

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Evidentiary Hearing
8 October 29, 2008
9 Jefferson City, Missouri
10 Volume 3
11
12 In the Matter of the Petition of)
13 Charter Fiberlink-Missouri, LLC,)
14 for Arbitration of an)
15 Interconnection Agreement Between) Case No. TO-2009-0037
16 CenturyTel of Missouri, LLC, and)
17 Charter Fiberlink-Missouri, LLC)
18
19 RONALD D. PRIDGIN, Presiding,
20 SENIOR REGULATORY LAW JUDGE.
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1 P R O C E E D I N G S

2 JUDGE PRIDGIN: Good morning. We are back
3 on the record in Case No. TO-2009-0037. As I recall, as
4 we left it last night, we were in the middle of
5 cross-examining Mr. Watkins, and just to touch base with
6 counsel, is it my understanding you want to stay with the
7 list of witnesses on the e-mail that Mr. Comley sent to
8 me, and that would be Mr. Reynolds, Mr. Schultheis, if I'm
9 pronouncing that name correctly, Ms. Hankins and
10 Mr. Miller. Let me go in that order.

11 All right. Is there anything further from
12 counsel before we resume cross-examining Mr. Watkins?
13 Nothing? All right. Mr. Watkins, you are still under
14 oath. And I don't recall, is it Mr. Halm, are you
15 cross-examining him?

16 MR. HALM: Yes, your Honor. I think we
17 need to clear the room of our witnesses that haven't
18 signed a nondisclosure agreement.

19 JUDGE PRIDGIN: In preparation, I think we
20 were going to go in-camera last night. Let me give the
21 witnesses a moment to leave.

22 (REPORTER'S NOTE: At this point, an
23 in-camera session was held, which is contained in
24 Volume 4, pages 332 through 339 of the transcript.)

25

1 JUDGE PRIDGIN: Does counsel want to wait
2 for those people to rejoin us or do you want to continue?

3 MR. HALM: I'll go ahead and start.

4 STEVEN E. WATKINS testified as follows:

5 CROSS-EXAMINATION BY MR. HALM:

6 Q. Given the facts that we just discussed, is
7 it still your position that a single point of
8 interconnection would require new and extraordinary
9 trunking arrangements?

10 A. Not in all situations. I saw only one
11 example of CenturyTel's operations across the state.

12 Q. Thank you. Is it technically possible to
13 combine different types of traffic on a single trunk
14 group?

15 A. It's technically possible, yes.

16 Q. So the trunk groups that are in place
17 between the end offices that we've just talked about?

18 A. It's technically possible. It's also
19 actually -- well --

20 Q. It's technically possible to carry local
21 traffic?

22 A. It's technically possible to carry multiple
23 kinds of traffic in the same trunk group, yes.

24 Q. Any idea whether it would be cost
25 prohibitive?

1 A. I don't know the costing implications.

2 Q. And are you familiar with the concept of

3 logical trunks?

4 A. No.

5 Q. In your testimony regarding the potential

6 ramifications of Charter's single point of interconnection

7 proposal, you have asserted that the proposal if

8 implemented would impose greater transport costs on

9 CenturyTel?

10 A. Yes.

11 MR. MOORMAN: Excuse me, counsel. Can you

12 give us a page cite?

13 MR. HALM: Rebuttal testimony, page 35.

14 MR. MOORMAN: Mr. Watkins, do you have

15 that?

16 THE WITNESS: Yes.

17 MR. HALM: Lines 12 through 15.

18 THE WITNESS: All right. Okay.

19 BY MR. HALM:

20 Q. Are you ready? Isn't it true that Charter

21 would have the same transport costs on its side of a

22 single point of interconnection?

23 A. I don't -- no. No.

24 Q. That's not true?

25 A. Depending upon where you might choose to

1 request a single POI, then CenturyTel's costs would be
2 determined by the choice in which particular end offices
3 you might be competing in and a number of factors, and
4 then there's a different set of factors on Charter's side
5 of the POI.

6 Q. Let's assume that a single POI was
7 established at the Wentzville tandem and Charter served
8 the communities of Cuba, Bourbon, O'Fallon and St. Peters
9 and delivered all of its traffic to that single point of
10 interconnection at the Wentzville tandem. It would incur
11 transport costs in doing that, wouldn't it?

