of Internet-related traffic?**

17   A.    Yes. In 2004, the FCC concluded that access charges apply to a form of telephony in  
18           which a call is converted to IP at some middle point for transport over the Internet  
19           backbone. *Order*, In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-  
20           to-Phone IP Telephony Services are Exempt from Access Charges, released April 21,  
21           2004 in WC Docket No. 02-361. In this situation, both the originating user’s connection  
22           and the terminating user’s connection are provisioned via the traditional Public Switched  
23           Telephone Network (“PSTN”) that uses TDM transport technology. In its decision, the

1 FCC found that these calls are subject to access charge treatment just like any other  
2 traditional PSTN calls since, in that case, the end users making and receiving the calls  
3 were not within the same local calling area. *Id.* at para. 24.

4 **Q. Does CenturyTel’s proposed language in the Agreement address this form of IP**  
5 **related traffic?**

6 A. Yes. CenturyTel’s language addresses this example in Article II, Section 2.80 as set forth  
7 in the DPL under Issue 1 (“ . . . and voice traffic originating on the PSTN, which is  
8 transported, through an [Internet Protocol Connection], and which ultimately, terminates  
9 on the PSTN.”). Charter’s language omits this scope of traffic.

10 **Q. Are there any other FCC actions on Internet-related traffic relevant to Issue 1?**

11 A. Yes, one more. The FCC addressed the services provided by Free World Dialup in which  
12 a voice call is both originated and terminated over computers connected to the Internet,  
13 and such calls never require or use the PSTN. *Memorandum Opinion and Order*, In the  
14 Matter of Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither  
15 Telecommunications Nor a Telecommunications Service, released February 19, 2004 in  
16 WC Docket No. 03-45. For this type of traffic, there would be no interconnection traffic  
17 between the Parties because neither of the telecommunications networks of the Parties are  
18 utilized, and there is no intercarrier compensation implication as a result.

19 **Q. Can you explain the reasons that the specific scope of traffic is so important to the**  
20 **Parties’ Agreement?**

21 A. Traffic that either Party may deliver to the other Party, including traffic related to *any* of  
22 the IP-methods, is either Local Traffic or non-local traffic. For Local Traffic, the Parties  
23 have agreed to a “bill and keep” compensation approach. For non-local traffic, access

1 charges apply. Regardless of what the status of various providers of IP-enabled services  
2 may be, to the extent that such providers offer and provide non-local calling services and  
3 either Party's LEC network is used to originate or terminate such non-local calls, then  
4 access charges apply.

5 **Q. What could occur if the scope of traffic is not properly defined?**

6 A. First, since Charter's proposed definition does not address *all* of the types of IP-Enabled  
7 traffic, some of which would not be local traffic, such limitation and/or ambiguity in its  
8 definition could be used by a Party to avoid the payment of access charges for non-local  
9 traffic that the other Party terminates. At the same time, the limitation and/or ambiguity  
10 provided in Charter's language may very well lead to unnecessary disputes and the need  
11 for the Parties to incur the cost of pursuing those disputes, including the possibility that  
12 the Commission could be involved as envisioned by the Agreement. Neither Party  
13 should get a free ride on the PSTN, but there is a real possibility that the limited and/or  
14 ambiguous language proposed by Charter could lead to that result. Accordingly, for  
15 these reasons, Charter's approach must be rejected. CenturyTel's language does not  
16 suffer from these drawbacks.

17 **Q. Do you have any basis for your suggestion that no one gets a free ride on the PSTN?**

18 A. Yes. First, CenturyTel's position is based on common sense. When someone uses a  
19 service it should pay for that service (which in this case would be terminating services of  
20 a LEC such as CenturyTel). This is nothing more than the concept that the cost causer  
21 should pay for the costs that result from its use. Second, the FCC has confirmed my  
22 statement. Specifically, the FCC has stated that, as a matter of public policy:

23 . . . any service provider that sends traffic to the PSTN should be subject to  
24 similar compensation obligations, irrespective of whether the traffic originates on

1 the PSTN, on an IP network, or on a cable network. We maintain that the cost of  
2 the PSTN should be borne equitably among those that use it in similar ways.

3 *IP-Enabled NPRM* at para. 33.

4 **Q. How does CenturyTel suggest that the Commission resolve Issue 1?**

5 A. The Commission should reject the narrow definition proposed by Charter and, for the  
6 reasons stated herein, adopt CenturyTel's more inclusive definitional approach as set  
7 forth in CenturyTel's proposed language in the Agreement.

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

12  
13 **(b) Should the billing Party be permitted to suspend or discontinue accepting  
14 orders from the billed Party under certain conditions when the billed Party  
15 fails or refuses to pay "undisputed" charges?<sup>3</sup>**

16 **Q. What portion of Issue 8 will you address?**

17 A. I will address the CenturyTel restated Issue 8(a). Another CenturyTel witness, Pam  
18 Hankins, will address sub-issue 8(b).

19 **Q. Has Charter provided a meaningful description of this Issue 8?**

20 A. No. Charter's general statement of this issue is misleading, and its position is  
21 conceptually flawed. Charter fails to recognize how the sections of the proposed  
22 Agreement under review fit within the other provisions with which it has already agreed.  
23 This is why CenturyTel restated the issue into two (2) subparts.

24 **Q. How would you summarize the essence of Issue 8(a)?**

25 A. Issue 8(a) involves the treatment of amounts that: (a) one party ("billing party") bills to

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<sup>3</sup> Charter contends that Issue 8(a) should be framed as follows: "(a) Should the bill payment terms related to interest on overpaid amounts be equitable?" and "(b) Should the bill dispute provisions ensure that neither Party can improperly terminate the Agreement in a manner that could impair service to the public?"

1 the other party (“billed party”); (b) the billed party fails to review the bill and does not  
2 dispute the bill; (c) the billed party pays the bill; and (d) the billed party decides later to  
3 review and then dispute the bill (the Parties have agreed that a bill may be disputed  
4 within a one (1) year). This example is covered under Section 9.4.2 of Article III dealing  
5 with “Billing Disputes Related to Paid Amounts” in contrast to Section 9.4.1 which  
6 covers disputed amounts that the billed party withholds from payment at the time the bill  
7 is rendered. In the situation under review in this Issue, Charter first wants the billing  
8 party to return the disputed portion of the bill that the billed party previously paid in  
9 error, plus interest, while the Parties pursue dispute resolution over the disputed bill. In  
10 other words, Charter seeks the right to have already paid amounts returned, with interest,  
11 many months after it has paid the bill and prior to any resolution of any dispute.

12 **Q. If Charter fails to review its bills and makes payment, should CenturyTel be held**  
13 **responsible for that Charter failure through the refunds and interest that Charter**  
14 **seeks from CenturyTel?**

15 A. No. If Charter fails to review its bills during the billing payment period and pays the bill  
16 in error, CenturyTel should not be responsible for Charter’s mistake. The Parties should  
17 accept their respective responsibilities to ensure proper billing. The Parties should not be  
18 effectively rewarded for failing to do so. Any other conclusion would defy common  
19 sense.

20 **Q. Can you explain your statement that any “other conclusion would defy common**  
21 **sense”?**

22 A. This situation is really no different than what any business or individual responsible for  
23 paying bills does on a monthly basis when those bills arrive in the mail. I think we can

1 all agree that responsible businesses and individuals review their bills and either pay  
2 them or dispute them. That action is prudent, and it is this responsibility that  
3 CenturyTel's language addresses and encourages, and does so in a rational and straight  
4 forward manner.

5 **Q. Are you suggesting that it is prudent for both Parties to review bills during the**  
6 **payment period time in order to identify disputes or errors?**

7 A. Yes. It is in the interest of both Parties not to delay recognition of disputed bills or errors  
8 in billing. This responsibility, in turn, allows for a more timely resolution of any dispute  
9 and allows the exchange of billed amounts so that both Parties' payment responsibilities  
10 are correct.

11 **Q. Would Charter's proposed approach promote expedient review of bills?**

12 A. No. Charter's approach would provide counter-productive incentives for the billed party  
13 to avoid timely review of bills and to seek large amounts of refunded cash from the  
14 billing party. If Charter's language was adopted, any time within one year of the date of  
15 an invoice Charter could dispute any bill and could potentially require CenturyTel to  
16 return large amounts of previously billed and paid amounts, including large amounts of  
17 interest. Charter's proposed language attempts to penalize CenturyTel for Charter's  
18 failure to conduct its own business competently and review bills for accuracy. The  
19 Charter proposed language further attempts to penalize CenturyTel by requiring  
20 CenturyTel to pay untenable levels of interest for either Charter's delay or Charter's  
21 failure to promptly bring any billing error to CenturyTel's attention.

22 **Q. Can Charter completely avoid this potential result?**

23 A. Yes. Charter's right not to pay disputed charges is not affected by this issue. Charter's



1 statement of this issue fails to recognize that it can dispute the bill before it ever pays the  
2 bill. In that case, Charter does not have to make payment and would not need to seek an  
3 interim refund as it proposes. *See* Agreement, Article III, Section 9.4.1. Therefore  
4 under the terms of the Agreement that both Parties have agreed to, Charter can review the  
5 bill during the payment period time, dispute any charges that it determines to be  
6 incorrect, and withhold payment.

7 **Q. Even if Charter does not review its bills, disputes a bill that is already paid, and the  
8 resolution of that dispute is in favor of Charter, will Charter be made whole?**

9 A. To the extent that Charter fails to review the bill during the bill payment period, and only  
10 does so later, it still can seek refunds through the billing dispute resolution process as  
11 provided for under Section 20 of Article III. If the dispute is resolved in Charter's favor,  
12 the Parties, in the course of the settlement of the dispute, will determine any retroactive  
13 corrective payments that need to be made to make each Party whole. Even if the Parties  
14 do not agree on the amount, Charter could then seek to have its needs addressed through  
15 the filing of a petition with the Commission to address any remaining concerns that  
16 Charter may have. This approach, which is consistent with the CenturyTel proposed  
17 language, fully addresses Charter's rights and interest in a more than fair and equal  
18 manner.

19 **Q. Does Charter's proposed language allow for a similar result?**

20 A. No. In contrast, Charter's proposal would discourage prudent and reasonably responsible  
21 steps to review bills and then reward Charter for its inaction. Moreover, Charter's  
22 proposed language would also allow the billed party to impose chaotic conditions on the  
23 other party through the lodging of purportedly discovered disputes within bills many

1 months later after the bills are paid. This approach would heighten the uncertainty  
2 regarding cash flow between the Parties. The language of the Agreement should not  
3 provide incentives that would reward a Party for its own negligence and/or irresponsible  
4 actions arising from its failure to review on a timely basis the invoices it receives. For  
5 these reasons, the Charter proposal on this issue should be rejected, and CenturyTel's  
6 proposed Section 9.4.2 should be accepted.

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

12  
13 **Q. Does Charter's statement of the issue accurately describe the terms and conditions**  
14 **under review here?**

15 A. No. Charter's statement of the issue does not properly address the set of circumstances  
16 that gives rise to the disputed issue. Charter's position could actually penalize  
17 CenturyTel for acting in good faith to respond to a request for facilities from Charter.  
18 CenturyTel's proposed language, in turn, ensures that neither Party is penalized.

19 **Q. How would Charter's proposed language penalize CenturyTel?**

20 A. Charter's proposed language would allow Charter unilaterally to request interconnection  
21 facilities without consequence as to whether Charter needs or ever uses such facilities.  
22 CenturyTel may have had to build and provision those facilities at additional cost. As a  
23 result, Charter's approach unfairly and unreasonably imposes a penalty on CenturyTel  
24 because it would allow Charter unilaterally to impose unnecessary costs on CenturyTel

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<sup>4</sup> Charter contends that Issue 9 should be framed as follows: "Should Charter be required to pay a penalty charge for facilities that it forecasts, but which CenturyTel determines that Charter has not fully utilized?"

1 for unused facilities.

2 **Q. How does CenturyTel's proposed language ensure that neither Party would be**  
3 **unfairly penalized?**

4 A. CenturyTel is the incumbent LEC. Charter has requested interconnection with  
5 CenturyTel's existing incumbent LEC network. The result of that interconnection  
6 request may result in CenturyTel, consistent with the requirements of applicable law,  
7 incurring the cost to provision, install and/or construct facilities in response to Charter's  
8 request. As such, CenturyTel may be required to expend resources and incur  
9 expenditures for new plant to accommodate the interconnection request. CenturyTel will  
10 fulfill its interconnection requirements consistent with applicable law and consistent with  
11 the Agreement provisions that have already been agreed to by the Parties. Therefore, if  
12 the facilities are needed by Charter, then there is no issue and each Party is treated fairly.  
13 However, if the facilities are not used within six (6) months based on a Charter-provided  
14 order which CenturyTel relied upon, then CenturyTel would be, under Charter's position,  
15 left holding the bag for the costs of the facilities. That result is unreasonable and  
16 penalizes CenturyTel based on its reliance upon Charter and the order that Charter  
17 provided to CenturyTel. In this instance, therefore, CenturyTel should not be forced to  
18 incur the costs associated with fulfilling an unnecessary request of Charter.

19 **Q. Under CenturyTel's proposed language what responsibilities would Charter have in**  
20 **this arrangement?**

21 A. Charter would have the obligation to ensure that the facilities it orders are reasonable and  
22 appropriate and that requests for interconnection are *bona fide* particularly if such request  
23 leads to the need to construct facilities. The result that arises under CenturyTel's

1 language is based on common sense.

2 **Q. How is the result you noted based on common sense?**

3 A. Common sense supports the notion that it is commercially reasonable as well as  
4 appropriate public policy for Charter to ensure that its interconnection requests are  
5 genuine and justifiable, particularly where CenturyTel may be called upon to expend new  
6 and additional resources to accommodate the interconnection. Common sense also  
7 supports the notion that CenturyTel will likely incur costs for interconnection  
8 arrangements that would be unnecessary were it not for Charter's presence. CenturyTel's  
9 proposed language ensures that Charter will take this responsibility seriously because  
10 Charter may be held responsible for its actions when costs are incurred unnecessarily.

11 In contrast, however, Charter's approach would allow it to take actions to order  
12 facilities (and require CenturyTel to construct facilities) without regard to whether those  
13 facilities are needed or will be used by Charter. Charter's approach would leave  
14 CenturyTel incurring unnecessary costs for the benefit of no one.

15 **Q. Are CenturyTel's proposed Agreement terms reasonable?**

16 A. Yes. CenturyTel only seeks the right to review the status of new plant that has been  
17 provisioned in response to Charter's requests and to determine whether that plant is  
18 actually being used by Charter. To the extent that Charter does not use the plant it has  
19 ordered within a reasonable time (which is six (6) months under CenturyTel's proposed  
20 language), CenturyTel may assert its right to assess a charge so that Charter will  
21 reimburse CenturyTel for costs it has incurred for such unused facilities. Moreover,  
22 CenturyTel's proposed provision allows Charter six (6) months to utilize plant prior to  
23 any evaluation, which should be more than sufficient time for Charter to ramp up service

1 which it has forecasted it would need from CenturyTel. Finally, the possibility of an  
2 unused facilities charge only arises to the extent that CenturyTel has built plant or  
3 facilities based on an order by Charter. Each of these conditions individually and  
4 collectively ensures that the provision will be applied only under reasonable  
5 circumstances consistent with sound public policy and reasonable business terms that are  
6 standard in other industries.

7 **Q. Do CenturyTel’s proposed revisions in any way prevent or discourage the Parties**  
8 **from working cooperatively to ensure proper facility orders and utilization?**

9 A. No. Charter suggests in its position statement on this issue in the Revised DPL that the  
10 Parties should “work cooperatively to ensure that the facility is utilized based upon  
11 industry standard utilization levels.” That is already achieved through the agreed-to  
12 provision of the Agreement where it is anticipated that the Parties will work  
13 cooperatively in the planning of interconnection. *See, e.g.*, Article V, Section 2.4.  
14 CenturyTel’s reserved right to apply the stranded investment charge does not undermine  
15 this cooperative planning provision. Rather, CenturyTel’s proposed resolution for Issue 9  
16 advances the objective of such discussion in that each Party will be responsible for the  
17 outcome of such planning sessions. CenturyTel expects and hopes that this cooperation  
18 will be constructive and will result in the avoidance of unnecessary deployment of  
19 unused plant. But that cooperation does not ensure that the safeguards intended by the  
20 Article III, Section 11.6 that CenturyTel proposes would be addressed. This further  
21 language, for the reasons I have set forth herein, is necessary in addition to the other  
22 provisions that anticipate coordination and planning between the Parties.

23 **Q. Do CenturyTel’s proposed terms absolutely result in a stranded plant/facility charge**

1           **when plant is built but not used?**

2    A.    No. The exact terms simply memorialize the Parties agreement that CenturyTel retains  
3           such right. To the extent that the conditions of the proposed provision are met, as I have  
4           explained above, then CenturyTel may decide to assert that right in which case the Parties  
5           would need to resolve the application of any stranded plant/facility charge consistent with  
6           the terms of the Agreement. The Parties' recognition of this right primarily ensures the  
7           proper incentives to plan and order facilities prudently. Including CenturyTel's  
8           provision within the Agreement should ensure that the adverse situation it is designed to  
9           address will not arise. Although CenturyTel expects and hopes that the other cooperative  
10          planning provisions will avoid any application of this other provision, including it does  
11          advance sound public policy.

12   **Q.    How is CenturyTel's proposal consistent with sound public policy?**

13    A.    CenturyTel's proposed terms are consistent with public policy in at least two ways.

14                 First, if CenturyTel constructs plant based on Charter's order and such facilities  
15                 are not used by the Parties for purposes of interconnection because Charter's plans were  
16                 not reliable and its order not justified, CenturyTel (and its customers) would unjustly  
17                 incur costs. This would be detrimental to CenturyTel, its customers, and to the public  
18                 interest in general. The proposed CenturyTel provision is intended to provide incentives  
19                 to Charter so that unused facility costs do not arise in the first place.

20                 Second, in the absence of CenturyTel's proposed Section 11.6, if Charter has no  
21                 incentive to accurately determine its facility needs with respect to the interconnection of  
22                 its network with that of CenturyTel, and if CenturyTel's provision is omitted as Charter  
23                 proposes, then Charter has no constraints that would limit its attempts to order facilities

1 from CenturyTel. As such, Charter could use this unconstrained ability in an anti-  
2 competitive manner. Charter could haphazardly or purposely order facilities to force  
3 CenturyTel to incur costs and thereby adversely affect CenturyTel's relative ability to  
4 compete.

5 The interconnection terms should not encourage either of these negative  
6 consequences. Charter's approach to omit the proposed provision would do nothing to  
7 discourage either of these negative results. For these reasons, CenturyTel's proposed  
8 Section 11.6 should remain consistent with sound public policy.

9  
10 **Issue 16** **Should the Agreement contain a provision providing that CenturyTel is**  
11 **solely responsible for the costs and activities associated with accommodating**  
12 **changes to its network that are required due to Charter's modifications to its**  
13 **network?**<sup>5</sup>

14 **Q. What is the essence of this issue?**

15 A. This essence of this issue is whether Charter can be permitted to require CenturyTel to  
16 apply what are *incumbent* LEC requirements regarding network changes to Charter's  
17 *CLEC* operations. Thus, this issue arises only because Charter has misconstrued the  
18 relationship between the Parties as prescribed by the Act (one Party is the incumbent (*i.e.*,  
19 CenturyTel) and one Party is the requesting *CLEC* (*i.e.*, Charter)) and is attempting to  
20 include terms and conditions that are inconsistent with that relationship and that are not  
21 relevant.

22 The underlying subject matter of this issue is technology upgrades and network  
23 changes. Any such upgrades and changes that Charter may be making to its network are

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<sup>5</sup> Charter contends that Issue 16 should be framed as follows: "Should both Parties be allowed to modify, and upgrade, their networks; and should the other Party be responsible for assuming the costs of such network upgrades or modifications?"

1 irrelevant because CenturyTel is not obtaining interconnection with Charter's network.  
2 Moreover, to the extent that Charter may make changes in its network, those actions do  
3 not change the terms and conditions of the Agreement that apply to CenturyTel, cannot  
4 and do not alter the regulatory obligations that CenturyTel has in providing to Charter  
5 interconnection with CenturyTel's network, and cannot be permitted to alter the  
6 relationship between the Parties.

7 **Q. What is that relationship?**

8 A. The CLEC requests and obtains interconnection with the incumbent LEC's network. It is  
9 the ILEC that has the obligation to provide interconnection with its incumbent LEC  
10 network to that requesting CLEC. There are no rights or obligations in the other direction  
11 that permit CenturyTel to request interconnection of Charter. CenturyTel cannot request  
12 and cannot demand that Charter provide CenturyTel interconnection with Charter's  
13 network. Therefore, CenturyTel is not obtaining, and will not obtain, interconnection  
14 with Charter's network as that concept is outlined under the Act. Consequently, with  
15 respect to this issue, all of the terms and conditions of the Agreement relate solely to  
16 CenturyTel's ILEC network. What Charter does with its separate CLEC network is of no  
17 relevance to the terms of the Agreement beyond whatever requirements apply to CLECs  
18 or beyond the actual responsibilities set forth in the Agreement. Therefore, the approach  
19 that Charter proposes which suggests incorrectly that CenturyTel may be obtaining  
20 interconnection with Charter's network is conceptually inconsistent with the nature of the  
21 relationship and would lead to confusion about the terms. For these reasons, the Charter  
22 approach should be rejected.

23 **Q. Do you have any support for your relationship conclusions?**



1 A. Yes. Charter is the requesting carrier and has requested interconnection from  
2 CenturyTel. Thus, the focus of the inquiry before the Commission is how that  
3 interconnection with CenturyTel's network will occur. In addition, the Act's structure  
4 also reflects the fact that the ILEC's network is the focus of any inquiry and specifically,  
5 Section 251(c) of the Act. The entirety of that section sets forth requirements for  
6 interconnection to an incumbent LEC's network, and these requirements and obligations  
7 apply solely to the subject ILECs. *See* 47 U.S.C. 251(c). Section 252(a)(1) of the Act  
8 also states that it is the ILEC that negotiates and enters into an interconnection agreement  
9 with a requesting telecommunications carrier which, in this case, is Charter as a CLEC.  
10 Therefore, CenturyTel is the incumbent and Charter is the requesting telecommunications  
11 carrier.

12 Moreover, and directly relevant to the subject matter of this issue, under Section  
13 251(c)(5) of the Act, it is *only* the *ILEC* that is required to provide notice of changes in  
14 the incumbent's "local exchange carrier's facilities or networks" that may affect the  
15 interconnection that the requesting telecommunications carrier (*i.e.*, Charter) obtains from  
16 the incumbent. Consistent with this notice of network changes, the language of the  
17 Agreement as proposed by CenturyTel addresses additional clarifying terms and  
18 conditions that arise because CenturyTel as the ILEC may change its network as  
19 anticipated by the Act. The Act anticipates that the requesting telecommunications  
20 carrier will obtain interconnection with the incumbent LEC's network and that, as a  
21 practical matter, the incumbent LEC may be making changes to that network during the  
22 interconnection arrangement with the requesting telecommunications carrier. When these  
23 changes occur, the incumbent LEC must provide sufficient notice to the requesting

1 telecommunications carrier and the FCC's rules provide specific procedures as to how  
2 that is to occur. However, just as with the FCC regulations, the Section 251(c)(5)  
3 requirements address only the ILEC's obligations about such changes, just as reflected in  
4 CenturyTel's proposed language. As a result, there are no provisions in the Act for the  
5 reverse situation as Charter's approach here suggests.

6 **Q. Are there any related terms and conditions in the Agreement that apply to**  
7 **CenturyTel in its provision of interconnection to Charter?**

8 A. Yes. Section 33 of Article III of the proposed Agreement sets forth the responsibility to  
9 provide notice with respect to changes in facilities or network that affect the other Party.  
10 Section 33 defines the publishing of notice as required by rules at 47 C.F.R. §§ 51.325  
11 through 51.335. These rules do not apply to Charter as a CLEC.

12 **Q. Are there interconnection standards that apply to an incumbent LEC regardless of**  
13 **what network changes an incumbent LEC may make?**

14 A. Yes. Regardless of what, if any, network changes CenturyTel may make within its  
15 incumbent network, CenturyTel will provide interconnection with its incumbent network  
16 consistent with the standards set forth in Section 251(c)(2) including the provision that  
17 interconnection must be provided that is at least equal to the interconnection  
18 arrangements that it provides to itself, to any subsidiary, affiliate, or any other party. *See*  
19 *47 U.S.C. § 251(c)(2)(C)*. Therefore, CenturyTel's provisions to Charter for  
20 interconnection to CenturyTel's network must be based on this standard. Section  
21 251(c)(2) also contains standards requiring provision of interconnection in a just,  
22 reasonable, and nondiscriminatory manner. *See 47 U.S.C. § 251(c)(2)(D)*.

23 **Q. Do these conditions apply to Charter?**

1 A. No. And as I have stated, CenturyTel is not obtaining interconnection with Charter's  
2 network, and the Section 251(c) standards do not apply to a requesting  
3 telecommunications carrier such as Charter.

4 **Q. If CenturyTel makes changes in its network and provides notice of such changes,  
5 will the standards of Section 251(c)(2) still apply?**

6 A. Yes. Therefore, Charter should have no concern because the fundamental standards of  
7 interconnection continue to apply regardless of what network changes CenturyTel may  
8 decide to make or whether the changes require notice, or not.

9 **Q. Are there other network standards that apply?**

10 A. Yes. Section 251(a)(2) of the Act recognizes that the telecommunications networks are  
11 intended to be seamless and fully interconnected. Therefore, to ensure technical  
12 feasibility and interoperability between and among all carriers, the Act prohibits the  
13 installation of "network features, functions, or capabilities that do not comply with the  
14 guidelines and standards established pursuant to section 255 or 256." 47 U.S.C.  
15 251(a)(2). Section 255 of the Act sets forth standards to ensure that telecommunications  
16 networks are compatible for users with disabilities. More relevant here, Section 256  
17 provides for coordination of networks to ensure maximum interconnectivity between and  
18 among public telephone network providers such as here where Charter and CenturyTel  
19 will be competing with each other.

20 **Q. If CenturyTel makes network changes and provides notice of such changes, do the  
21 requirements and standards that arise under Section 251(a)(2) continue to apply to  
22 CenturyTel?**

23 A. Yes. Therefore, and once again, Charter should have no concern because these standards

1 also continue to apply regardless of what network changes CenturyTel may decide to  
2 make.

3 **Q. Do the other terms and conditions of the Agreement continue to apply even if**  
4 **CenturyTel makes network upgrades or other changes?**

5 A. Yes.

6 **Q. What then is the reason for the provision in the Agreement clarifying that any costs**  
7 **that may arise for Charter when CenturyTel makes upgrades to its incumbent**  
8 **network are Charter's costs?**

9 A. This provision is necessary simply to avoid disagreement later. Since Charter may be  
10 relying on CenturyTel's network and CenturyTel may be making changes and upgrades  
11 to its ILEC network (all of which, once again, are subject to requirements that apply to  
12 CenturyTel) during the term of the Agreement, the language that CenturyTel proposes  
13 ensures that Charter understands that CenturyTel is not responsible for the costs in  
14 Charter's network. The CenturyTel language avoids any potential interpretation by  
15 requesting CLECs beyond that intended approach.

16 **Q. Can you explain the reasons that it would be inappropriate to include Charter's**  
17 **proposed addition?**

18 A. Charter's proposed approach to include language in the opposite direction -- where  
19 Charter is making network changes -- makes no conceptual sense. As I have explained,  
20 CenturyTel is not obtaining interconnection to Charter's network, and CenturyTel has no  
21 real interest in what Charter does in its network beyond assurance that Charter will  
22 comply with the terms of the Agreement as well as Charter's general duty under Section  
23 251(a)(2) noted above.

1 Further, Charter's proposed language could be an attempt to include language  
2 within the Agreement that it could later argue allows it to make changes in its network  
3 and then foist new and additional costs upon CenturyTel. As I have stated, CenturyTel's  
4 rights and obligations with respect to Charter do not change regardless of whether  
5 Charter makes changes in its network, and it would make no sense to impose unjust and  
6 unreasonable terms on CenturyTel where there is no regulatory or Act framework for  
7 doing so, let alone creating the risk that doing so may somehow improve Charter's  
8 competitive position at CenturyTel's expense as a result of the imposition of costs upon  
9 CenturyTel.

10 **Q. Is Charter allowed to make upgrades and changes to its network?**

11 A. Yes. There is nothing in the proposed agreement that prevents Charter from doing  
12 whatever it wants with respect to its own network provided that its actions do not violate  
13 its responsibilities set forth in Agreement and are consistent with its obligations under the  
14 Act. Therefore, once again, Charter's issue statement is misleading when it suggests that  
15 the issue involves whether the Parties are allowed to make changes to their networks.  
16 Regardless, as I have discussed, the Agreement does not need to address Charter's  
17 network because Charter has no obligations to CenturyTel for use of Charter's network  
18 while, in the reverse, CenturyTel does.

19 **Q. In summary, should the Agreement's Section 47 conditions regarding changes,  
20 modifications, and/or upgrades to CenturyTel's network also apply to Charter's  
21 network as the modification to the Agreement proposed by Charter suggests?**

22 A. For all of the reasons stated above, the answer is "no."

1 **Issue 18**      **What terms and conditions that govern the Point of Interconnection (POI)**  
2                    **and trunking arrangements should be included in the Interconnection**  
3                    **Agreement?**<sup>6</sup>  
4

5 **Q.**      **How would you summarize the essence of this issue?**

6 A.      This issue examines the question of where Charter should establish interconnection  
7            within CenturyTel’s incumbent network for purposes of connecting Charter’s trunking  
8            facilities with CenturyTel’s trunking facilities so that local competitive traffic can be  
9            exchanged between the Parties. As an initial point, the concepts of a proper Point of  
10           Interconnection (“POI”) and any associated trunking arrangements are also related to  
11           Issue Nos. 19, 21 and 22, and some of the Agreement terms, concepts, and issues overlap.  
12           Therefore, the discussion of *all* of these issues – Issues 18, 19, 21 and 22 -- and the  
13           position of the Parties must be considered and addressed in combination with each other  
14           as I have done within the discussions of this testimony.

15 **Q.**      **Could you explain the reasons for the restatement of the issue by CenturyTel?**

16 A.      As I will explain herein, the statement of the issue by CenturyTel avoids the critical  
17           mistakes of fact that are assumed to exist in the statement of Issue 18 made by Charter.

18 **Q.**      **How would you summarize CenturyTel's position on this issue?**

19 A.      Charter's proposal that it be allowed to establish only a single Point of Interconnection  
20           (“POI”) literally at any point on CenturyTel's network within a Local Access and  
21           Transport Area (“LATA”) is inappropriate, not consistent with the scope of the Act’s  
22           interconnection requirements, and otherwise would not be technically feasible in many  
23           instances. As such, contrary to Charter’s position, nothing in the Act precludes the

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<sup>6</sup> Charter contends that Issue 18 should be framed as follows: “Should Charter be entitled to interconnect with CenturyTel at a single point of interconnection (POI) within a LATA?”

1 establishment of multiple POIs or multiple trunk groups consistent with CenturyTel's  
2 reasonable conditions, and Charter's suggested "single POI per LATA" theory has no  
3 basis.

4 **Q. Are you familiar with the structure and requirements of Section 251 of the Act?**

5 A. Yes. As a negotiator of interconnection agreements and advisor to small  
6 telecommunications companies with respect to those agreements and the practical and  
7 policy ramifications arising from the terms and conditions of those agreements, I have a  
8 working understanding of the requirements of Section 251 of the Act as well as the  
9 FCC's rules that implement those requirements.

10 **Q. Is the concept of a LATA applicable to CenturyTel?**

11 A. No. The LATA concept, in the context of a single POI, has as its basis the exchange of  
12 traffic with a regional Bell Operating Company ("BOC") and therefore is not applicable  
13 to CenturyTel. LATAs are a concept specifically designed in 1984 in the context of  
14 breaking apart the BOCs from the then existing AT&T. LATAs were established to  
15 recognize BOCs explicitly and to accommodate the ubiquitous, interconnected network  
16 architecture of the specific BOC. LATAs do not have such significance or relevance to  
17 the existing CenturyTel network. A concept designed for a BOC cannot be blindly  
18 applied to a non-BOC, particularly a smaller ILEC like CenturyTel.

19 **Q. Is CenturyTel a "BOC"?**

20 A. No. CenturyTel is not a BOC as that term is defined under the Act. *See* 47 U.S.C. §  
21 153(4). Moreover, the manner in which the interconnection requirements have been  
22 applied to the BOCs has taken into consideration the settlement of the antitrust action

1 against them. Further, the BOC has a ubiquitous network within a LATA as compared to  
2 a non-BOC LEC that serves more discrete areas (like CenturyTel) within that large area.

3 **Q. Would the Charter “single POI per LATA” concept as discussed in the DPL be**  
4 **technically feasible in many instances for CenturyTel to achieve?**

5 A. No. For example, if Charter connected on CenturyTel’s network in one area of a LATA  
6 for the exchange of traffic that originates and terminates in another area, there may be no  
7 existing CenturyTel network for the transport of the local interconnection traffic between  
8 the two areas. Interconnection, under the technically feasible and “at-least-equal-in  
9 quality” requirement of Section 251(c) of the Act, requires no more than for an ILEC to  
10 provide interconnection with its existing incumbent network; it does not require the  
11 incumbent to build new network facilities or to provision new trunking arrangements to  
12 satisfy an interconnection request of a competitor.

13 In many instances, CenturyTel’s exchange areas and switches are isolated from its  
14 service areas in other parts of the State, and there may be no local connecting facilities.  
15 Moreover, the connecting facilities (*i.e.*, between an access tandem and end offices to the  
16 extent such arrangements are relevant here) have been engineered and sized within  
17 CenturyTel’s network for the origination and termination of access traffic and other  
18 interoffice traffic. In addition, and in many cases, these connecting facilities are not used  
19 for local intraexchange traffic (*i.e.*, traffic that originates and terminates within a single  
20 exchange where Charter and CenturyTel may compete). In these situations, therefore,  
21 CenturyTel is not and cannot be required to provide an interconnection arrangement that  
22 is beyond the level it provides to itself.



1 **Q. Are there service quality issues if CenturyTel's existing access traffic facilities are**  
2 **used for local interconnection traffic?**

3 A. Yes. Use of these types of connecting facilities to include new volumes of local traffic  
4 must be limited so as not to overburden these facilities with unpredictable volumes of  
5 traffic. Absent that approach, use of these facilities may impair end users' ability to  
6 make or receive toll calls or other calls for which the facilities were designed and  
7 engineered. As CenturyTel has proposed, and no matter where Charter may intend to  
8 connect with CenturyTel's network, where there is significant local traffic between  
9 specific end offices of CenturyTel and Charter, it is only reasonable from a network  
10 management and service quality perspective that the Parties establish a POI with the use  
11 of high-volume trunks so as not to overburden the other trunking arrangements.

12 **Q. What is your understanding of the interconnection requirements of Section 251 of**  
13 **the Act?**

14 A. The Act contains three sets of escalating interconnection obligations under Sections  
15 251(a), (b) and (c). The most burdensome set of requirements are contained in Section  
16 251(c). Of particular note, Section 251(c)(2) of the Act states:

17 (2) Interconnection.-- The duty to provide, for the facilities and equipment  
18 of any requesting telecommunications carrier, interconnection with the  
19 local exchange carrier's network-- (A) for the transmission and routing of  
20 telephone exchange service and exchange access; (B) at any technically  
21 feasible point within the carrier's network; (C) *that is at least equal in*  
22 *quality to that provided by the local exchange carrier to itself or to any*  
23 *subsidiary, affiliate, or any other party to which the carrier provides*  
24 *interconnection . . . .* (emphasis added.)  
25

26 **Q. Are the FCC's rules consistent with the requirements of Section 251(c)(2)?**

27 A. Yes. Section 251(c)(2) of the Act is consistent with the FCC's rules at 47 C.F.R. §  
28 51.305. This section of the Act is also consistent with the FCC's discussion at para. 173

1 of the FCC's initial interconnection decision in its *First Report and Order*. For example,  
2 Section 51.305 (a)(3) of the FCC's rules states:

3 (a) An incumbent LEC shall provide, for the facilities and equipment of  
4 any requesting telecommunications carrier, interconnection with the  
5 incumbent LEC's network: . . .

6  
7 (3) That is at a level of quality that is equal to that which the  
8 incumbent LEC provides itself, a subsidiary, an affiliate, or any  
9 other party. At a minimum, this requires an incumbent LEC to  
10 design interconnection facilities to meet the same technical criteria  
11 and service standards that are used within the incumbent LEC's  
12 network. This obligation is not limited to a consideration of service  
13 quality as perceived by end users, and includes, but is not limited  
14 to, service quality as perceived by the requesting  
15 telecommunications carrier. . . .

16  
17 In paragraph 173 of the FCC's *First Report and Order* in CC Docket No. 96-98 and 95-  
18 185, the FCC recites the provisions of Section 251(c)(2) related to equal quality.

19 **Q. Can you elaborate on your comment that an ILEC only has to provide**  
20 **interconnection to its existing network?**

21 A. Yes. This conclusion derives from the United States Court of Appeals for the Eighth  
22 Circuit court's review of the actions taken by the FCC to implement Section 251(c)(2) of  
23 the Act. *See* 47 U.S.C. § 251(c)(2). Under the most burdensome requirements under the  
24 Act, one section of which is Section 251(c)(2)(C), an incumbent LEC is not required to  
25 provision interconnection arrangements for the benefit of its competitors that are more  
26 than what the incumbent does for itself or what it does in interconnection with other  
27 carriers. Notwithstanding this requirement, Charter's position on Issue 18 could require  
28 the violation of this "at-least-equal-in-quality" requirement found in Section  
29 251(c)(2)(C).

1 **Q. Can you explain how the FCC addressed the non-discriminatory, "at least equal in**  
2 **quality" requirement?**

3 A. Yes. The FCC addressed this issue in its *First Report and Order* in CC Docket Nos. 96-  
4 98 and 95-185 issued on August 8, 1996. See *In the Matter of Implementation of the*  
5 *Local Competition Provisions in the Telecommunications Act of 1996; Interconnection*  
6 *between Local Exchange Carriers and Commercial Radio Service Providers, First*  
7 *Report and Order*, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499 (1996) (“*First*  
8 *Report and Order*”). In this decision, and in response to competitive entrants’ comments,  
9 the FCC initially decided to require ILECs to provision interconnection arrangements for  
10 requesting carriers that would be superior to (*i.e.*, more than “at least equal”) to what the  
11 incumbent does for itself or with other carriers, and the requesting carrier would be  
12 responsible for compensating the ILEC for the extraordinary cost.

13 **Q. Did the courts agree with the FCC's approach?**

14 A. No. The 8<sup>th</sup> Circuit reversed the FCC on this matter. The court ruled that ILECs, under  
15 Section 251(c)(2) of the Act, are not required to provision superior arrangements at the  
16 request of competing carriers.