12 A. It would incur transport costs, for
13 example, between Cuba and Wentzville for facilities that
14 CenturyTel does not currently transport local traffic that
15 originates and terminates in Cuba to Wentzville.

16 Q. I'm sorry. I'm asking you about Charter's
17 costs.

18 A. Charter's would be on the other side of the
19 POI.

20 Q. And I asked you to assume that we would
21 have a single point of interconnection at the Wentzville
22 tandem.

23 A. Okay.

24 Q. And Charter would have traffic in those
25 four communities I just identified? They would have --

1 A. You would be connecting to the single POI
2 in Wentzville.

3 Q. Right.

4 A. That's all we know about what you would be
5 doing.

6 Q. Right. So if a Charter subscriber in
7 O'Fallon called a CenturyTel subscriber in O'Fallon but
8 there was only that single point of interconnection at the
9 Wentzville tandem, Charter would have to bring that
10 traffic up to the Wentzville tandem, right?

11 A. That would be the point at which Charter
12 would hand it off to CenturyTel.

13 Q. It would incur some costs in delivering
14 that traffic to the point of interconnection?

15 A. As would CenturyTel.

16 Q. Right. Both parties would incur transport
17 costs?

18 A. Not always exactly the same.

19 Q. Generally speaking, both parties would
20 incur transport costs if there is a single point of
21 interconnection?

22 A. Your choice of POI might involve greater
23 efficiencies and convenience for you and greater costs and
24 inconvenience for CenturyTel.

25 Q. But I don't think you deny that both

1 parties will incur transport costs when a single point of
2 interconnection is used?

3 A. Both parties incur transport costs
4 regardless of where POIs are and regardless of whether
5 there's single POIs.

6 Q. Thank you. Thank you very much. In a
7 previous question I asked you about potential costs
8 associated with CenturyTel's transmission of local traffic
9 on the facilities that are in place that we've just talked
10 about, and I think you told me that you don't know what
11 those costs might be?

12 A. I know that, for example, CenturyTel does
13 not transport local traffic that originates and terminates
14 in Cuba --

15 Q. Right, I think you told us that.

16 A. -- to the tandem in Wentzville.

17 Q. Yes. Thank you. And my question was, what
18 additional costs would be associated with carrying traffic
19 that doesn't meet that classification, and I think you
20 said you don't know?

21 A. The additional costs to transport to some
22 location that CenturyTel doesn't currently transport its
23 local traffic to the extent you choose a point that's a
24 point that we don't currently have, don't currently
25 transport our local traffic to.

1 Q. There's facilities in place. Those
2 facilities can accept local traffic. You acknowledge
3 that?

4 A. Correct.

5 Q. Trunks could be establish to carry local
6 traffic?

7 A. At additional cost to what's there today.

8 Q. Yes. What is that additional cost?

9 A. I don't have the absolute value of what
10 that is.

11 Q. Who at CenturyTel would know what that
12 additional cost would be?

13 A. I don't know that -- we would have -- I
14 don't know the answer to that.

15 Q. Is there anybody here today that would know
16 the answer?

17 A. No, because it would depend upon some sort
18 of very specific proposal and evaluation of costs which
19 we're not prepared to do here today.

20 Q. Is there anybody here today, or do you know
21 the capacity of the facilities that we've just talked
22 about?

23 A. No.

24 Q. No, there is nobody here today?

25 A. We don't know the exact capacity, no.

1 Q. Yesterday we talked a little bit -- a lot a
2 bit about the single point of interconnection rule, and
3 I'm still trying to get my mind around this phantom BOC
4 idea that you have, although the FCC never specifically
5 excludes -- the FCC never says that the single point of
6 interconnection rule only applies to BOCs, but that's your
7 interpretation of it?

8 A. Yes.

9 Q. Is it your position that all of the
10 requirements of Section 251(c) only apply to BOCs?

11 A. No.

12 Q. Which ones, then, do apply?

13 A. I'm not sure that all of 251(c) applies to
14 BOCs.

15 Q. Let me ask the reverse, then. Does all of
16 Section 251(c) apply to non-BOCs, like CenturyTel?

17 A. That's a question I'm not sure I'm prepared
18 to answer.

19 Q. You're not prepared to answer?

20 A. It depends upon -- certainly not all of
21 251(c) applies to all carriers other than BOCs. There are
22 a lot of different classifications of carriers, and I'm
23 not here to testify on what classification CenturyTel is.
24 Our testimony centers on we're prepared to provide
25 interconnection pursuant to a particular standard, and

1 we've shown that that standard satisfies 251(c)(2) fully,
2 and that's -- that what Charter is requesting is beyond
3 what is required by 251(c)(2).

4 Q. And Section 251, does that -- well, 251(c),
5 does that identify BOCs specifically?

6 A. No.

7 Q. Does it identify incumbent LECs
8 specifically?

9 A. It does.

10 Q. In your arguments surrounding the
11 application of the single point of interconnection rule,
12 you maintain that the basis for that rule is a single
13 Section 271 order that was issued, what, the year 2000?

14 MR. MOORMAN: Your Honor, just a point of
15 clarification. I won't object necessarily to the form of
16 the question, but when there's characterizations made by
17 Mr. Halm with respect to the questions he's asking
18 Mr. Watkins, Mr. Watkins' response -- just to make sure I
19 have the direction from the Bench, because if so then I
20 have to object, the fact that Mr. Watkins' responds to the
21 question doesn't mean that he agrees with the
22 characterization or advocacy or testimony if you want me
23 to use that, that Mr. Halm is using to phrase the question
24 he's posing. Is that a correct assumption, that his
25 response is simply to -- he isn't necessarily agreeing

1 with the form of the question?

2 JUDGE PRIDGIN: That's how I feel about it.
3 If you think the question's argumentative, you're free to
4 object, but yet just because he's responding to a question
5 that you don't like or he doesn't like doesn't necessarily
6 mean that you agree with the way he's phrased the issue.

7 MR. MOORMAN: Fair enough.

8 JUDGE PRIDGIN: If that's what you're
9 asking.

10 MR. MOORMAN: Yes. Thank you.

11 JUDGE PRIDGIN: I'm sorry. Do we need to
12 ask the question again?

13 THE WITNESS: Yeah, that might be good,
14 please.

15 BY MR. HALM:

16 Q. Okay. Well, at page 28 of your rebuttal
17 testimony, lines 3 through 7, page 28, that seems to be a
18 nice summation of your arguments; is that right?

19 A. There's a more lengthy development of that
20 in my direct testimony, but yes, that's a summary.

21 Q. Is it your opinion that state commissions
22 have never ordered a non-BOC ILEC to provide access at a
23 single point of interconnection for a LATA?

24 A. I'm not sure that I know of any.

25 Q. Okay. I would like to turn to your

1 testimony on Issue No. 20. Generally speaking, is
2 CenturyTel bound by the prior decisions of this Commission
3 concerning network interconnection obligations of the
4 incumbent LECs?

5 A. That's beyond the scope of my testimony,
6 and I guess I'd need to know each decision and what the
7 status of those decisions are and who they apply to.

8 Q. In your testimony you've referred to the
9 Socket decision on several occasions.

10 A. No, I don't believe I did on several
11 occasions.

12 Q. I'm sorry?

13 A. I don't believe I referred to the Socket
14 decision on several occasions.

15 Q. I've got that noted somewhere. Are you
16 familiar with the Socket decision?

17 A. I haven't studied it, no.

18 Q. You've studied quite a bit of federal law,
19 but you apparently haven't studied much state commission
20 decisions implementing federal law; is that right?

21 MR. MOORMAN: Objection, your Honor,
22 argumentative.

23 JUDGE PRIDGIN: Sustained.

24 MR. HALM: Give me a moment, please.

25 JUDGE PRIDGIN: Certainly.

1 BY MR. HALM:

2 Q. On page 48 of your rebuttal testimony --

3 A. Yes.

4 Q. -- at lines 20 through 23.

5 A. Yes.

6 MS. KILPATRICK: I'm sorry, Mr. Halm. What
7 page was that?

8 MR. HALM: Page 48.

9 MS. KILPATRICK: Pardon me.

10 MR. HALM: Lines 20 through 23.

11 BY MR. HALM:

12 Q. You provided your reaction to Mr. Gates'
13 discussion of this Commission's decision in the Socket/
14 CenturyTel interconnection arbitration proceeding?