17 **Q. What did the 8<sup>th</sup> Circuit court determine in this regard?**

18 A. On remand from the United States Supreme Court, the 8<sup>th</sup> Circuit court issued its opinion  
19 in *Iowa Utilities Board v. Federal Communications Commission ("IUB II")* (219 F.3d  
20 744 (8th Cir. 2000)). This decision reaffirmed the court’s earlier conclusion (which was  
21 not affected by the Supreme Court’s remand) that “the superior quality rules violate the  
22 plain language of the Act.” *Id.* at 758. The court also stated that the “at least equal in

1 quality” does not mean “superior quality” and “[n]othing in the statute requires the ILECs  
2 to provide superior quality interconnection to its competitors.” *Id.*

3 In addition, in reviewing the meaning of “at least equal in quality” and the  
4 provision of interconnection on a non-discriminatory basis, the 8<sup>th</sup> Circuit court that  
5 addressed the original appeal of the FCC’s *First Report and Order* concluded that  
6 competitive carriers requesting interconnection should have access “only to an incumbent  
7 LEC’s *existing* network -- not to a yet unbuilt superior one.” *Iowa Utilities Bd. v. F.C.C.*,  
8 120 F.3d 753 (8<sup>th</sup> Cir. 1997) (“*IUB I*”) at 813 (emphasis in original) Additionally, in  
9 addressing the meaning of nondiscrimination in the context of the Act this same court  
10 concluded that this mandate “merely prevents an incumbent LEC from arbitrarily treating  
11 some of its competing carriers differently than others; *it does not mandate that incumbent*  
12 *LECs cater to every desire of every requesting carrier.*” *Id.* (emphasis added).

13 **Q. What impact did the 8<sup>th</sup> Circuit court’s decision have on the FCC’s superior quality**  
14 **rules?**

15 A. The court rejected those rules. Moreover, following the *IUB II* court’s rejection of the  
16 FCC’s incorrect interpretation and remand, the FCC eventually also recognized these  
17 conclusions in its *Report and Order and Order on Remand and Further Notice of*  
18 *Proposed Rulemaking*, CC Docket Nos. 01-338, 96-98, and 98-147 that was released by  
19 the FCC on August 21, 2003. In that decision at para. 15, the FCC notes that the Court  
20 concluded that incumbents are not required “to alter substantially their networks in order  
21 to provide superior quality interconnection and unbundled access.” Finally, I want to  
22 emphasize that, even under the FCC’s invalidated superior quality rules, the FCC had  
23 nevertheless recognized (at para. 225 of its *First Report and Order*) that if the LEC were

1 to provision a superior interconnection arrangement in response to an interconnection  
2 request from a competing carrier, the requesting competing carrier would be responsible  
3 for any extraordinary costs caused by that CLEC's request.

4 **Q. What conclusion must be reasonably drawn from the explicit words in Section**  
5 **251(c)(2) of the Act?**

6 A. The inescapable conclusion is that, even under the strictest application of the rules and  
7 the Act, the interconnection obligations of an ILEC apply only with respect to the area of  
8 its own incumbent network. Moreover, as the quoted Section 251(c)(2) states, the  
9 requirements, at most, *do not require* the ILEC to provision interconnection arrangements  
10 with the requesting competing carrier that are more complex or more costly than the  
11 arrangements that the ILEC provides for itself or with any other party.

12 In this proceeding, Charter is asking for terms that may require CenturyTel *both*  
13 to provision a new form of local service and to be responsible for transport for that new  
14 local service to distant locations beyond that for any other local traffic for which  
15 CenturyTel currently is responsible. Therefore, as a result of the requirements of Section  
16 251(c)(2) as I have outlined, there is no basis for Charter's position.

17 **Q. What relevance does this discussion have in relation to Issue 18?**

18 A. As I have discussed earlier, the conclusion is that incumbent LECs are not required to  
19 provision superior arrangements at the request of competing carriers. While it is not clear  
20 what specific interconnection arrangement that Charter has in mind or whether its  
21 intended approaches would be accommodated within the already proposed CenturyTel  
22 Agreement language, the possibility exists under Charter's position that CenturyTel may,  
23 at Charter's election, provision some local calling service that would involve transport to

1 distant locations within a LATA to points not related to the area in which the traffic  
2 originates or terminates and beyond existing arrangements for the transport of local  
3 traffic. CenturyTel has no obligation to provision such superior arrangements to  
4 accommodate Charter. Even if CenturyTel were to comply with this arrangement and  
5 provision network to meet Charter's demands, any extra cost (*i.e.*, transporting local  
6 calling traffic to other and more distant points within the LATA) would be the  
7 responsibility of Charter as the FCC's invalidated rules originally concluded.

8 **Q. How would Charter's election require CenturyTel to provision a superior form of**  
9 **local calling service?**

10 A. Charter may seek to establish a POI at a location within the CenturyTel incumbent  
11 network for which new and additional trunking would be required to exchange local  
12 competitive traffic with Charter. This may occur if Charter is competing with CenturyTel  
13 in one exchange area but seeks to connect to an end office in another exchange area  
14 served by CenturyTel. Therefore, there is no requirement for CenturyTel to build or  
15 create new trunking arrangements to, as the *IUB I* court stated, "cater to every desire" of  
16 Charter so that local interconnection traffic can be exchanged between the Parties.  
17 Consequently, as a threshold matter, POIs must be established on the incumbent network  
18 of CenturyTel where there are existing arrangements in place to accomplish the  
19 anticipated traffic exchange between the Parties. This necessarily limits the POI to such  
20 locations. CenturyTel serves multiple areas across Missouri, therefore this same issue  
21 can arise in a number of places where Charter may attempt to provide competitive service  
22 and to connect.

1           The technical feasibility of locating a connection in order to provide for the  
2 exchange of traffic in any area in which the Parties are competing depends on many  
3 variables. Therefore, the CenturyTel proposed interconnection terms at, for example,  
4 Sections 2.2.2 and 3.3.2 of Article V recognize that the Parties must review these  
5 variables in arriving at a feasible interconnection arrangement.

6 **Q. Is there any reason to believe that CenturyTel should be subject to obligations that  
7 are greater than, or more burdensome than, those set forth in Section 251(c)(2)?**

8 A. No. CenturyTel *cannot* be subject to requirements that are *more* burdensome than those  
9 that apply under Section 251(c)(2) of the Act.

10 **Q. Do you have any basis for this position?**

11 A. Yes. As I indicated above, subparagraphs (a), (b) and (c) of Section 251's  
12 interconnection requirements create an escalating set of obligations, and it would be  
13 illogical to confer a broader meaning than that required by the most burdensome parts of  
14 the statute. Thus, Section 251(a) cannot reasonably be interpreted in a manner that is  
15 more burdensome than Section 251(b), and Section 251(a) and Section 251(b) obligations  
16 cannot be interpreted in a manner that are more burdensome than Section 251(c).

17 **Q. Can you elaborate on your prior statement that LATAs are a concept designed for a  
18 BOC?**

19 A. LATAs originated in the Modified Final Judgment that broke up the former AT&T in the  
20 early 1980's. When the former AT&T consented to the court decree that ended its  
21 antitrust case, it agreed to be separated into local operating companies (the BOCs) and a  
22 long distance service company (the then former AT&T). This break-up required division  
23 of the then-existing assets of the former AT&T into the BOC components and AT&T, the

1 long distance service company. The result of this division also created the framework for  
2 the line-of-business restrictions on the BOCs (*e.g.*, the BOCs were not allowed to provide  
3 services that crossed from one LATA to another; those services were reserved to AT&T).

4 Each LATA was specifically chosen to reflect the BOCs' network design,  
5 including recognition of the existing end office and tandem hierarchy and the existence of  
6 ubiquitous network interconnection between the exchanges within the chosen LATA  
7 structure. The LATA choice fit the BOC's network operations. As a result, each BOC  
8 had (and has further developed) a ubiquitous network throughout the LATA with  
9 switching and trunking that was designed for that LATA.

10 **Q. Did LATA boundaries take into account the network design of a non-BOC?**

11 A. No. Non-BOCs, like CenturyTel, do not have ubiquitous networks that cover LATAs,  
12 and the LATA design is not derived from CenturyTel's operations in its service areas.  
13 The non-BOCs' operations were and are scattered in and around BOC service areas. If  
14 one examines the facts existing at the time of the former AT&T break-up, the non-BOC  
15 LECs were considered in this process only for the purpose of determining with which  
16 BOC LATA each independent telephone company would be "associated." This  
17 association determined, again, the bounds of the BOC's line-of-business restrictions as  
18 the consequence of the resolution of the antitrust case. While each LATA represents a  
19 subset area of the nation that fit the operations and network design of a particular BOC,  
20 there was no such design correlation to the operations of independent telephone  
21 companies such as CenturyTel.

22 **Q. Do you agree with the Charter's position that the rule is that single POIs are**  
23 **established by LATA?**



1 A. No. That is an exaggeration of the actual development of this concept. A thorough  
2 examination of the FCC's original *First Report and Order* reveals there is no discussion  
3 whatsoever of the concept of POIs within LATAs. In fact, in the 700-page *Report and*  
4 *Order*, the word LATA only appears once in the context of choices for deaveraging of  
5 network element rates.

6 **Q. Does the concept of LATA have any relevance to the concept of POI?**

7 A. Yes, *but only for a BOC* which CenturyTel is not. The POI issue as it relates to LATAs  
8 evolved based on CLECs arbitrations with *incumbent BOCs*. In such proceedings, the  
9 BOC pointed out that it was restricted from providing services across LATAs, and that is  
10 how the LATA concept became associated with the POI issue. However, the resolution  
11 of these issues (the point that Charter does not address) cannot be divorced from the  
12 context within which the issues were raised – the antitrust action against the BOCs and  
13 the resulting line-of-business relief that the BOCs wanted under Section 271 of the Act.

14 In fact, and as Charter notes, the basis for the application of this concept has been  
15 the pending Section 271 relief that the BOCs and the agreement to terms of  
16 interconnection for the BOCs that were subject to the antitrust enforcement action. *See*  
17 DPL, Charter's position on Issue 18 citing to SBC Communications Section 271 relief  
18 proceeding in Texas: *Memorandum Opinion and Order*, In the Matter of Application of  
19 SBC Communications, Inc., Southwestern Bell Telephone Company, And Southwestern  
20 Bell Communications, Inc. d/b/a Southwestern Bell Long Distance, Pursuant to §271 of  
21 the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in  
22 Texas, CC Docket No. 00-65, released June 30, 2000 ("*SWBT Texas 271 Order*").

23 **Q. Is there any reference within the *SWBT Texas 271 Order* to a single POI per LATA?**

1 A. Yes. There is but a single reference in the *SWBT Texas 271 Order* (at footnote 174)  
2 regarding a single POI within a LATA and that reference is to a specific section in an  
3 interconnection agreement between Southwestern Bell Telephone Company, a BOC, and  
4 MCI Worldcom. The individual agreement that Southwestern Bell has with MCI  
5 Worldcom does not establish any general duty or requirements for any other carrier of for  
6 non-BOC carriers.

7 **Q. Can Charter rely (*see Charter's Position in the DPL on Issue 18*) on the FCC's**  
8 **pending intercarrier compensation proceeding to support its position regarding a**  
9 **single POI per LATA?**

10 A. No. The FCC's notice of proposed rulemaking is not controlling. The issuance of an  
11 FCC notice of proposed rulemaking does not create rules. Rules result from action by the  
12 FCC in a rulemaking, and no action on the issues being contested here has been taken by  
13 the FCC within the cited rulemaking. In any event, the LATA POI concept was  
14 developed for application to BOCs as I have already explained. The FCC has not  
15 determined that this concept must be applied to non-BOC ILECs, and there has been no  
16 public policy examination by the FCC to conclude that this BOC-developed policy is  
17 either rational, much less a requirement, for non-BOCs such as CenturyTel.

18 In fact, a thorough review of the record in the FCC's intercarrier compensation  
19 proceeding (as referenced by Charter) indicates that it is the Section 271 proceedings for  
20 BOCs that forms the basis for the single, LATA POI concept. As I am sure the  
21 Commission is aware, Section 271 of the Act only applies to BOCs as it sets forth  
22 processes under which BOCs can seek removal of the line-of-business restrictions arising  
23 from the break up of the former AT&T. Finally, the issues are not settled in the FCC's

1 proposed rulemaking, including under what conditions additional POIs and trunking  
2 should be established between competing carriers and whether the requesting carrier  
3 should pay for the facilities to connect from its POI to the areas in which traffic is  
4 exchanged.

5 **Q. Can Charter rely upon the *SWBT Texas 217 Order* and the FCC’s intercarrier  
6 compensation proceedings to support its “single POI per LATA” theory?**

7 A. No. Charter is attempting illogically and incorrectly to extend the LATA and POI  
8 concept, as such concept has emerged for the BOCs in response to the break-up of the  
9 former AT&T. The position taken by Charter is based on the incorrect assumption that  
10 the concept applies equally to non-BOCs. As I have explained, however, the facts  
11 demonstrate otherwise.

12 **Q. How does the CenturyTel proposed agreement address the technical considerations  
13 that may arise in the provisioning of interconnection between the Parties?**

14 A. To address all of these concerns, the Agreement terms proposed by CenturyTel would  
15 require the establishment of new interconnection points and trunk groups between the  
16 Parties where traffic volumes and other considerations go beyond a level that would  
17 begin to have a significant effect on CenturyTel’s network design. For example, where  
18 there is significant traffic between a Charter and a CenturyTel switch, the CenturyTel  
19 proposed language expects that high-use dedicated trunks will be established for this  
20 component of traffic. There are a vast number of possible factors and variables to  
21 consider in evaluating any particular possible arrangement including network availability,  
22 network impairment considerations, and extraordinary costs. Therefore, the agreement  
23 language proposed by CenturyTel applies an approach whereby these factors are

1 examined to determine reasonable POI requirements and the resulting trunking  
2 arrangements. The conditions that determine the need to establish new interconnection  
3 points and trunk groups include, among others, existing facility capacity (*e.g.*, connecting  
4 trunks), traffic volumes, relative costs of different networking options, and projections of  
5 future capacity needs. CenturyTel's proposed language recognizes that the evaluation of  
6 these factors must be based on CenturyTel's existing network (*i.e.*, interconnection  
7 obligations only arise with respect to CenturyTel's existing network), and also recognize  
8 that interconnection arrangements may change if and when CenturyTel otherwise  
9 upgrades or changes its network.

10 **Q. Is the way that CenturyTel's approach addresses this requirement reasonable?**

11 A. Yes. As I noted above, the possibility exists that Charter may seek to interconnect with  
12 CenturyTel at a location which would, in turn, require CenturyTel to switch and transport  
13 local intra-exchange traffic (from the end users of one Party to the end users of the other  
14 Party) to and from a different exchange from the exchange area where Charter connects.  
15 This switching and transport would necessitate the inclusion of new intraexchange traffic  
16 over CenturyTel's interoffice trunking -- traffic that such trunking was not designed to  
17 carry. As such, and setting aside for now that Charter should be required to pay for any  
18 new form of transport, the sizing and engineering of trunks and switching architecture  
19 could be thrown into disarray and overloaded if a large number of carriers were to  
20 demand novel, new trunking arrangements in this way. The same would also be true if  
21 there is a large amount of local traffic that begins to be switched and transported in this  
22 manner.

1 CenturyTel cannot be expected to add new network design capacity in an  
2 unplanned manner based upon the elections of other carriers. If CenturyTel were to be  
3 forced to add new trunking arrangements and capacity according to arbitrary elections by  
4 other carriers, CenturyTel would be placed in the position of having to install network  
5 facilities at extraordinary cost. This requirement would also be imposed without  
6 constraints as to how and when other carriers made their choices. Without constraints,  
7 CenturyTel could find itself strapped with unused facilities as other carriers make  
8 alternate plans or exit the market.

9 **Q. Is Charter correct when it suggests (DPL, Charter Position on Issue 18) that the**  
10 **only limitation to its single POI per LATA concept is where such arrangement**  
11 **would not be “technical feasibility?”**

12 **A.** No. Charter fails to address the fact that “technical feasibility” is only *one* of the relevant  
13 criteria included in Section 251(c)(2). As I have explained, another criterion is that the  
14 interconnection requirements are confined to a “no more than equal to” provision based  
15 on the interconnection arrangements that an ILEC provides to itself or with other carriers.  
16 ILECs do not have to cater to every desire of connecting carriers. Second, Congress  
17 stated in Section 251(c)(2) that the interconnection point must be at locations “within the  
18 [incumbent] carrier’s network.”

19 To the extent that Charter requests to establish a POI and/or connecting trunking  
20 arrangements with CenturyTel for the exchange of local competitive traffic and that  
21 requested arrangement would require extraordinary trunking and/or switching beyond  
22 that which is required of CenturyTel for the exchange of local traffic with itself or with

1 other neighboring carriers, Charter's request would be contrary to Section 251(c)(2)'s "no  
2 more than equal to" criterion.

3 Furthermore, even though the courts invalidated the attempt by the FCC to  
4 impose interconnection arrangements on incumbents beyond the "equal to" condition, the  
5 FCC nevertheless recognized that the requesting carrier should be responsible for the  
6 extraordinary costs. In contrast, Charter's apparent position is that it can demand more  
7 than equal interconnection arrangements for which Charter will not have any cost  
8 responsibility.

9 **Q. How is this Issue 18 related to Issue 19?**

10 **A.** Issue 19 relates to so-called transit arrangements and brings into question the same issues  
11 of the establishment of proper POIs and each Party's responsibilities under the Act. I will  
12 discuss these further issues in the context of Issue 19 including, for example, the fact that  
13 CenturyTel's obligation is only to establish a POI within its incumbent LEC network and  
14 to deliver local traffic to that POI. As I will discuss, the Act does not require CenturyTel  
15 to establish a POI with Charter at points outside of CenturyTel's network or to be  
16 responsible for transport of local traffic to points outside of CenturyTel's network.

1 **Issue 19**      **Should the Agreement between the Parties limit the voluntary utilization of**  
2 **third party transit arrangements to a DS1 level of traffic?**<sup>7</sup>  
3

4 **Q.**      **Can you explain the essence of this issue?**

5 A.      Yes. Issue 19 is a practical, operational issue: when should the Parties migrate from a  
6 third-party transit arrangement for the exchange of traffic to a dedicated trunking  
7 arrangement in order that continued quality of the exchange of traffic is ensured and  
8 network control is not compromised? This issue relates to the terms and conditions under  
9 which the Parties may exchange local competitive traffic via a third party tandem switch  
10 over common trunks carrying traffic of different carriers and/or of different traffic types  
11 (e.g., local, toll and access). These third-party tandem-switched arrangements have been  
12 referred to as “transit arrangements.” Therefore, this issue addresses whether it is  
13 reasonable for the Parties to agree to CenturyTel’s more than reasonable offer to utilize a  
14 “transit arrangement” under specifically limited circumstances, and only under those  
15 circumstances. And, as to this issue, the answer is “yes.”

16 **Q.**      **Could you explain the reasons that support the reasonableness of adopting**  
17 **CenturyTel’s offer?**

18 A.      While I will address them in more detail below, in general CenturyTel’s proposed offer  
19 and the limitation on the use of “transit arrangements” are entirely reasonable and should  
20 be adopted by the Commission because there are no requirements that allow Charter to  
21 establish a POI at another ILEC’s tandem to exchange traffic with CenturyTel and  
22 demand that CenturyTel be forced to obtain services from, and rely on, a third party  
23 carrier. Thus, CenturyTel has offered very CLEC-friendly language which allows the

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<sup>7</sup> Charter contends that Issue 19 should be framed as follows: “Should Charter’s right to utilize indirect interconnection as a means of exchanging traffic with CenturyTel be limited to only those instances where Charter is entering a new service area, or market?”

1 exchange of traffic via a third party transit arrangement for traffic volumes up to a DS1  
2 level. CenturyTel's position is also extremely accommodating to Charter in that it would  
3 involve CenturyTel transporting traffic to locations well beyond its incumbent network  
4 provided, however, that it is only for a small level of traffic.

5 **Q. What would occur if the CenturyTel-proposed DS1 threshold of traffic exchanged**  
6 **between the Parties is met?**

7 A. Once the CenturyTel- proposed threshold DS1 criteria is reached, the Parties would  
8 establish dedicated trunking between their networks for each traffic type. However, the  
9 language also allows the Parties, upon mutual agreement, to utilize other interconnection  
10 methods that may be mutually beneficial, including continuation of the transit  
11 arrangement in instances where that arrangement makes sense.

12 **Q. Could you explain the reasons for the restatement of the issue by CenturyTel?**

13 A. As I will explain herein, the statement of the issue by CenturyTel avoids the critical  
14 mistakes of fact that are assumed to exist in the statement of Issue 19 made by Charter  
15 with respect to some "right" to use indirect interconnection indefinitely.

16 **Q. Prior to your continuing your testimony, is there any clarification that you would**  
17 **like to make?**

18 A. Yes. CenturyTel believes it is critical to ensure that the concepts of "indirect  
19 interconnection" and "direct connection" are properly defined. Specifically, from an  
20 operational perspective, the issue involves whether interconnection should take place  
21 indefinitely through an inferior third-party *transit* arrangement that combines multiple  
22 carriers' traffic and different jurisdictional traffic on the same tandem switched facilities.  
23 This is the concept of "indirect interconnection" being discussed under Issue 19.



1           However, even when the inferior transit arrangement is no longer appropriate according  
2           to CenturyTel's proposed terms, CenturyTel is not demanding or dictating that Charter  
3           construct its own trunks to the POI with CenturyTel. Charter may still connect indirectly  
4           through *the use of other carriers' facilities* including the use of the facilities of the same  
5           former transit provider. This is a form of "dedicated" interconnection since traffic is  
6           being delivered to the POI over trunks *dedicated* to a Parties' use of the exchange of  
7           competitive traffic rather than existing trunks from the tandem provider designed and  
8           used for a different purpose.

9   **Q.    Can you summarize CenturyTel's position?**

10  A.    Yes. It is the FCC's Part 51 -- Subpart H rules that address the terms and conditions  
11       under which competing ILECs exchange traffic that is subject to Section 251(b)(5) of the  
12       Act. As I have discussed in the context of Issue 18, the Act and the FCC rules require no  
13       more than for the ILEC to establish a POI(s) with a requesting competing carrier at a  
14       technically feasible point within the ILEC's existing network subject to the condition that  
15       the interconnection arrangement be "no more than equal" to what the ILEC does for itself  
16       or with other carriers. A key fact it that there is no difference or distinction in the rules or  
17       the Act regarding the establishment of proper POI(s) that depend on whether the carriers  
18       interconnect to that point directly (facilities dedicated to that Party's traffic) or indirectly  
19       (facilities carrying multiple jurisdictional and/or multiple carrier's traffic).

20                In an indirect (transit) form of interconnection, Charter may attempt to establish a  
21       POI with another neighboring ILEC, typically at that ILEC's tandem. This action by  
22       Charter would result in both Parties having to obtain transit service from the third party  
23       tandem provider. CenturyTel should not, however, be required to incur additional costs

1 of transit in situations where the CLEC fails to establish a proper POI with dedicated  
2 trunks on the incumbent network of CenturyTel for the exchange of Section 251(b)(5)  
3 traffic. Nevertheless, CenturyTel has been willing to exchange traffic with a CLEC via a  
4 third-party, tandem-switched trunking arrangement where such arrangement would be  
5 technically feasible, regardless of the interconnection point issue, provided that the  
6 additional costs to CenturyTel are limited to inconsequential amounts. CenturyTel is  
7 willing to define that limitation based on an amount of traffic that is no more than one  
8 DS1 level of traffic.

9 Moreover, since the transit arrangement is an operationally inferior and  
10 potentially anti-competitive approach, its use should be properly limited. CenturyTel is  
11 willing to compromise on the issue and agree to the use of a transit arrangement, even  
12 though there is no requirement to do so, until traffic volumes reach more than  
13 insignificant levels.

14 **Q. Does this issue involve the issue of being interconnected directly or indirectly, or is**  
15 **this issue related to the use of so-called transit arrangements?**

16 A. This issue relates to the conditions under which transit arrangements may be appropriate.  
17 Even where the terms and conditions may limit the use of transit arrangements to  
18 insignificant levels of traffic, and the Parties migrate from the use of commingled traffic  
19 transit arrangements, the Parties can still, nevertheless, be connected indirectly.  
20 Moreover, if Charter needs to utilize the facilities of another carrier to reach a properly  
21 established POI within the incumbent LEC network of CenturyTel, Charter can do so in  
22 lieu of constructing its own facilities. This option provided to Charter does not change  
23 the fact that the Act prescribes that the POI must be on the incumbent network of

1 CenturyTel. Contrary to Charter’s suggestion, the CenturyTel proposed terms do not  
2 limit Charter’s ability to utilize an indirect arrangement using some third party facilities,  
3 but the Agreement proposal purposely intends to limit transit arrangements for the  
4 reasons I will discuss in detail. It appears that the use of the words “direct” and  
5 “indirect” may actually mask the true nature of this issue; *i.e.*, under what conditions is  
6 the use of a *transit* arrangement appropriate.

7 **Q. Does this compromise on the DS1 level of traffic threshold change CenturyTel’s**  
8 **position regarding the establishment of a POI?**

9 A. No. Despite this compromise and limited offer to exchange local traffic via a transit  
10 arrangement, this arrangement does not change CenturyTel’s position regarding where  
11 the POI must be established for local interconnection traffic arrangements and should not  
12 be construed to suggest obligations for CenturyTel beyond those that actually apply.  
13 Rather, the obligation of CenturyTel is only to deliver its local interconnection traffic to  
14 points within its ILEC network. Any delivery of traffic, or transport of it, to more distant  
15 points (*i.e.*, into a neighboring ILEC's territory where Charter may connect with another  
16 ILEC) is actually Charter’s responsibility. That responsibility includes any transit  
17 services provided by a third party, regardless of what *de minimus* arrangements  
18 CenturyTel may be willing to accept here.

19 **Q. Do any Section 251 requirements alter your conclusions?**

20 A. No. Section 251(c)(2) establishes that the POI location must be within the ILEC’s  
21 network. The FCC’s reciprocal compensation rules adopted to implement Section  
22 251(b)(5) establish the compensation arrangements on each carrier’s side of the POI. The  
23 FCC described this framework at para. 1039 of its *First Report and Order*.

1 We define “transport,” for purposes of section 251(b)(5), as the  
2 transmission of terminating traffic that is subject to section 251(b)(5) from  
3 the interconnection point between the two carriers to the terminating  
4 carrier’s end office switch that directly serves the called party (or  
5 equivalent facility provided by a non-incumbent carrier).  
6

7 The exchange of interconnection traffic should be as required by Section 251(c)(2) of the

8 Act:

9 New entrants will request interconnection pursuant to section 251(c)(2) for  
10 the purpose of exchanging traffic with incumbent LECs. In this situation,  
11 the incumbent and the new entrant are co-carriers and each gains value  
12 from the interconnection arrangement.  
13

14 *First Report and Order* at para. 553.

15 **Q. Is this analysis and discussion consistent with the FCC’s rules?**

16 A. Yes. As I have stated above, it is consistent with the FCC’s rules at Section 51.305 and  
17 the FCC’s discussion at para. 173 of its *First Report and Order*. And, again, section  
18 251(c)(2) refers to the point at which interconnection will take place for the exchange of  
19 local competitive traffic:

20 (2) Interconnection.-- The duty to provide, for the facilities and equipment  
21 of any requesting telecommunications carrier, *interconnection with the*  
22 *local exchange carrier’s network* -- (A) for the transmission and routing of  
23 telephone exchange service and exchange access; (B) *at any technically*  
24 *feasible point within the carrier’s network*; (C) *that is at least equal in*  
25 *quality to that provided by the local exchange carrier to itself or to any*  
26 *subsidiary, affiliate, or any other party to which the carrier provides*  
27 *interconnection . . . .*  
28

29 **Q. What conclusion must one draw from the explicit words in the Act and the FCC’s**  
30 **rules and rulemaking discussions?**

31 A. As I have indicated above, the inescapable conclusion is that, even under the strictest  
32 application of the rules and the Act, the interconnection obligations of an ILEC apply  
33 only with respect to interconnection at points *within its own incumbent network*, not with

1 respect to POIs located in the incumbent network of some other carrier or in areas where  
2 the LEC is not an incumbent. Section 251(a)'s reference to the obligation of all  
3 telecommunications carriers to "interconnect . . . indirectly" with all other  
4 telecommunications carriers cannot change or modify these requirements. Regardless of  
5 what facilities options that may be available to a requesting competitive carrier, the  
6 incumbent's obligation is limited to an interconnection point *within* the ILEC's network.  
7 At the same time, and as the quoted Section 251(c)(2) states and as I have explained, the  
8 requirements, at most, do not require the ILEC to provision interconnection or service  
9 arrangements with the requesting competing carrier that are more than a level equal to  
10 what the ILEC provides to itself or in interconnection arrangements with any other party.

11 **Q. Does Charter's position on Issue 19 contradict these requirements?**

12 A. Yes. In this proceeding, Charter is asking for terms that would require CenturyTel to  
13 provision a new form of local service and to be responsible for transport to distant  
14 locations beyond the points of transport of any other local traffic.

15 **Q. Is there any reason to believe that CenturyTel should be subject to obligations that  
16 are greater than, or more burdensome than, those set forth in Section 251(c)(2)?**

17 A. No.

18 **Q. Do the FCC's rules for the exchange of competitive interconnection traffic differ  
19 depending on whether the Parties are directly or indirectly interconnected?**

20 A. No. There is no distinction in the Subpart H rules with respect to whether the Parties are  
21 directly or indirectly interconnected. As I have explained above, the POI may be  
22 established properly using direct trunking or indirectly using the facilities of another

1 carrier. The FCC does not discuss so-called transit arrangements as an interconnection  
2 option; therefore, its rules do not contemplate any such distinction.

3 **Q. Does Section 251(a) of the Act’s reference to “interconnect . . . indirectly” create a**  
4 **right for Charter to demand its transit arrangement form of indirect**  
5 **interconnection with CenturyTel?**

6 A. No. First, Section 251(a) *does not* afford any carrier a “choice” with respect to another  
7 carrier’s fulfillment of the general obligations of Section 251(a) as suggested by Charter’s  
8 position on this issue. Second, Section 251(a) of the Act *does not* create rights or  
9 standards for interconnection. Rather, as reflected in the specific language that Congress  
10 used, Section 251(a) only creates a general duty on telecommunications carriers to be  
11 connected directly or indirectly with all other telecommunications carriers. Contrary to  
12 any suggestion by Charter, Section 251(a) also *does not* afford rights to one class of  
13 carrier to demand of another class of carrier the manner in which a carrier fulfills this  
14 general duty, and this section of the Act further *does not* set forth any particular standards  
15 under which carriers must negotiate or arbitrate terms of either direct or indirect forms of  
16 interconnection.

17 **Q. Is Charter’s position in Issue 19 an attempt to convince the Commission to expand**  
18 **the scope and meaning of Section 251(a)?**

19 A. Yes. Charter is attempting to expand the scope and meaning of Section 251(a) to afford  
20 Charter with rights that simply do not exist. In fact, Section 251(a) is separate and  
21 distinct from interconnection requirements related to the exchange of traffic.

22 **Q. Do you have any support for your conclusion that the general requirements of**  
23 **Section 251(a) of the Act do not address the exchange of traffic?**

1 A. Yes. Section 251(a) of the Act establishes no standards or requirements for the exchange  
2 of the traffic that is the subject of Section 251(b)(5) of the Act; it is the FCC's Subpart H  
3 rules which solely establish those standards for the exchange of local interconnection  
4 traffic. But one need not rely on the FCC's Part 51 rules alone. While the FCC has  
5 stated these conclusions more than once, I will point to a few paragraphs in a  
6 *Memorandum Opinion and Order* released by the FCC on March 13, 2001, in File No. E-  
7 97-003 ("*Atlas Decision*") beginning at paragraph 23:

8 23. Complainants base their argument on an erroneous interpretation of  
9 the term "interconnect" in section 251(a)(1). *We have previously held that*  
10 *the term "interconnection" refers solely to the physical linking of two*  
11 *networks, and not to the exchange of traffic between networks.* In the  
12 *Local Competition Order*, we specifically drew a distinction between  
13 "interconnection" and "transport and termination," and concluded that the  
14 term "interconnection," as used in section 251(c)(2), does not include the  
15 duty to transport and terminate traffic. Accordingly, section 51.5 of our  
16 rules specifically defines "interconnection" as "the linking of two  
17 networks for the mutual exchange of traffic," and states that this term  
18 "does not include the transport and termination of traffic."  
19

20 24. Complainants argue that the term "interconnection" has a different  
21 meaning in section 251(a) than in section 251(c). According to  
22 Complainants, section 251(a) blends the concepts of "interconnection" and  
23 "transport and termination," and "the only way for AT&T and [Total] to  
24 interconnect under Section 251(a)(1) is for AT&T to purchase [Total]'s  
25 services at its tariffed rate."  
26

27 25. *We find nothing in the statutory scheme to suggest that the term*  
28 *"interconnection" has one meaning in section 251(a) and a different*  
29 *meaning in section 251(c)(2).* The structure of section 251 supports this  
30 conclusion. Section 251(a) imposes relatively limited obligations on all  
31 telecommunications carriers; section 251(b) imposes moderate duties on  
32 local exchange carriers; and section 251(c) imposes more stringent  
33 obligations on incumbent LECs. Thus, *section 251 of the Act "create[s] a*  
34 *three-tiered hierarchy of escalating obligations based on the type of*  
35 *carrier involved."* As explained above, section 251(c) does not require  
36 incumbent LECs to transport and terminate traffic as part of their  
37 obligation to interconnect. *Accordingly, it would not be logical to confer a*  
38 *broader meaning to this term as it appears in the less-burdensome section*  
39 *251(a).*

1  
2 26. Furthermore, among the subparts of this provision, *section 251(b)(5)*  
3 *establishes a duty for all local exchange carriers to “establish reciprocal*  
4 *compensation arrangements for the transport and termination of*  
5 *telecommunications.”* Local exchange carriers, then, are subject to section  
6 251(a)’s duty to interconnect *and* section 251(b)(5)’s duty to establish  
7 arrangements for the transport and termination of traffic. *Thus, the term*  
8 *interconnection, as used in section 251(a), cannot reasonably be*  
9 *interpreted to encompass a general requirement to transport and*  
10 *terminate traffic.* Otherwise, section 251(b)(5) would cease to have  
11 independent meaning, violating a well-established principle of statutory  
12 construction requiring that effect be given to every portion of a statute so  
13 that no portion becomes inoperative or meaningless . . . .

14  
15 *Id.* (footnotes omitted, emphasis added).

16 **Q. What do these excerpts from the *Atlas Decision* demonstrate?**

17 A. These excerpts are examples of decisions that support my conclusion that the general  
18 requirements of Section 251(a) are very limited in scope. As such, and contrary to the  
19 logical outgrowth of Charter’s position, Section 251(a) *cannot* create an obligation for  
20 either an ILEC or a CLEC (1) to originate or deliver traffic; (2) to provision a particular  
21 local service for its end users, *or* (3) to provision some extraordinary form of service or  
22 interconnection arrangement at the request of some other carrier. To the extent that  
23 Charter suggests requirements in this proceeding that go beyond the general and limited  
24 duty of being “directly and indirectly” interconnected under Section 251(a) of the Act, its  
25 proposals should be rejected. An arbitration cannot result in the imposition of  
26 interconnection requirements that go beyond what the Act requires or go beyond the  
27 regulations prescribed by the FCC as reflected in Section 252(c) of the Act. Finally,  
28 regardless of whether the Parties are connected directly or indirectly, the POI must be at a  
29 point within the incumbent network of CenturyTel.



1 **Q. Does Section 251(a) create rights for Charter to demand that CenturyTel negotiate**  
2 **and/or arbitrate specific standards for so-called "indirect" interconnection as**  
3 **Charter claims?**

4 A. No. The compliance with the general interconnection obligation of Section 251(a) is not  
5 achieved through the implementation of negotiation or arbitration scheme of Section 252.

6 Section 251(c)(1) of the Act sets forth the obligation for ILECs “to negotiate in  
7 good faith in accordance with section 252 the particular terms and conditions of  
8 agreements to fulfill the duties described in paragraphs (1) through (5) of subsection  
9 [251](b)] and this subsection [251(c)].” Accordingly, the only sections of the Act which  
10 include “standards” for application under negotiation or arbitration are those contained in  
11 Sections 251(b) and (c). The explicit terms of Section 252 do not require such  
12 negotiation or arbitration with respect to Section 251(a). Similarly, Section 252(a)(1)  
13 permits ILECs to negotiate agreements “without regard to the standards set forth in  
14 subsections (b) and (c) of section 251,” but does not mention any standards in subsection  
15 251(a) because there are none. If Congress had intended that there also be Section  
16 251(a) standards which are implicated for negotiation or arbitration purposes, then it  
17 would have also listed that section. The reason is that the general duty of Section 251(a)  
18 is just that -- without any specific standard for fulfillment.

19 **Q. Has the FCC spoken to the issue of whether Section 251(a) is subject to the**  
20 **negotiation requirements of the Act?**

21 A. Yes. Although aspects of an FCC proceeding were vacated by the courts on grounds that  
22 do not affect the FCC’s fundamental analysis and observations, the FCC came to similar  
23 conclusions about this interplay between Sections 251(a), (b), and (c), and the standards

1 under which negotiations and arbitrations under Section 252 are applicable. *See In the*  
2 *Matter of CoreComm Communications, Inc., and Z-Tel Communications, Inc. v. SBC*  
3 *Communications, Inc. et al., Order on Reconsideration*, File No. EB-01-MD-017, FCC  
4 04-106, released by the FCC on May 4, 2004 (“Z-Tel”) at para. 18.

5 **Q. In summary, therefore, does Section 251(a) create standards for negotiation or**  
6 **arbitration?**

7 A. No, not based on the wording of that section versus the wording chosen by Congress in  
8 Section 251(c)(1) and Section 252(a)(1) and in the FCC’s *Z-Tel* decision. And, “no”  
9 based on the FCC’s *Atlas Decision* that confirms the limited scope of Section 251(a)  
10 within the hierarchy of interconnection obligations under Section 251 of the Act. Thus,  
11 Section 251(a) creates only general duties; there are no rights afforded other carriers to  
12 demand (or choose) how another carrier fulfills its general duty to be directly or  
13 indirectly connected to the public switched network.

14 **Q. Is CenturyTel in compliance with the general duty created by Section 251(a) of the**  
15 **Act?**

16 A. Yes. CenturyTel has not refused to connect with any carrier, and in particular, Charter.  
17 However, CenturyTel is not required to provision: (1) Charter’s form of interconnection  
18 that would force CenturyTel to rely on another carrier’s transit arrangement; (2)  
19 arrangements beyond those actually required under the actual standards set forth in the  
20 other subsections of Section 251; and (3) arrangements with Charter that are superior or  
21 extraordinary to the form and level of arrangements it provisions for itself or for  
22 interconnection with other carriers.

1 **Q. Are commingled traffic and third-party-tandem transit arrangements required**  
2 **under the Act or under the FCC's interconnection rules?**

3 A. No. In over 700 pages of the FCC's *First Report and Order* and its implementing rules,  
4 there is no discussion of commingled tandem-switched transit arrangements under which  
5 a third party carrier would commingle interconnecting parties' traffic. In fact, the words  
6 and/or concepts of "transit," "transit service," and "transit traffic" do not appear in that  
7 document.

8 **Q. Is "transit" an interconnection obligation?**

9 A. No, and the FCC agrees.

10 **Q. On what basis are you suggesting that the FCC agrees that "transit" is not an**  
11 **interconnection obligation?**

12 A. First, in a Virginia Arbitration matter with the BOC Verizon, the FCC concluded that it  
13 had not had "occasion to determine whether incumbent LECs have a duty to provide  
14 transit service under this [Section 251(c)(2)] provision of the statute, *nor do we find clear*  
15 *Commission precedent or rules declaring such a duty.*" *Memorandum Opinion and*  
16 *Order*, Petitions of WorldCom, Inc., Cox Virginia Telcom, Inc., and AT&T  
17 Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications  
18 Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission  
19 Regarding Interconnection Disputes with Verizon Virginia, Inc., CC Docket Nos. 00-  
20 218, 00-249, and 00-251, FCC 02-1731 (released July 17, 2002)("Verizon Arbitration  
21 *Order*") at para. 117 (emphasis added). Consequently, there can be no presumption of a  
22 requirement for CenturyTel to acquiesce to the unbridled use of a multi-carrier facility

1 traffic arrangement if there has been no finding that such arrangements are even a duty  
2 under the interconnection obligations set forth in the Act.

3 Second the FCC acknowledged the status of transit services under the Act's  
4 interconnection requirements when it stated in its *Further Notice of Proposed*  
5 *Rulemaking, In the Matter of Developing a Unified Inter-carrier Compensation Regime,*  
6 *CC Docket No. 01-92, FCC 05-33 (released March 3, 2005) ("Unified Inter-carrier*  
7 *Compensation FNPRM")* at paragraph 120 states:

8 Although many incumbent LECs, mostly BOCs, currently provide transit  
9 service pursuant to interconnection agreements, the Commission has not  
10 had occasion to determine whether carriers have a duty to provide transit  
11 service.

12  
13 Thereafter, the FCC made the following statements: "We seek comment on the  
14 Commission's legal authority to impose transiting obligations." (*Id.*, ¶ 127) "Assuming  
15 that the Commission [FCC] has the necessary legal authority, we solicit comment on  
16 whether we should exercise that authority to require the provision of transit service."  
17 (*Id.*, ¶ 129) "If rules regarding transit service are warranted, we seek comment on the  
18 scope of such regulation." (*Id.*, ¶ 130) "We also seek comment on the need for rules  
19 governing the terms and conditions for transit service offerings." (*Id.*, ¶ 131) Moreover,  
20 even these statements within *Unified Inter-carrier Compensation FNPRM* were made  
21 with the acknowledgement by the FCC that transit arrangements were assumed to be  
22 applicable to those situations "when carriers do not exchange significant amounts of  
23 traffic." (*Id.*, ¶ 126 (footnote omitted)) There would have been no reason for the FCC to  
24 make these statements if "transit" was an interconnection obligation.

25 **Q. Does public policy support CenturyTel's position?**

1 A. Yes. As a public policy matter, the rights of carriers like CenturyTel in a competitive  
2 world to design its own network architecture without interference from other carriers (for  
3 switching hierarchy and traffic management, identification, measurement, and billing)  
4 would need to be fully addressed in any examination of some mandatory trunking design  
5 under which CenturyTel would be forced involuntarily to use the transit arrangements of  
6 its competitors. There is a long list of competitive issues regarding carriers' rights to  
7 design and deploy their own network hierarchy which would also need to be examined.  
8 Likewise, there would also need to be public policy review of the anti-competitive  
9 implications associated with requiring carriers to be dependent upon another carrier's  
10 tandem switch. All of these unaddressed matters are raised in this proceeding to the  
11 extent that Charter wants to keep open the possibility of connecting with a third party  
12 tandem provider and then demand that CenturyTel accept that third party's and Charter's  
13 network design that favors those carriers to the detriment of CenturyTel.

14 Further, as I have discussed above, the terms of a transit arrangement as proposed  
15 by Charter could not only require CenturyTel to pay for transport of local traffic to points  
16 outside of CenturyTel's ILEC network but would also involve the provisioning of a  
17 superior form of transport of local traffic that goes beyond that which CenturyTel does  
18 for itself or with any other interconnecting carrier. Only where the impact of such transit  
19 arrangement is limited to small levels of traffic is CenturyTel willing to utilize the transit  
20 arrangement. The fact that such transit arrangements are otherwise not required as an  
21 interconnection obligation demonstrates that CenturyTel's position is entirely reasonable  
22 to accommodate initial traffic levels with Charter.

1 **Q. Can you explain your statement earlier that CenturyTel is willing to utilize a third-**  
2 **party transit arrangement with Charter under conditions where there will be**  
3 **limited amounts of traffic between the Parties?**

4 A. Yes. In Sections 3.3.1.1 and 3.3.2.4 of the proposed Agreement, CenturyTel has  
5 proposed that the Parties may utilize a transit traffic arrangement via a third party tandem  
6 with commingled traffic, and tandem-switched trunking. However, recognizing that  
7 there is no requirement for such transit arrangements, and that such commingled traffic  
8 arrangements create concerns about network management and the proper identification of  
9 traffic types and intercarrier compensation, CenturyTel's willingness to implement these  
10 transit arrangements with Charter is limited to small volumes of exchanged traffic.

11 **Q. Are there operational reasons that support CenturyTel's position?**

12 A. Yes. In general, the common trunking arrangements that CenturyTel has with third party  
13 tandem providers are often engineered as common trunks for purposes that do not include  
14 the switching of local traffic that originates and terminates in some other exchange area.  
15 These arrangements are not used or provisioned for transport of local traffic to and from a  
16 third party tandem. Therefore, use of common trunking facilities for this new purpose  
17 could overload facilities designed and used for other purposes, such as those facilities and  
18 arrangements designed and used for completion of toll calls to and from CenturyTel's  
19 end users. As such, the sizing and engineering of the trunks and the third party's tandem  
20 switches could be thrown into disarray and overloaded if either a large number of carriers  
21 were to use transit arrangements in this way or there is a large amount of local traffic that  
22 begins to be switched and transported in this manner over facilities that were not intended  
23 for this purpose.

1 **Q. Are there other operational reasons that support CenturyTel's position?**

2 A. Yes. First, CenturyTel and third party tandem providers cannot be expected to add  
3 network capacity for a new network design in an unplanned manner at the mercy of  
4 unilateral elections by other carriers. If CenturyTel (and/or any tandem provider) were to  
5 be forced to add capacity according to the arbitrary elections by other carriers, it may  
6 have to install network facilities at extraordinary cost. Without constraints, CenturyTel  
7 could find itself strapped with unused facilities as other carriers make alternate plans or  
8 exit the market.

9 Second, when switching and trunking facilities are provisioned by a third party  
10 transit provider, neither Charter nor CenturyTel have significant management control.  
11 With dedicated trunks between them, Charter and CenturyTel would no longer be  
12 dependent on a third party access/toll connecting network and could directly ensure  
13 quality of call completion by controlling their own trunking capacity.

14 Third, the possibility also exists, where CenturyTel operates its own tandem  
15 switch, that Charter could seek to connect with another carrier's tandem. This  
16 arrangement would result in double tandem routing which is not a technically feasible,  
17 available arrangement.

18 Fourth, CenturyTel is concerned over being forced to rely on third party tandem  
19 providers based on the need for billing information and the ability to obtain this  
20 information when carriers are commingling traffic over the same common trunks.

21 **Q. Can you explain what you mean when you indicate that carriers like CenturyTel are**  
22 **concerned about being forced into commingled traffic arrangements involving third**  
23 **party tandem providers?**

1 A. CenturyTel and other smaller LECs are rightfully concerned that they be able to  
2 accurately and completely identify and measure other carriers' traffic without reliance on  
3 an often non-cooperative intermediary such as a BOC.

4 **Q. Does CenturyTel want to be forced to rely on some other carrier for traffic**  
5 **identification and measurement?**

6 A. No. In a competitive world and as a matter of rational public policy, a carrier should not  
7 be forced to rely upon its competitor (or potential competitor) for performance of traffic  
8 identification and measurement to determine proper intercarrier compensation. In order  
9 to avoid reliance on the tandem provider, many smaller LECs, including CenturyTel,  
10 have made ongoing capital expenditures and network upgrades in order to put in place a  
11 network design that ensures the ability to identify, measure and record terminating traffic  
12 of other carriers. However, in many instances, the insertion of a third party tandem  
13 arrangement undermines the equipment's ability to perform identification and  
14 measurement as intended. Therefore, in addition to the network management drawbacks,  
15 the third party transit arrangements also increase the probability of unidentified traffic,  
16 missing traffic, and the lack of proper traffic type measurement.

17 **Q. What are the practical ramifications arising from unidentified traffic, missing**  
18 **traffic and the lack of proper traffic type measurement?**

19 A. These elements create billing uncertainties and increase the likelihood for CenturyTel  
20 (and Charter) of uncollected revenues. Moreover, these elements give further weight to  
21 the need to limit traffic exchanged through the transit arrangement to a DS1 threshold.  
22 By limiting the amount of traffic via a transit arrangement to a DS1 level, network  
23 integrity is assured between the Parties; problems associated with unidentified and



1 unbilled traffic are minimized to manageable levels; the Parties reduce their exposure to  
2 unlawful arbitrage whereby traffic types may be misrepresented; the Parties are not  
3 forced into unreasonable reliance on a third party tandem operator, and neither Party is  
4 forced to pay significant transit charges to the intermediary. Moreover, the recovery of  
5 network costs by carriers such as CenturyTel depends critically on proper intercarrier  
6 compensation. Where intercarrier compensation is avoided by other carriers because  
7 traffic identification and measurement is compromised by less than optimal network  
8 arrangements, carriers such as CenturyTel must recover these lost revenues from other  
9 sources. This result, in turn, upsets the underlying regulatory policies that spread cost  
10 recovery over the available sources in the proper proportion.

11 Accordingly, efforts by carriers like CenturyTel to properly identify, measure, and  
12 bill for all traffic should not be circumvented, and they should not be forced to rely on  
13 another carrier (a potential competitor), just because Charter and a third party tandem  
14 provider demand such a result. Absent such a result, one of the overarching objectives of  
15 the 1996 revisions to the Act – the encouragement of facilities-based competition –  
16 would be undermined.

17 **Q. Have carriers such as CenturyTel invested in their network in order to avoid**  
18 **reliance on companies such as the BOCs for traffic measurement for intercarrier**  
19 **compensation purposes?**

20 A. Yes. I have 32 years experience of working with LECs such as CenturyTel. Over the  
21 last several decades, many smaller LECs have configured their networks and deployed  
22 related measurement and recording facilities for the express purpose of removing  
23 themselves from dependence on large LECs such as the BOCs for the necessary traffic

1 detail required for proper billing. Based on their experience with the large ILECs, these  
2 smaller LECs remain concerned with inaccurate measurement, unidentified traffic,  
3 missing settlements, and other less-than-acceptable methods and results with respect to  
4 the large LECs' performance of these call detail record functions.

5 **Q. Can you cite a specific example of where regulators have recognized this issue?**

6 A. Yes. This migration away from dependence on the BOCs can be illustrated by an access  
7 proceeding involving a small LEC and its relationship with BellSouth  
8 Telecommunications, Inc. (now a part of AT&T). The FCC agreed with the Public  
9 Service Telephone Company in Georgia ("PSTC") that it was allowed to reconfigure its  
10 network for these very purposes:

11 Further, PSTC is upgrading its permanent network not only to  
12 provide equal access and 800 number portability, but to decrease its  
13 reliance on the facilities of a potential competitor with which PSTC has  
14 already allegedly encountered measurement and reliability problems.

15  
16 *In the Matter of Allnet Communications Services, Inc. v. Public Service Telephone*  
17 *Company, Memorandum Opinion and Order*, File No. E-93-099, released October 8,  
18 1996 at para. 17.

19 The FCC noted PSTC's reason "that when [PSTC] noticed measurement and  
20 reliability problems with BellSouth's network, [PSTC] decided to reconfigure its own  
21 network to reduce reliance on BellSouth." *Id.* at para. 9.

22 **Q: Has the FCC addressed the reliance on other carriers in any other context?**

23 A. Yes. Specifically, the FCC has concluded that "wholesale telecommunications carriers  
24 have assumed responsibility for compensating the incumbent LEC for the termination of  
25 traffic under a section 251 arrangement between those two parties." *In the Matter of*  
26 *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange*

1 *Carriers May Obtain Interconnection Under Section 251 of the Communications Act of*  
2 *1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP*  
3 *Providers, Memorandum Opinion and Order, WC Docket No. 06-55, DA 07-709,*  
4 *released March 1, 2007 (“TWC Order”)* at para. 17. Under this directive, the  
5 intermediary carrier is fully responsible for the traffic, including compensation, of its  
6 contract partners’ traffic when it connects to CenturyTel and delivers traffic to  
7 CenturyTel’s network. However, in stark contrast to the *TWC Order*, the third party  
8 transit providers (such as BOC in the context of this Issue 19) contend that they have no  
9 compensation responsibilities for the traffic they deliver to CenturyTel and have little, if  
10 any, other responsibilities to carriers like CenturyTel in such arrangements.

11 **Q. How are the issues in this proceeding related to CenturyTel's right not to rely on a**  
12 **third party tandem provider for traffic identification, measurement, and records?**

13 A. As stated above, CenturyTel’s DS1 level trigger below which a transit arrangement  
14 would be permitted affords Charter a more than reasonable “start-up” opportunity  
15 confined to transit arrangements where there is only a small amount of traffic. In this  
16 way, CenturyTel's concerns about the identification of traffic type and potential  
17 compensation implications between Charter and CenturyTel are sufficiently limited; the  
18 financial ramifications associated with the lack of actual traffic identification information  
19 are more manageable; and the burdens and potential harm associated with these methods  
20 are hopefully held to inconsequential levels.

21 **Q. How is the language regarding the need for percent factors for traffic exchanged via**  
22 **a transit arrangement related to this Issue 19?**

1 A. As I have explained, even though there is no requirement for CenturyTel to provision an  
2 indirect transit arrangement via a third party carrier, CenturyTel has proposed a more  
3 than reasonable compromise for transit traffic exchange for de minimus volumes of  
4 traffic. At any level, however, this network approach is inferior in that it creates  
5 significant concerns about network management, traffic measurement, and proper  
6 compensation. With this in mind, CenturyTel addresses this concern with terms and  
7 conditions for traffic identification and measurement. *See* Article V, Section 3.3.1.4 that  
8 Charter proposes to omit. Thus, where the threshold level of traffic has not been reached,  
9 and Charter and CenturyTel are exchanging small volumes of traffic via a transit  
10 arrangement with another carrier, CenturyTel remains concerned that it may not be able  
11 to obtain accurate and complete records for the traffic that the intermediary tandem  
12 provider “transits” to CenturyTel over commingled trunks (or, for that matter, the nature  
13 of all of the commingled traffic and quantities of each type).

14 **Q. Are the terms included in CenturyTel’s Section 3.3.1.4 necessary?**

15 A. Yes. If there were not explicit terms and conditions in place between Charter and  
16 CenturyTel, the Parties may not have any accepted method to identify, measure, and bill  
17 for components of traffic between them, including traffic that may be subject to  
18 intercarrier compensation requirements. To avoid an unnecessary future dispute,  
19 CenturyTel proposes to include appropriate terms in the Agreement which would require  
20 the carrier that is sending traffic to the other Party through the third party transit provider  
21 to provide accurate factors based on call detail records which can be verified and would  
22 be representative of the portion that is local interconnection traffic and subject to the  
23 compensation terms under the interconnection agreement. The remainder of the traffic

1 may include jointly provided access service traffic or intrastate toll traffic that would be  
2 subject to access charges between the Parties. This mechanism would allow the Parties  
3 to identify, through call records, the portion of transited traffic that may be subject to  
4 compensation responsibilities and the inclusion of the terms would avoid a dispute later  
5 over how proper compensation may need to be determined between the Parties.

6 **Q. Does CenturyTel's proposed DS1 threshold address these practical and operational**  
7 **concerns?**

8 A. Yes. CenturyTel has set forth various threshold criteria in the proposed agreement to  
9 address all of these concerns and conditions directly. If any of the threshold conditions  
10 are reached and presuming all other technical feasibility, the Parties would be required to  
11 establish a dedicated trunking arrangement for the exchange of traffic that would remove  
12 this traffic from the common/tandem switched facilities and would, therefore, be in a  
13 position to address and consider these operational and practical concerns. (As I have  
14 stated, even under the dedicated trunking arrangement, Charter may establish the  
15 dedicated trunking to a POI on the incumbent network of CenturyTel either by Charter  
16 deploying its own facilities or by Charter leasing dedicated facilities from a third party  
17 carrier for Charter's indirect interconnection on its side of the POI.)

18 Moreover, CenturyTel's proposed language is designed to set the threshold  
19 criteria at a DS1 level of traffic and to include specific terms in the Agreement defining  
20 that threshold so as to avoid unnecessary disputes between the Parties. In this way, the  
21 potential burdens and network concerns are mitigated to sufficiently insignificant levels.

22 **Q. How has this DS1 threshold been defined?**

1 A. It has been defined as the volume of traffic exchanged reaching a level of 200,000  
2 minutes of use a month as the amount that defines a DS1 level. *See* Agreement, Article  
3 V, Section 2.2.2(c). Charter has previously agreed that 200,000 minutes of use is the  
4 correct level to define the DS1 threshold, but apparently deviated from its previous  
5 agreement in its Petition where it changes that threshold to 240,000 minutes of use per  
6 month. Charter has previously agreed to the 200,000 minutes equivalent in agreements  
7 with CenturyTel in other states and in the current agreement that Charter has with  
8 CenturyTel in Missouri.

9 **Q. Are there any other problems with Charter’s approach here?**

10 A. Yes. It appears that Charter wants the unilateral right to maintain a transit arrangement  
11 between it and CenturyTel. This approach would impose financial responsibilities on  
12 CenturyTel to transport unlimited local traffic to distant points beyond CenturyTel’s  
13 incumbent network. As such, and as I have already explained, that result is more onerous  
14 than what is actually required by Section 251(c)(2). Charter’s demand for an unlimited  
15 transit arrangement would require CenturyTel to go beyond the statutory requirement.  
16 CenturyTel, at most, is obligated to deliver traffic to Charter at a POI established within  
17 CenturyTel’s incumbent network and to establish interconnection arrangements that are  
18 no more than equal to what CenturyTel does with itself and other interconnecting  
19 carriers. Charter would be demanding arrangement far beyond the controlling “no more  
20 than equal” criterion. For these reasons, Charter’s approach must be rejected.

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?**<sup>8</sup>  
3

4 **Q.**      **Is there any question as to whether Charter will be entitled to lease interconnection**  
5                      **facilities from CenturyTel at cost-based rates as implied by Charter’s statement of**  
6                      **the issue?**

7 A.      No, and that it why Charter’s statement of the issue is wrong. The Parties have already  
8                      agreed that Charter may lease interconnection facilities from CenturyTel at cost-based  
9                      rates pursuant to Section 251(c)(2) of the Act. The only unresolved issue is how long the  
10                      Parties should be afforded the opportunity to arrive at a conclusion about what those rates  
11                      should be and what specific dispute resolution terms should be followed in the event that  
12                      they cannot arrive at negotiated rates.

13 **Q.**      **Can you explain the proposals before the Parties?**

14 A.      Yes. The Parties have agreed to defer consideration of what the proper rates for  
15                      interconnection facilities should be until after the effective date of the Agreement. After  
16                      the effective date, the Parties intend to negotiate such rates. CenturyTel’s position is that  
17                      six (6) months is a prudent amount of time to allow the Parties to resolve this issue,  
18                      particularly when any interim treatment will be adjusted (*i.e.*, “trued-up”) once the final  
19                      rates are determined. Charter proposes to allow only ninety (90) days for discussions and  
20                      resolution of such rates. Both Parties have agreed to interim rates to be used during the  
21                      pendency of the determination of final rates.

22 **Q.**      **Can you explain the basis for CenturyTel’s position that 6 months is a more prudent**  
23                      **time period?**

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<sup>8</sup> Charter contends that Issue 20 should be framed as follows: “Should Charter be entitled to lease interconnection facilities from CenturyTel at cost-based rates pursuant to Section 251(c)(2) of the Act?”

1 A. It will afford the Parties a greater possibility of resolving the issue without resorting to  
2 further proceedings before the Commission. Based upon its experience in these matters,  
3 CenturyTel believes that 6 months will provide the necessary time for the complete  
4 exchange of proposals and good faith “give and take” discussions, while 90 days most  
5 likely will not afford sufficient time. From a public policy standpoint, the Parties should  
6 be encouraged to resolve the rates without the Commission, and the extra, but limited,  
7 time will increase that possibility. Again, because the Parties have agreed to adjust  
8 interim compensation to the level of the final rates, there is little, if any, adverse  
9 consequences in utilizing the full time to resolve the issue. The additional time will be  
10 also be needed to review the complexities and implications of the FCC’s triennial review  
11 decisions and the court’s review related to the pricing of what has been defined as  
12 “entrance facilities.”

13 **Q. How would the Parties’ disagreement concerning the terms be resolved in the event**  
14 **that they are unsuccessful in their voluntary negotiations?**

15 A. CenturyTel would rely upon the terms and conditions already set forth in the Agreement  
16 for the resolution of disputes. *See* Article III, Section 20. CenturyTel favors this  
17 approach because these processes are defined explicitly in the Agreement and address all  
18 possible scenarios that could arise between the Parties. CenturyTel does not favor  
19 Charter’s approach because it would rely on a vague and undefined “action with the  
20 Commission,” and therefore should be avoided. CenturyTel sees no reason why the  
21 Parties would agree to dispute resolution processes elsewhere in the Agreement but  
22 would then want to avoid those processes here.



1 For these reasons, the CenturyTel approach to allow sufficient time and to utilize  
2 the established dispute resolution process is reasonable and does not prejudice either  
3 Party's rights.  
4

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

7  
8 **(b) Regardless of whether one-way or two-way trunks are deployed, where**  
9 **should Points of Interconnection (POIs) be located and what are each Party's**  
10 **responsibilities with respect to facilities to reach the POI?**<sup>9</sup>  
11

12 **Q. How would you summarize the essence of Issue 21(a)?**

13 A. Issue 21(a) involves questions regarding whether and under what conditions the Parties  
14 may decide to use one-way trunks for the exchange of local traffic that is within the scope  
15 of the Agreement. At the outset, the Agreement proposed by CenturyTel already allows  
16 the use of one-way trunks. Therefore, Charter's issue statement that asks whether  
17 Charter is allowed to deploy one-way trunks is simply misplaced.

18 More importantly, if both Parties are providing service to end users, and the end  
19 users of one Party are exchanging local traffic with the end users of the other Party, there  
20 will be two-way local calling traffic exchanged between the Parties. In that case, two-  
21 way trunks would likely be more efficient *for both Parties*. Thus, there simply is no  
22 sound cost or practical reason not to deploy two-way trunks for the anticipated exchange  
23 of local traffic. One-way trunks may be needed only where there is some technical  
24 consideration under which one-way trunks would allow the Parties to properly identify,  
25 measure and bill for traffic while two-way trunks would not. The Agreement recognizes

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<sup>9</sup> Charter contends that Issue 21 should be framed as follows: "Should Charter be allowed to deploy one-way trunks at its discretion; and without having to assume the entire cost of interconnection facilities used to carry traffic between the Parties' respective networks?"

1 that minor exception in Section 3.2.3 of Article V. Accordingly, other than for this  
2 potential minor exception, there is no reason why Charter would want to deploy two sets  
3 of one-way trunks in each direction because to do so would require more trunks and  
4 facilities than the use of a single set of two-way trunks.

5 **Q. Does the FCC rule § 51.305(f) cited by Charter in the Revised DPL support its**  
6 **position on this issue?**

7 A. No. The rule cited by Charter is the exact opposite of its arguments here. Section  
8 51.305(f) states as follows: “If technically feasible, an incumbent LEC shall provide two-  
9 way trunking upon request.” In adopting this rule, the FCC expressed its concern that  
10 incumbents may attempt to prohibit CLECs from using two-way trunks and thereby force  
11 the use of one-way trunks at higher cost to the CLEC. In its *First Report and Order* at  
12 para. 219 the FCC stated: “Refusing to provide two-way trunks would raise the costs for  
13 new entrants and create a barrier to entry.” As I have quoted, the rule specifically  
14 requires the incumbent to allow two-way trunking with the CLEC. Although the FCC  
15 was concerned about imposing costs on the CLECs, that consideration is not relevant  
16 here because CenturyTel is not proposing any prohibition against two-way trunks, and  
17 except for the minor exception, CenturyTel prefers two-way trunks.

18 **Q. Does the Agreement anticipate that the Parties will be exchanging traffic other than**  
19 **Local Traffic?**

20 A. Yes. Traffic other than Local Traffic is a possibility under the terms of the Agreement.  
21 Non-local traffic is traffic subject to the terms and conditions of access tariffs. Therefore,  
22 for non-local traffic, the relationship between the Parties and the terms and conditions of  
23 trunking are governed by the framework of access, not local interconnection, and

1 determined by the rules, terms and conditions of access tariffs. The terms and conditions  
2 for non-local traffic are outside the scope of interconnection and arbitration.

3 **Q. If one-way trunks are actually less efficient and more expensive, why would Charter**  
4 **argue in favor of one-way trunks?**

5 A. It appears that Charter's interest in one-way trunks is nothing more than an attempt to  
6 impose extraordinary costs on CenturyTel in a manner conceptually inconsistent with the  
7 applicable framework. CenturyTel's duty is no more than to deliver local traffic to a  
8 properly established POI at a point within its incumbent network, regardless of whether  
9 the delivery is accomplished through one-way or two-way trunks. This is the issue  
10 presented by CenturyTel Issue 21(b).

11 **Q. How would you summarize the essence of Issue 21(b)?**

12 A. Charter is attempting a distorted interpretation of the Act's interconnection requirements  
13 that simply cannot be supported. Taken literally, Charter's proposal would make  
14 CenturyTel responsible for one-way facilities extending both beyond the POI located  
15 within the CenturyTel service area and beyond the CenturyTel incumbent area, to a  
16 switch location of Charter at any distant point.

17 **Q. How is Charter's proposal conceptually inconsistent with the applicable**  
18 **framework?**

19 A. The framework for interconnection is that once the POI is established, each Party is  
20 responsible for the facilities on its side of the POI, and each Party is responsible for the  
21 delivery of its originating local traffic to the other Party at the POI. When the Parties use  
22 two-way trunks for this purpose, each Party is responsible for the two-way facilities on its  
23 side of the POI and for delivery of local traffic to the other Party at the POI. When the

1 Parties use one-way trunks, the equivalent approach would be that, after a proper POI(s)  
2 is established, each Party is responsible for both sets of one-way facilities on its side of  
3 the POI(s), and each Party is responsible for delivery, over the relevant one-way trunk  
4 group, of its originating traffic to the other Party at the POI(s). This is the same  
5 conceptual approach for both applications except that one set of trunks is used in the first  
6 two-way trunking example and two separate sets of one-way trunks are used in the latter  
7 example.

8 In contrast, when one-way trunks are used under Charter's approach, Charter  
9 wants to abandon this framework and move the POI for one set of one-way trunks (in the  
10 Charter terminating direction) to some distant location that is neither within the  
11 incumbent network of CenturyTel nor consistent with the controlling requirements under  
12 Section 251(c)(2) of the Act.

13 **Q. How would Charter's approach be inconsistent with the requirements of Section**  
14 **251(c)(2) of the Act?**

15 A. Section 251(c)(2) only requires CenturyTel (1) to establish a POI with Charter within the  
16 CenturyTel ILEC network and (2) to deliver its traffic to that point within CenturyTel's  
17 incumbent service area. By suggesting that CenturyTel may be responsible for circuits to  
18 Charter's switch at some distant location, Charter's proposal is outside the scope of that  
19 requirement. Moreover, Charter's approach is an obvious attempt to foist transport costs  
20 on CenturyTel to deliver its traffic to some distant point that only Charter controls.  
21 Further, through its "one-way trunk" proposal, Charter is requesting a superior form of  
22 interconnection that goes beyond the Section 251(c)(2) requirements as I have discussed,  
23 for example, in Issue 18, above. Specifically, Charter suggests that CenturyTel should be

1 required to be responsible for the delivery of its end user-originated local traffic to points  
2 well beyond the points that CenturyTel delivers any other local traffic with any other  
3 carrier. That suggestion cannot be imposed upon CenturyTel.

4 **Q. Could you explain how Charter's proposal could require CenturyTel to be**  
5 **responsible for transport to points outside of CenturyTel's incumbent network?**

6 A. According to Charter's approach, Charter could locate its switch hundreds of miles away,  
7 perhaps in another state, to serve its end users located in a local calling area of  
8 CenturyTel in Missouri in which Charter intends to compete, and require CenturyTel to  
9 be responsible for one-way trunks from that service area in Missouri all the way to  
10 Charter's switch.

11 **Q. What is CenturyTel's position on this issue?**

12 A. Regardless of what trunking methods the Parties may use -- one-way or two-way trunks  
13 -- the POI must be at a location within CenturyTel's incumbent area. The POI is the  
14 demarcation point between CenturyTel's network and Charter's network which  
15 establishes the financial responsibility framework. Once the POI is established, each  
16 Party's financial responsibility for the facilities and equipment on its side of the POI are  
17 set, and each Party is responsible for the delivery of its local traffic to the other Party at  
18 that point. In its proposed language for Issue 18 in the DPL, Charter already recognizes  
19 that the POI must be "on the CenturyTel network" but wants to abandon that concept  
20 here in Issue 21.

21 **Q. For the exchange of local traffic, where would CenturyTel intend the POI to be?**

22 A. Consistent with the applicable requirements, CenturyTel's position is that the POI must  
23 be located at a technically feasible point within its ILEC network that takes into account

1 the existing network availability, potential impairment, and potential extraordinary costs  
2 as discussed in my testimony regarding Issue 18. Since the Parties would be originating  
3 and terminating local competitive traffic within a particular local calling area, and  
4 presumably both Parties would be providing local telephone service with their own  
5 facilities within that CenturyTel local service area, CenturyTel's proposal to meet at  
6 some reasonably central point in that same area ensures a fair and just approach for  
7 CenturyTel and Charter. Furthermore, as discussed in my testimony on Issue 18, the  
8 establishment of the POI must also be consistent with technical feasibility and cannot  
9 require CenturyTel to provision interconnection with Charter that is more than equal to  
10 what CenturyTel does for itself or with other carriers.

11 **Q. Does CenturyTel provision arrangements that involve the transport of local calls to**  
12 **distant points?**

13 A. No, not for itself or for interconnection with any other carriers. Even when ILECs  
14 provision, for example, extended area service ("EAS") interconnection arrangements  
15 with neighboring LECs, most often they are responsible for trunking and transport only to  
16 a meet point with the neighboring carrier, and certainly no more than transport to the  
17 immediate neighboring area where the originating and terminating end users are located.  
18 CenturyTel is not responsible for the transport of local calling traffic to distant locations  
19 well beyond the local calling areas in which the local calls originate and terminate. The  
20 interconnection requirements require only that CenturyTel deliver its local traffic to a  
21 competitor at a properly established POI on the CenturyTel incumbent network.

22 **Q. Under the most burdensome requirements under the Act, is any incumbent LEC**  
23 **required to provision interconnection arrangements for the benefit of its**

1           **competitors that are more than what it does for itself or what it does in**  
2           **interconnection with other carriers?**

3    A.    No. I have already explained above in this testimony the three sets of escalating  
4           interconnection obligations for which Section 251(c)(2) contains the most burdensome  
5           requirements. As I have also discussed earlier, the 8th Circuit Court concluded that  
6           incumbent LECs are not required to provision superior arrangements at the request of  
7           competing carriers. In this proceeding, Charter is asking for terms that would require  
8           CenturyTel *both* to provision a new form of local service and to be responsible for  
9           transport for that new local service to distant locations beyond that for any other local  
10          traffic for which CenturyTel currently is responsible. CenturyTel has no obligation to  
11          provision such superior arrangements.

12   **Q.    Is there any reason to believe that CenturyTel should be subject to obligations that**  
13          **are greater than, or more burdensome than, those set forth in Section 251(c)(2)?**

14    A.    No. Once again, CenturyTel *cannot* be subject to requirements that are *more* burdensome  
15          than those that apply under Section 251(c)(2) of the Act. But that is what Charter is  
16          proposing here.

1 **Issue 22**      **Should the Parties utilize reasonable projections of traffic volumes in**  
2                    **addition to actual traffic measurement in their determination of whether the**  
3                    **threshold has been reached for purposes of establishing dedicated end office**  
4                    **trunks versus after-the-fact traffic measurement solely for such**  
5                    **determination?**<sup>10</sup>  
6

7 **Q.      How would you summarize the essence of Issue 22?**

8 A.      The Parties have already agreed that the amount of traffic that represents the capacity of  
9            twenty four (24) or more trunks is the level at which dedicated end office trunks should  
10           be deployed for Local Traffic exchange purposes. The question presented by this issue is  
11           whether only actual, after-the-fact traffic volumes should be considered in determining  
12           whether the threshold has been reached or whether actual volumes and reasonable  
13           projections of traffic should be used, in combination, for such evaluation by the Parties.  
14           To the extent that the Parties have reasonable projections of traffic that would indicate the  
15           impending threshold, Charter wants to disregard such information.

16 **Q.      What is the CenturyTel position here?**

17 A.      It is CenturyTel’s position that it would be imprudent to disregard traffic projections and  
18           to do so would undermine the purpose of the Agreement provision. CenturyTel’s  
19           proposed language would allow the Parties to utilize the best information available to  
20           ensure that the network facilities they each must deploy are sized in a manner that  
21           ensures the proper exchange of traffic between their respective end users. In this regard,  
22           the Agreement would remain dynamic and reflective of the level of the exchange of  
23           traffic between the Parties.

24 **Q.      Has Charter provided a meaningful description of this Issue 21?**

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<sup>10</sup> Charter contends that Issue 22 should be framed as follows: “What threshold test should be used to determine when the Parties will establish direct end office trunks?”



1 A. No. Charter's general statement of this issue does not describe the narrow dispute  
2 between the Parties on the issue of network facilities. CenturyTel's restatement of the  
3 issue avoids this problem.

4 **Q. What is the purpose of the proposed provision under review here?**

5 A. The purpose is to have in place a process for the Parties to move to dedicated end office  
6 trunks so as to avoid overburdening other trunk groups and network degradation, and to  
7 ensure quality service to both providers' end users.

8 **Q. Does Charter's approach support that purpose?**

9 A. No. Charter would prefer to address traffic volumes only after the effect of that traffic  
10 has already occurred. This approach, in turn, allows service quality and network issues to  
11 linger while the Parties await further confirming evidence regarding the need to augment  
12 the interconnection facilities between them. As a result, Charter's approach undermines  
13 what should be the goal of each of the Parties – to avoid service quality and network  
14 degradation issues. Contrary to Charter's approach, however, CenturyTel's proposed  
15 language advances the goal of service quality by using reasonable forecasts of traffic that  
16 would help determine what the facility requirements will need to be to avoid service  
17 degradation. For these reasons, CenturyTel's approach to rely on forecasts and actual  
18 information is simply a more effective approach to the objective of ensuring quality  
19 interconnection service and should be adopted. Moreover, since it is this network  
20 interconnection that will be used to allow the exchange of end user traffic that one Party  
21 delivers to the other, *both Parties* benefit from CenturyTel's proposal.

- 1 **Issue 23** (a) Where Charter is the N-1 carrier for calls to ported numbers of third  
2 party carriers, should Charter be responsible for data base queries and the  
3 proper routing of its calls to third party carriers?  
4
- 5 (b) For calls that Charter fails to fulfill its N-1 carrier obligations and are  
6 routed improperly to a CenturyTel end office, what should Charter be  
7 required to pay to CenturyTel for the completion of such calls to third  
8 parties?<sup>11</sup>  
9
- 10 **Q. Could you explain the reasons for the restatement of the issue by CenturyTel?**
- 11 A. As I will explain herein, the statement of the issue by CenturyTel provides a more  
12 complete description of the actual dispute that needs to be resolved by the Commission.
- 13 **Q. What section of the Agreement is Charter questioning in the context of this issue?**
- 14 A. As set forth by Charter in the Revised DPL, Charter is questioning the terms of Section  
15 4.6.5 of Article V.
- 16 **Q. What do the subsections of Section 4.6 address?**
- 17 A. The first four (4) subsections of Section 4.6 address transit traffic.
- 18 **Q. Is there a need to understand these sections in order to address the dispute  
19 regarding Section 4.6.5?**
- 20 A. Yes. In order to place the dispute regarding Section 4.6.5 in context, the arrangements  
21 described in the first 4 subsections of Section 4.6 should be understood.
- 22 **Q. Have Charter and CenturyTel agreed to these 4 subsections under Section 4.6?**
- 23 A. Yes. There is no disagreement between the Parties regarding those sections.
- 24 **Q. Based on your review of those 4 subsections of Section 4.6, what arrangements do  
25 they describe?**

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<sup>11</sup> Charter contends that Issue 23 should be framed as follows: “Should Charter pay CenturyTel a tariffed access charge for transiting traffic where CenturyTel end office switches perform a transit functionality for unqueried calls that have been ported to another carrier?”

1 A. In general, these subsections address the provision of Transit Service by either Party  
2 *through a properly configured Tandem switching office.* With respect to CenturyTel, the  
3 provisions are intended to apply “where CenturyTel currently owns a Tandem and where  
4 the CenturyTel End Offices to which traffic is to be exchanged are actually connected to  
5 the CenturyTel Tandem.” Agreement, Article V, Section 4.6.1. “CenturyTel will accept  
6 Transit Traffic originated by [Charter] for termination to another CLEC, another LEC, or  
7 wireless carrier that is connected to CenturyTel’s Access Tandem Switch or subtending  
8 End Office.” *Id.* at Section 4.6.4.

9 **Q. What does Section 4.6.5 address?**

10 A. Section 4.6.5 is a distinct provision added to Section 4.6 that addresses calls that are not  
11 properly delivered by Charter to a CenturyTel tandem. Therefore, the situation being  
12 addressed in Section 4.6.5 is where Charter delivers calls to certain end offices (perhaps  
13 tandem offices) of CenturyTel without Charter having performed its N-1 carrier  
14 responsibility.

15 **Q. Could you explain what you mean with respect to Charter’s “N-1 carrier  
16 responsibility?”**

17 A. First, the FCC has defined the “N-1” carrier as that carrier right before the terminating  
18 carrier. In practical terms, for local calls, the N-1 carrier is the carrier that has the retail  
19 carrier/customer relationship with the end user that is making the call. Second, with this  
20 as background, the FCC requires the N-1 carrier to query a data base in order to  
21 determine the identify of the terminating carrier that now serves the end user that has  
22 been assigned the telephone number that is being called. This query is necessary because  
23 of the possibility that the telephone number being called has been “ported” to another

1 carrier. Therefore, when I reference the “N-1 carrier responsibility”, I am referring to the  
2 obligation of the N-1 carrier to launch the query and to route calls based on the  
3 information indicating the identity of the called party’s service provider.

4 To place this N-1 responsibility in context, Charter and CenturyTel compete;  
5 both provide services to end users; both have ported numbers and send calls to ported  
6 numbers, and all carriers within the areas covered by the Agreement have been required  
7 to convert to the long-term data base method of number portability. This conversion,  
8 therefore, includes the function of querying calls for number codes where numbers have  
9 been ported between and among competing providers, and routing calls to those numbers  
10 based on the query response information.

11 **Q. What effect does the query being launched have on the call that is being made?**

12 A. As a result of the response to the query, the N-1 carrier will be able to route the call to  
13 the proper terminating carrier in order to complete the call properly. Therefore, when  
14 Charter does not perform its N-1 responsibility, Charter does not know the proper routing  
15 of the call and routes the call incorrectly to a CenturyTel end office (or perhaps an  
16 incorrect tandem).

17 **Q. With respect to Issue 23(a), does Charter agree that, where Charter is the N-1  
18 carrier, Charter is responsible for performing its N-1 carrier obligations?**

19 A. Yes. Charter confirms this fact in the Revised DPL in response to Issue 23(a): “Charter  
20 does not dispute that it is required to perform its N-1 query and routing obligations for  
21 calls to ported numbers . . . .” As a result, Charter agrees that it needs to be perform this  
22 N-1 carrier query function. It appears that the non-queried, misrouted calls of Charter are  
23 simply “mistakes” that Charter should address internally in its network.

1 **Q. If Charter performed its N-1 obligation properly, would this arbitration issue be in**  
2 **dispute?**

3 A. No. This issue would not exist. Charter would perform its N-1 obligation properly and  
4 route transited calls pursuant to the terms of the first four (4) subsections of Section 4.6  
5 which, again, are not in dispute.

6 **Q. What then does CenturyTel request the Commission do to resolve Issue 23(a)?**

7 A. Based on Charter's statements acknowledging its N-1 carrier responsibility, the  
8 Commission, in this proceeding, need only *explicitly* confirm that Charter is responsible  
9 for the N-1 functions where Charter is the N-1 carrier.

10 **Q. Just to confirm, is it correct that you indicated the Parties have no dispute with**  
11 **respect to the first four sections of Section 4.6?**

12 A. That is correct. The first 4 subsections of Section 4.6 are not in dispute. And, again,  
13 these provisions, as I have explained above, address calls to and from third party carriers  
14 where the routing is through the proper tandem architecture intended for transit routing to  
15 and from third party carriers. Charter has only disputed Section 4.6.5 which is confined  
16 to the situation where a non-queried call has been routed outside the scope of the terms  
17 and conditions of the first 4 subsections of Section 4.6. Therefore, with respect to  
18 Section 4.6.5, CenturyTel must perform Charter's N-1 responsibilities because Charter  
19 has not, and the call must be completed through extraordinary efforts required of  
20 CenturyTel to route the call.

21 **Q. Has Charter objected to the query charge in these instances?**

22 A. No. Charter has not disputed the provisions for transiting of calls where Charter has  
23 performed the N-1 query and, as such, no query is required to be performed by

1 CenturyTel. See Agreement, Section 4.6.4.4.1 for transit of local traffic, referencing  
2 CenturyTel's pricing for such elements that is not in dispute. Also, Charter has not  
3 disputed the "NP query charge" that is required for the type of calls being addressed in  
4 Section 4.6.5 -- unqueried, improperly routed calls. *Id.*, Section 4.6.5. Therefore, this  
5 issue is narrow. The only issue is what Charter should pay for queries and transit  
6 functions for improperly routed calls for which Charter has failed to perform its N-1  
7 responsibility.

8 **Q. Can you explain what would occur if Charter performs its N-1 carrier**  
9 **responsibilities with respect to a call delivered to CenturyTel for termination?**

10 A. In such a situation, the call would be delivered to the CenturyTel tandem consistent with  
11 the conditions set forth in the first 4 subsections of Section 4.6 and, therefore, sent to the  
12 proper terminating carrier pursuant to the transit functions set forth in those 4  
13 subsections.

14 **Q. Can you explain the extraordinary efforts that would be required to be undertaken**  
15 **by CenturyTel if Charter does not perform its N-1 carrier responsibilities?**

16 A. Yes. If Charter delivered a call to a CenturyTel end office that must be terminated to  
17 another carrier as a result of a ported number, the end office would then have to re-route  
18 the call to a CenturyTel tandem since it is that tandem office that is designed to transit  
19 traffic to the third party carrier. As some point in this arrangement, CenturyTel would  
20 also have to perform the N-1 query. Once the N-1 query response is received and the  
21 carrier serving the telephone number is identified, CenturyTel would then route the call,  
22 if technically possible, to that carrier for termination. As a result, the steps I have  
23 outlined are non-standard and require that the call be routed in a manner that requires

1 CenturyTel to take extraordinary measures to switch and direct such calls over trunking  
2 facilities in a manner inconsistent with the design of its network architecture since end  
3 offices do not normally perform a “transit” function. In these instances, the call delivered  
4 to CenturyTel for termination cannot be completed through normal network architecture  
5 because the routing of calls to the ported numbers is not intended to take place via the  
6 particular end office of CenturyTel to which Charter directs these calls.

7 **Q. With respect to Issue 23(b), does CenturyTel attempt to complete the calls that**  
8 **Charter sends where Charter has not performed its N-1 carrier responsibilities?**

9 A. Yes, that has been CenturyTel’s approach thus far. Although CenturyTel is not required  
10 to take responsibility for the query and routing of calls where Charter fails to perform its  
11 N-1 carrier responsibility, CenturyTel will nonetheless continue to do so provided it is  
12 properly compensated by Charter and where it is technically feasible to do so. This  
13 willingness of CenturyTel also is subject to the understanding that any agreement to  
14 perform these functions is outside of any interconnection requirements.

15 **Q. Can you explain your reference to proper compensation?**

16 A. As I have described above, where Charter delivers a call to CenturyTel for transit to  
17 another terminating carrier and Charter has not performed its N-1 carrier responsibility,  
18 CenturyTel must undertake extraordinary measures to address Charter’s improperly  
19 routed calls and to complete these calls in some nonstandard manner. These  
20 extraordinary measures involve additional switching and trunking beyond that which  
21 would normally apply to standard transit traffic pursuant to Section 4.6.1 through 4.6.4 of  
22 the Agreement. In other words, the amount that Charter should be required to pay for the

1 transit of these improperly routed calls must be more than what it pays for properly  
2 routed transit calls.

3 **Q. What should Charter be required to pay CenturyTel in those instances where**  
4 **Charter does not perform its N-1 carrier responsibility?**

5 A. The charges should conform to the functions that CenturyTel will be required to  
6 undertake on each call. The exact extraordinary switching, transport, tandem switching  
7 and further transit functional elements are idiosyncratic to each situation. The elements  
8 that would arise include: (a) the NP query charge; (b) Tandem Switching; (c) Tandem  
9 Switching Facility, and (d) Transport Switched Termination. And, I note, these are the  
10 rate elements that CenturyTel proposed in the Agreement.

11 **Q. Should Charter be allowed to avoid these elements?**

12 A. No. There is no reason why Charter should be permitted to avoid those rate elements that  
13 are triggered for a call where Charter has not performed its N-1 carrier responsibilities.  
14 Charter is the cost causer in this instance and should pay for the network functions that  
15 CenturyTel performs on its behalf. As such, Charter should not be afforded special  
16 treatment when it is Charter that fails to fulfill its own N-1 carrier responsibilities. If  
17 Charter does not want CenturyTel to perform these functions (which are outside the  
18 scope of interconnection requirements) and does not want to pay according to the terms  
19 and conditions under which CenturyTel would otherwise be willing to do this for Charter,  
20 then Charter should perform its own N-1 responsibilities for itself, route the call properly,  
21 and thereby avoid the Section 4.6.5 charges.

22 **Q. What is Charter's approach?**



1 A. Charter's approach is not entirely clear. It appears that Charter wants to avoid any  
2 recognition of the specific and extraordinary functions that CenturyTel performs for  
3 improperly routed calls and simply pay \$0.005 per minute to CenturyTel for such  
4 improperly routed transited calls.

5 **Q. Is Charter's approach reasonable?**

6 A. No. Based on its stated position in the Revised DPL, Charter appears to assume that  
7 CenturyTel has the obligations to perform this special routing and related functions on  
8 behalf of Charter and to do so at some Charter stated transit rate. Charter has not cited  
9 any basis that creates any obligation for CenturyTel to be responsible for Charter where  
10 Charter fails to perform its own interconnection and number porting responsibilities.  
11 More importantly, Charter can not cite any support for its notion that CenturyTel should  
12 be responsible for Charter while Charter dictates a rate of compensation at \$0.005 per  
13 minute.

14 **Q. What element charges does CenturyTel propose to apply for its performance of the**  
15 **individual network functions associated with the transit of Charter's improperly**  
16 **routed calls?**

17 A. CenturyTel already has intrastate rates in place for these individual functional elements.  
18 These are the rates available for the provision of such transit functions. These are also  
19 the lawful rates for the functions that CenturyTel would perform for Charter or any other  
20 carrier that seeks such assistance. For these reasons, these are the rate elements that  
21 should apply to Charter and that is how CenturyTel requests that the Commission  
22 resolved Issues 23(b).

23 **Q. Is there any other aspect of Charter's proposal to which you would like to respond?**

1 A. Yes. I will discuss Charter's assertion in the Revised DPL that transit charges for its  
2 improperly routed calls, for which treatment is in dispute under this issue, should be  
3 based on the TELRIC costing methodology as opposed to CenturyTel's intrastate access  
4 rates. However, this discussion is without waiver of CenturyTel's right to argue that  
5 TELRIC pricing issues for improperly routed transit calls are wholly outside the scope of  
6 the applicable Section 251 requirements and this arbitration. It is with this specific  
7 reservation that my testimony is provided below.

8 In addition to its mention of TELRIC in the Revised DPL, Charter also proposes  
9 the use of \$0.005 per minute instead. Charter provides no basis for its \$0.005 rate  
10 proposal.

11 Charter's suggested approach is not appropriate. First, and contrary to Charter's  
12 assertion, CenturyTel has no interconnection obligation under the Act to provide  
13 transiting service to Charter much less to do so at Charter's unsupported proposed rates.  
14 As I have explained above in response to Issue 19 in my discussion regarding Section  
15 251(a) arrangements, transit is not even an interconnection obligation.

16 Second, CenturyTel is willing, however, to provide to Charter such transit  
17 services at the CenturyTel intrastate rates for the identical functional elements as  
18 contained in CenturyTel's intrastate access tariff. CenturyTel's transiting proposal is not  
19 interconnection; it represents commercial business terms and conditions for a service  
20 offered voluntarily, and as such, the intrastate access element rates are entirely  
21 reasonable.

22 Third, Charter's approach does not address the public policy ramifications that  
23 arise, particularly under the potential constraints of TELRIC pricing, where one set or

1 individual LECs may be required to act as transit providers while others are not,  
2 particularly where smaller carriers are involved. Requiring the provision of transit at  
3 low levels of compensation would improperly impose cost burdens for such LECs.

4 **Q. What are the cost burdens you reference?**

5 A. Again, subject to the reservation of rights noted above and without waiver of such rights,  
6 the policy implications involve the burdens placed on a carrier such as CenturyTel to  
7 provision extraordinary switching and trunking facilities in an unplanned manner, at the  
8 mercy of unilateral and arbitrary elections of other carriers such as Charter. Carriers  
9 cannot be expected to construct and maintain added capacity for potentially unlimited  
10 numbers of carriers that might seek to utilize transit services. Without constraints on the  
11 unregulated and arbitrary elections of other carriers, LECs such as CenturyTel would find  
12 themselves installing network facilities at extraordinary costs, and would find themselves  
13 strapped with unused facilities and capacity as the requesting carriers unilaterally make  
14 alternative plans or exit the market. Imposing TELRIC constrained pricing negatively  
15 exacerbates these policy implications. Thus, Charter's suggestion for TELRIC pricing  
16 should be rejected particularly, as with this issue, it admits that it fails to perform its N-1  
17 obligation.

1 **Issue 27**      **When Charter submits an LSR requesting a number port, should Charter be**  
2 **contractually required to pay the service order charge(s) applicable to such**  
3 **LSR?<sup>12</sup>**  
4

5 **Issue 40**      **Should the Pricing Article include Service Order rates and terms?**

6 **Q.**      **What aspects of this set of arbitration issues will you address in your testimony?**

7 A.      I will address the issues that relate to the question of whether it is appropriate for one  
8 Party to recover the administrative cost of service order activity from the other Party  
9 when one Party requests the processing of a number port or any other service ordered and  
10 performed pursuant to the terms of the Agreement. CenturyTel witness Jeffrey Reynolds  
11 will address the derivation of rates and the charge elements for these activities that are the  
12 subject of Issues 27 and 40.

13 **Q.**      **Can you explain the reasons for combining your discussion of CenturyTel's**  
14 **additional Issue 40 with Issue 27?**

15 A.      The definition of Initial Service Order ("ISO") and the related component concepts are  
16 integral aspects of the terms and conditions that are under review in Issue 27. Because  
17 the two issues are related, I will address them at the same time.

18 Charter has attempted to strike from the Agreement the definition of ISO and the  
19 service order charge elements in the Pricing Attachment that would limit the scope of  
20 ISOs and eliminate ISOs for number porting-related activities that either Party performs  
21 on behalf of the other Party. As a result, the ISO charge would not be applied to porting  
22 requests. CenturyTel has added Issue 40 for completeness and to avoid any  
23 misunderstanding about the scope of this fundamental issue.

24 **Q.**      **Can you explain the basis for CenturyTel's restatement of Issue 27?**

---

<sup>12</sup> Charter contends that Issue 27 should be framed as follows: "Should CenturyTel be allowed to assess a charge for administrative costs for porting telephone numbers from its network to Charter's network?"

1 A. Charter's statement of Issue 27 is potentially misleading because it presumes its own  
2 stated position as appropriate and the correct conclusion. Charter's position is incorrect.  
3 The administrative cost of processing LNP orders is not contained in the costs that should  
4 be recovered from end users through a special federal LNP charge. As I will explain,  
5 Charter's assumptions are clearly wrong, and its issue statement should not serve to  
6 support its incorrect position.

7 **Q. What is CenturyTel's proposal for service order processing charges, including for**  
8 **example, those for number porting requests?**

9 A. CenturyTel maintains that, when either Party submits a request for the other Party to  
10 process an order for a number port (or perform some other service order functions related  
11 to the proposed charges), the Party making such request should be required to pay a  
12 service processing charge to the other Party, particularly since the requesting Party  
13 benefits from the responding Party's actions. The Party making such a service request  
14 issues a Local Service Request ("LSR"). The administrative costs of processing the LSR  
15 and the recovery of those costs are the subjects of this issue.

16 **Q. Are the administrative costs of service order activity processing for port requests**  
17 **recovered by CenturyTel's LNP end user surcharge?**

18 A. No. Charter, in its stated position in the Revised DPL, sets forth several FCC orders  
19 addressing number portability cost recovery. None of those orders support Charter's  
20 conclusions. There is no evidence that Charter can cite to support its notion that the  
21 ongoing administrative costs of processing LSRs for LNP requests are to be included, or  
22 have been included, in the special end user charge.

23 I note that, in addressing the extraordinary costs of implementing number

1 portability in the industry, the FCC defined a specific set of costs referred to as “*specific*  
2 *costs directly related to providing long-term number portability*” (to be referred to herein  
3 as “*Special LNP Category*”). The FCC allowed affected carriers to calculate the *Special*  
4 *LNP Category* costs that are within this specific definition and to recover those costs  
5 through an end-user surcharge over a specific and limited time period (usually over five  
6 years). The costs that CenturyTel proposes to include in the LSR service order charge are  
7 not included, and have not been included, in that specific category of costs.

8 **Q. Can you provide any support for your conclusion that the administrative costs of**  
9 **processing an LSR are not included in the *Special LNP Category* costs?**

10 A. Yes. The FCC has defined the scope of the *Special LNP Category* costs in the context of  
11 the various orders it has released addressing the special end user surcharge. For example,  
12 the FCC explains that “long-term number portability involves the cost of redesigning  
13 current networks to handle the database query system (*e.g.*, the cost of creating the  
14 databases, upgrading switch software, and purchasing SCPs), as well as the incremental  
15 cost of winning a subscriber (*e.g.*, the cost of uploading that customer’s new LRN to the  
16 regional database and querying future calls from that customer to NXXs where number  
17 portability is available).” *Third Report and Order*, In the Matter of Telephone Number  
18 Portability, released May 12, 1998, in CC Docket No. 95-116 and RM 8583 at para. 26.  
19 The FCC described this category as “the costs of purchasing the switch software  
20 necessary to implement a long-term number portability solution.” *Id.* at para. 62. As  
21 such, this category of costs includes the initial, extraordinary costs that carriers incurred  
22 at the point in time when they implemented long-term number portability methods. The  
23 FCC concluded that the scope of network upgrade costs should be confined only to the

1 portion of overall upgrade costs that is demonstrably an incremental cost that carriers  
2 incur in the provision of long-term portability. *Id.* at para. 73. Therefore, by FCC ruling,  
3 the *Special LNP Category* does not include the administrative costs of ILECs or CLECs  
4 for the processing of service orders among carriers, and Charter cannot point to any  
5 suggestion by the FCC to the contrary.

6 **Q. What has been the industry experience since the FCC decided the cost recovery**  
7 **details for what it defined as the *Special LNP Category* costs?**

8 A. At the point in time when an incumbent LEC converted its network to the long-term  
9 method of number portability, the carrier was allowed to quantify the *Special LNP*  
10 *Category* costs and file a tariff for the recovery of these costs (and other categories  
11 related to the introduction of long-term LNP) from its own subscribers over a specific and  
12 limited time period, most often over five (5) years. *See* 47 C.F.R. § 52.33. The exact  
13 inclusion of costs within the special category and the quantification of those costs were  
14 the subject of the FCC proceedings reviewing tariffs filed by the incumbents. *See, e.g.,*  
15 *Memorandum Opinion and Order, In the Matter of Telephone Number Portability Cost*  
16 *Classifications Proceeding*, released December 14, 1998 in CC Docket No. 95-116 and  
17 RM 8535. As such, the experience of the incumbent LECs in developing the tariff  
18 proposals and interaction with the FCC defined the scope of these special end user  
19 charges.

20 **Q. Is there any other support for your conclusion that the administrative costs of**  
21 **processing LSRs is not included in the *Special LNP Category* of costs?**

22 A. Yes. The special end user surcharge that recovered the *Special LNP Category* costs is  
23 limited in time and does not include recovery of ongoing or future costs. The special end

1 user charge ceases at the end of the special surcharge time period. For many carriers, that  
2 charge and recovery mechanism no longer exists but the administrative costs of  
3 processing LSRs continues. Therefore, there is no way that the time limited charge could  
4 recover these administrative costs because the incurrence of these costs continues  
5 indefinitely.

6 Furthermore, in an order addressing a request by BellSouth, the FCC recognized  
7 that there may be some other costs that arise in the context of number portability activity,  
8 but concluded that such costs do not specifically qualify for treatment or recovery via the  
9 *Special LNP Category* end user charge. *Order, In the Matter of Telephone Number*  
10 *Portability and BellSouth Corporation Petition for Declaratory Ruling and/or Waiver,*  
11 released April 13, 2004 in CC Docket No. 95-116. In the context of that proceeding,  
12 Verizon Wireless asked the FCC to address “carrier-to-carrier” charges associated with  
13 administrative processing of orders, including those of LNP requests. *Id.* at para. 8, note  
14 41. The FCC went on to conclude that the costs to be recovered via these carrier-to-  
15 carrier charges are not included in the special end user charge because BellSouth  
16 confirmed that the proposed charges were standard fees for services provided to carriers  
17 and such transaction costs “are not recoverable through an end-user . . . charge.” *Id.* at  
18 para. 10, and note 49. The proposed fees included recovery of transaction expenses  
19 including fees for processing LNP requests. *Id.* The FCC concluded that the fees for  
20 costs not includable in the *specific costs directly related to providing long-term number*  
21 *portability* category “do not satisfy the Commission’s cost recovery standards for  
22 portability-related charges. . . . Were BellSouth to seek recovery of such costs through its  
23 [federal end user] tariff, they would be rejected. However, because BellSouth is not



1 seeking to recover these costs from its own end-users, there is no danger of double  
2 recovery.” *Id.* at note 49. Thus, the FCC concluded that the administrative costs for  
3 which CenturyTel seeks charges between the Parties are not included in the special  
4 federal end user tariff charges as Charter claims.

5 **Q. Does CenturyTel generally assess charges for processing LSRs?**

6 A. Yes. That is my understanding from my consultation with the CenturyTel management.

7 **Q. Does Charter submit LSRs to CenturyTel?**

8 A. Yes.

9 **Q. Does CenturyTel submit LSRs to Charter?**

10 A. Yes. When CenturyTel seeks to provide service to a current customer of Charter and  
11 seeks to port that end user’s telephone number, CenturyTel must submit an LSR.

12 **Q. Does CenturyTel assess order processing charges as a routine term and condition of  
13 interconnection with CLECs?**

14 A. Yes, that is my understanding.

15 **Q. Can you briefly describe the costs that CenturyTel seeks to recover via the LSR  
16 processing charge?**

17 A. Assuming that the proper terms and conditions of interconnection are in place between a  
18 CLEC and CenturyTel, the CLEC submits LSRs for end users that are changing service  
19 and seek to port their numbers. While Mr. Reynolds provides more specific testimony  
20 with respect to the steps that must be taken, in general, the office actions that  
21 CenturyTel’s staff must take include the following: The CenturyTel staff must access  
22 Internet based request systems and retrieve the LSRs of CLECs. The LSR must be  
23 reviewed in the context of pending orders and the accuracy and completeness of the

1 order. The staff member goes through a number of checks of the information included on  
2 a LSR to ensure proper authorization for porting and whether current services need to be  
3 addressed as a result of the service provider change. Assuming that the order is complete  
4 and correct, the order is entered into an activities system and also into the CenturyTel  
5 CLEC account activity system and updated multiple times in the course of completing the  
6 pending orders. After these tasks are completed, the order is forwarded to the technical  
7 personnel that actually perform the port in accordance with industry standards and  
8 database interaction. These activities are included in the costs that the other CenturyTel  
9 witness has assembled for the derivation of the service order charge.

10 **Q. Are the service order processing costs you have described above part of the actual**  
11 **porting process?**

12 A. No. The activity of interacting with regional databases and programming switches to  
13 accomplish the port are separate activities. Technical personnel coordinate this activity  
14 with the National Portability Administration Center. An examination of the costs to be  
15 included in the derivation of the LSR ordering charge as the other CenturyTel witnesses  
16 submit in this proceeding will reveal this distinction.

17 **Q. Is the charging of a processing fee between the Parties for number port requests**  
18 **consistent with cost recovery practices in the industry?**

19 A. Yes. The activities benefit the new service provider and the end user that is changing to  
20 this new service provider. Therefore, the charges that CenturyTel proposed for the  
21 administrative functions associated with porting a number should flow to the carrier that  
22 can recover them from the benefiting end user. No one would argue that there is time  
23 incurred in processing any form of service order and that such time results in costs being

1 incurred by the Party fulfilling the order. As such, both Parties should be required to  
2 provide compensation to the other for the typical service order activity processing costs.

3 If each carrier were otherwise required to absorb these service order processing  
4 costs, the entire body of users of the Party “porting out” the number would be subjected  
5 to the costs associated with the specific porting customers. By charging the new service  
6 provider, the new service provider can recover these costs from the end user that has  
7 *caused* the costs to be incurred and is the ultimate beneficiary, *i.e.*, from the end user that  
8 has changed his or her service to that new provider.

9 **Q. Has this issue of charging a LSR administrative processing charge for number port**  
10 **requests been addressed in Missouri?**

11 A. Yes. In a complaint case involving CenturyTel and Charter, Commission Staff William  
12 Voight provided testimony concluding that “CenturyTel and Charter undoubtedly incur a  
13 cost in an administrative -- what I would call variable cost in porting telephone numbers”  
14 and that CenturyTel can assess a service charge. *See* Transcript, Vol. 2, p. 311,  
15 Complaint of Charter Fiberlink, LLC Seeking Expedited Resolution and Enforcement of  
16 Interconnection Agreement Terms Between Charter Fiberlink -- Missouri, LLC and  
17 CenturyTel of Missouri, LLC, Case No. LC-2008-0049.

18 **Q. How should Issues 27 and 40 be resolved?**

19 A. The Commission should conclude that LSR processing charges are appropriate and the  
20 framework of Initial Service Order, Subsequent Service Order and the definitions and  
21 rates for these activities should be adopted. The other CenturyTel witnesses will set forth  
22 justification for the rates associated with these elements.

1 **Issue 33** **Is Charter entitled to lease CenturyTel facilities for the purpose of**  
2 **connecting Charter’s network to CenturyTel’s 911 networks? If so, is**  
3 **Charter entitled to lease such facilities at TELRIC rates?<sup>13</sup>**  
4

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

7 **Q. Is Charter’s statement of Issue 33 proper?**

8 A. No. CenturyTel has restated Issue 33 in a manner more descriptive of the dispute  
9 between the Parties.

10 **Q. Can you explain the basis for discussing Issues 33 and 39 together?**

11 A. Yes. Both issues involve what charges should apply to Charter for the use of  
12 CenturyTel’s facilities or services for Charter’s provision of 911 service?

13 **Q. Can you provide some background on the manner in which CenturyTel and other**  
14 **Missouri carriers operate and maintain 911 service and 911 networks in their**  
15 **service territories?**

16 A. Yes. This background is explained under CenturyTel’s position in the Revised DPL  
17 under Issues 33 and 39. The authorized agency in each local jurisdiction operates a  
18 public safety answering point (“PSAP”) for the operation of 911 service. In those  
19 jurisdictions where CenturyTel is the primary incumbent LEC, CenturyTel serves the  
20 PSAP agency with facilities and “services” that CenturyTel provisions for such agency.  
21 Each public agency enters into contracts with each LEC “service supplier” for the  
22 necessary systems.

23 Furthermore, it is my understanding that each jurisdiction has tax levying  
24 authority. As part of the contracts that each jurisdiction has with the service supplier

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<sup>13</sup> Charter contends that Issue 33 should be framed as follows: “Should CenturyTel be required to make 911 facilities available to Charter at cost-based rates pursuant to Section 251(c)?”

1 LECs, the LECs are required to assess and collect a tax levy -- 911 surcharge -- on a per-  
2 line basis subject to certain statutory limits and then to remit the collected surcharge  
3 revenue to the PSAP authority as the means to fund its operation.

4 **Q. Is Charter required to participate as a service supplier in the 911 arrangement with**  
5 **PSAP authorities?**

6 A. Yes. Again, as explained in the Revised DPL, certificated LECs are required to provide  
7 access to local emergency services including 911 access. In other words, if a certificated  
8 LEC intends to provide service to customers in Missouri, it must provide access to 911  
9 where such emergency systems have been established and must collect the appropriate  
10 911 surcharge and remit the revenues to the PSAP authority.

11 **Q. Where an incumbent LEC is the primary service supplier to a PSAP jurisdiction,**  
12 **how do other carriers that operate within that same jurisdiction provision 911**  
13 **service?**

14 A. To avoid duplication of costs, there is most often only one carrier that provisions the  
15 necessary selective routers and dedicated connections to the appropriate PSAPs for  
16 emergency dispatch within a specific area. CenturyTel has this primary role in some  
17 jurisdictions in Missouri, and other larger LECs have a similar primary role in others.  
18 The other (non-primary) LECs operating in those jurisdictions must connect trunking  
19 facilities to the primary LEC's selective router location so that the other carrier's 911  
20 services can be routed to the appropriate answering point.

21 **Q. In those instances where CenturyTel is the primary service supplier and Charter is**  
22 **providing competitive service to end users in the same area, how would Charter**  
23 **connect to the 911 system?**

1 A. Charter would need to connect its network to the CenturyTel 911 system location.  
2 Charter can accomplish this by installing its own facilities, purchasing such facilities  
3 from third parties, or leasing such facilities from CenturyTel as Charter does with  
4 CenturyTel today. Under the arrangement that Charter has with CenturyTel today,  
5 Charter leases trunks from CenturyTel pursuant to tariffed terms and conditions.

6 **Q. What is the established practice in Missouri for the operating LECs to be**  
7 **reimbursed for the costs of provisioning 911 services within each PSAP jurisdiction?**

8 A. It is my understanding that the operating LECs work cooperatively with PSAP  
9 jurisdictions to determine the scope of facilities and services to be provided by each LEC.  
10 Once the scope of facilities and services are established between the LECs and the PSAP  
11 jurisdictions (*i.e.*, the scope is accepted and confirmed by the PSAP jurisdiction), the  
12 LECs recover their costs based on special tariff charges set forth in State tariffs. These  
13 specialized services 911 tariff terms and conditions set forth rate elements that apply to  
14 the various facilities and services provided to the PSAP jurisdiction.

15 **Q. What are the costs that CenturyTel is proposing to recover from Charter?**

16 A. CenturyTel maintains that it should recover from Charter any costs of 911 operations  
17 related to Charter's 911 service that are caused by Charter and are outside those costs that  
18 CenturyTel recovers from PSAP jurisdictions. For the 911 relationship that Charter  
19 currently has with CenturyTel, this includes facility charges for the connection of  
20 Charter's network to the selective router location operated by CenturyTel, and perhaps a  
21 charge should Charter request an additional copy of the Master Street Address Guide.  
22 These are the only charges that would apply to Charter given its current arrangements.

1 **Q. If these are the only charges that may apply, what is the reason for CenturyTel's**  
2 **inclusion of the additional language and rates in the Agreement?**

3 A. All of the other terms and charges set forth in the CenturyTel Agreement are there to  
4 address other CLECs that have a right under 47 U.S.C. § 252(i) to adopt the Agreement  
5 but have not established the same relationship with CenturyTel as has Charter. New  
6 CLECs may require other services and facilities outside the scope of what Charter needs,  
7 and any adoptable agreement must cover such an eventuality.

8 **Q. Has Charter already established a 911 relationship with CenturyTel?**

9 A. Yes. Charter has already established connectivity with and currently uses CenturyTel's  
10 E911 Gateway. Charter paid the appropriate nonrecurring charges at the time these  
11 facilities were place in service.

12 **Q. Ultimately, are the LECs' costs of provisioning facilities and services for 911 service**  
13 **recovered from the PSAP jurisdiction?**

14 A. Yes, that is my understanding. While there may be some individual conditions or  
15 limitations in some instances, the general framework is that the PSAP jurisdiction is  
16 billed the applicable special rate element charges specified in the providing LEC's tariff.  
17 Regardless of any issue regarding 911 facilities that Charter may have with CenturyTel in  
18 this arbitration proceeding, CenturyTel's recovery of 911 costs for PSAP jurisdictions is  
19 based on its established 911 element charges set forth in the specialized tariff. The cost  
20 method to be used is not in question for those tariffed rates,.

21 **Q. Has Charter established the framework to bill the PSAP jurisdiction?**

22 A. No. It is my understanding that Charter has not been included in the arrangement with  
23 the PSAP jurisdiction. However, it would appear that Charter has the same rights to

1 recover from PSAP jurisdictions its costs of providing 911 service. This would seem to  
2 be both the preferable approach and the approach most consistent with the established  
3 framework that exists for other carriers. If Charter's participation were established with  
4 the PSAPs, Charter would receive reimbursement from the PSAP jurisdiction, just as  
5 other LECs do today, through the bills that Charter would send to the PSAP jurisdiction.  
6 As a result, Charter would not experience any net cost. It is CenturyTel's position that it  
7 should be the responsibility of *each* LEC and CLEC providing service to the public to  
8 establish their respective involvement in the local 911 framework.

9 **Q. How does CenturyTel propose to address the connecting facilities arrangement with**  
10 **Charter?**

11 A. CenturyTel has included Section 3.3.1 of Article VII in the Agreement which, under  
12 CenturyTel's proposal, would continue to make the same facility use options available to  
13 Charter as are available today at the specific rates set forth in Article XI.

14 **Q. What is Charter's proposal?**

15 A. Charter's proposal differs in that Charter claims that it is entitled to obtain the connecting  
16 facilities from CenturyTel at TELRIC prices. Of course, if Charter receives  
17 reimbursement from the PSAP jurisdictions in a similar manner as other LECs, Charter  
18 would not incur any net cost regardless of what rates are established between carriers.  
19 While I do not believe that Charter's discussion of pricing methods is relevant, I will  
20 nevertheless address some of Charter's arguments below. However, this discussion is  
21 without waiver of CenturyTel's right to argue that any 911 facility rate issues are wholly  
22 outside the scope of CenturyTel's Section 251 obligations and this arbitration. It is with  
23 this specific reservation of rights that my remaining testimony is provided below.



1 **Q. What justification does Charter offer for its proposal?**

2 A. Charter, in the Revised DPL, quotes from an FCC order that is addressing non-  
3 telecommunications carrier status IP-Enabled service providers and the means that those  
4 providers may provision access to “911 databases” and “interconnection to 911  
5 facilities.” In this case, Charter has indicated its status as a telecommunications carrier.  
6 Charter also identifies Section 271 of the Act as related to its proposed requirement and  
7 related to the cited paragraph in the order.

8 **Q. Does Section 271 of the Act apply to CenturyTel?**

9 A. No. As I indicated in my testimony on Issue 18, CenturyTel is not a BOC. Section 271  
10 applies solely to Bell operating companies with respect to the line of business restrictions  
11 imposed on the BOCs. The text of the order identifies BOCs as the parties relevant to the  
12 FCC’s discussion therein. In addition, I note that Charter fails to note the fact that in the  
13 very next paragraph in the order that it cites (at para. 39), the FCC references the fact that  
14 many BOCs offer access to the 911 systems through tariff offerings and makes no  
15 mention of any pricing constraints that might apply.

16 **Q. What response do you have to Charter’s suggestion that CenturyTel’s obligations**  
17 **under Sections 251(a) of the Act mean that CenturyTel is required to provide**  
18 **connecting facilities at TELRIC prices?**

19 A. First, Section 251(a), as I have discussed earlier in various places in this testimony,  
20 imposes only a general duty to be connected to other carriers either directly or indirectly.  
21 CenturyTel has agreed to connect with Charter and there is no further implication other  
22 than that fact.

1 **Q. What response do you have to Charter’s suggestion that CenturyTel’s obligations**  
2 **under Section 251(c) of the Act mean that CenturyTel is required to provide**  
3 **connecting facilities at TELRIC prices?**

4 A. Section 251(c) is not applicable for at least several reasons.

5 First, Charter’s connection to CenturyTel’s 911 selective router is not an  
6 interconnection arrangement. Interconnection is the linking of two networks for the  
7 mutual exchange of traffic. *See* 47 C.F.R. § 51.5. The FCC has also concluded that  
8 “transmission facilities connecting incumbent LEC switches and wire centers are an  
9 inherent part of the incumbent LEC’s local network Congress intended to make available  
10 to competitors . . . . On the other hand, we find that transmission links that simply  
11 connect a competing carrier’s network to the incumbent LEC’s network are not  
12 inherently a part of the incumbent LEC’s local network. Rather, they are transmission  
13 facilities that exist outside the incumbent LEC’s local network.” *Report and Order and*  
14 *Order on Remand and Further Notice of Proposed Rulemaking*, released August 21, 2003  
15 in CC Docket Nos. 01-338, 96-98, and 98-147 at para. 366. To the extent that  
16 CenturyTel provides facilities to Charter for Charter’s connection to a 911 selective  
17 router, Charter is not connecting to incumbent LEC switches or wirecenters. Moreover,  
18 the CenturyTel facilities that Charter wants to use are not within the scope of  
19 CenturyTel’s incumbent LEC network for purposes of interconnection.

20 Second, to the extent that Charter argues that the connecting facilities from  
21 Charter’s network to the CenturyTel 911 selective router are subject to Section 251(c)  
22 and should be considered “entrance facilities,” it would be wrong. Entrance facilities  
23 connect the CLEC network to the ILEC network for the mutual exchange of traffic.

1           However, the facilities that are in dispute in this issue do not connect to the CenturyTel  
2 incumbent network, the facilities would connect Charter's network to a 911 selective  
3 router network that is outside the CenturyTel incumbent network that is subject to  
4 interconnection. Furthermore, there is also no mutual exchange of traffic.

5           Third, the facilities connecting to the 911 system routers could not be entrance  
6 facilities because entrance facilities are only available "pursuant to section 251(c)(2) *for*  
7 *the transmission and routing of telephone exchange service and exchange access*  
8 *service.*" *Order on Remand, In the Matter of Unbundled Access Network Elements,*  
9 released February 4, 2005 in WC Docket 04-313 ("*TRRO*") at para. 140. For the  
10 facilities that Charter may need to connect to the 911 system, these facilities would not be  
11 used for transmission or routing of telephone exchange service or exchange access, but  
12 would be used for providing emergency service access to a PSAP. Therefore, the  
13 purpose is not within the scope under which interconnection facilities are available under  
14 Section 251(c)(2) of the Act.

15           Charter does not seek interconnection facilities of any kind. It seeks point-to-  
16 point circuits from its network to the 911 system. The 911 selective router is not a switch  
17 and is not part of the incumbent LEC network subject to the terms of interconnection. A  
18 selective router is part of the PSAP 911 system network and is provided so that PSAPs  
19 can avoid multiple connections to many LECs.

20           Finally, assuming *arguendo* that such facilities were deemed to be interconnection  
21 facilities and determined to be used for the transmission or routing of local telephone  
22 exchange service or exchange access under Section 251(c)(2), then such facilities,

1 according to the FCC, must be provided at cost-based rates, but not necessarily under  
2 rigid TELRIC requirements. Any cost-based rate method would comply.

3 **Q. Assuming arguendo that the 911 facilities were deemed to be entrance facilities, how**  
4 **did the FCC address interconnection in its *TRRO* order?**

5 A. The FCC ruled that a CLEC can obtain entrance facilities at a low cost with no  
6 impairment to its ability to compete, and that competing carriers are not entitled to use  
7 unbundled entrance facilities at TELRIC-rates. *Id.* at paras. 136-141. As such, the FCC  
8 removed entrance facilities from the list of unbundled elements subject to interconnection  
9 and its interconnection form of pricing (*i.e.*, forward-looking economic pricing methods).

10 Facilities found to be competitively impaired are generally required to be priced  
11 under the TELRIC methods. The FCC's recognition that CLECs could obtain entrance  
12 facilities without impairment under other arrangements is consistent with CenturyTel's  
13 position that such facilities are available under the cost-based rates under which  
14 CenturyTel makes the facilities available in tariffs.

15 Logically and conceptually, to continue to apply TELRIC to such facilities would,  
16 in turn, mean that the FCC's impairment conclusion with respect to entrance facilities  
17 meant nothing. Any suggestion that the FCC removed entrance facilities from  
18 impairment pricing treatment (*i.e.*, TELRIC) in one sentence, and then subsequently  
19 reinstated that treatment in a subsequent sentence a paragraph later would render the  
20 FCC's conclusions in the *TRRO* meaningless, and would create an unexplained conflict  
21 within the *TRRO*.

22 For these reasons, Charter is not entitled to obtain the use of CenturyTel's  
23 facilities for connection of Charter's network to CenturyTel's 911 System network at

1 TELRIC rates. CenturyTel's proposes to offer to provide use of facilities to Charter for  
2 this purpose pursuant to the rates set forth in the Agreement. This approach satisfies both  
3 the requirement of cost-based rates and adherence to non-discrimination. Finally, apart  
4 from the potential connecting facilities and a request for additional copies of the Master  
5 Street Address Guide, CenturyTel is not proposing to charge Charter anything else for the  
6 use of CenturyTel's 911 System network.

7

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

9 A. Yes, it does.