15 A. Yes. My reference was to Mr. Gates'
16 testimony, not to the Socket proceeding.

17 Q. So have you reviewed that decision?

18 A. No. My answer as contains in my testimony
19 is my response.

20 Q. No. I asked you if you've reviewed that
21 decision.

22 A. I have not.

23 Q. So you didn't rely upon, you didn't read
24 the Socket decision when you wrote your rebuttal
25 testimony?

1 A. My testimony relies upon my analysis of the
2 interconnection requirements out of the act in the FCC's
3 rules, which are the applicable requirements that apply to
4 this proceeding.

5 Q. But not this Commission's decisions in
6 previous arbitration proceedings involving CenturyTel?

7 MR. MOORMAN: Your Honor, I object.

8 MR. HALM: Just to be clear, I'd like the
9 record --

10 MR. MOORMAN: Your Honor, I object. It
11 asks for a legal conclusion. This Commission is well
12 versed in understanding how its decisions may or may not
13 apply to given circumstances and the precedential value
14 associated with it. Calls for a legal conclusion,
15 improper question.

16 MR. HALM: Your Honor.

17 JUDGE PRIDGIN: I'm going to overrule.
18 Both sides have extensively testified about the law, and I
19 don't know how proper it is, but it's been done and both
20 sides have been into it. So I'm going to overrule. And
21 I'm not sure that the witness has answered the question.
22 I think his question went to, did he review that decision,
23 and I'm not sure he answered that question.

24 THE WITNESS: I have not reviewed that
25 decision.

1 BY MR. HALM:

2 Q. Thank you. Did you review any other
3 arbitration decisions of this Commission before writing
4 your testimony?

5 A. I did not.

6 Q. Okay. I think one of the questions in
7 dispute under Issue 20 is whether or not the TELRIC rate
8 should be used for entrance facilities that CenturyTel
9 provides?

10 A. No. My position is that's not an issue
11 under dispute under Issue 20.

12 Q. Do you agree that this Commission, the
13 Federal Court in Missouri and the Eighth Circuit have all
14 ruled that CenturyTel must make available entrance
15 facilities available to Charter pursuant to Section
16 251(c)(2) at TELRIC rates?

17 A. I'm not familiar with that.

18 Q. Are you familiar with the Eighth Circuit's
19 decision affirming the Federal Court's decision affirming
20 this Commission's --

21 A. I haven't studied that, no.

22 Q. Would you assume for argument sake that
23 those bodies did rule that way?

24 A. Okay.

25 MR. MOORMAN: Objection. He says he hasn't

1 studied the case.

2 JUDGE PRIDGIN: Sustained.

3 BY MR. HALM:

4 Q. In preparing your testimony, I think you
5 told us yesterday that you've reviewed the pleadings of
6 both parties; is that right?

7 A. Yes.

8 Q. Did you review the joint DPL that was filed
9 on September 2nd?

10 A. Yes.

11 Q. In your rebuttal testimony at page 50,
12 lines 6 through 10, I think that's where you say that for
13 Issue 20 there are only two issues in dispute. You've
14 identified those two issues as the time period for
15 negotiating rates and what dispute resolution terms apply?

16 A. Yes.

17 Q. And what is the basis for your conclusion
18 that those are the only two issues?

19 A. The status of the proposals and the
20 differences between the proposals.

21 Q. As reflected in the Joint DPL?

22 A. Yes.

23 Q. Does CenturyTel agree that the appropriate
24 pricing standards for these facilities is the TELRIC
25 pricing standard?

1 A. Our position is that that's not an issue in
2 this arbitration at this point in time.

3 Q. Do you agree that that is the appropriate
4 pricing standard?

5 A. I have no position on it. It's not an
6 issue in this proceeding.

7 Q. Did Charter assert that that is the
8 appropriate pricing standard?

9 A. Yes, they did.

10 Q. Did Charter offer direct testimony on that?

11 A. I believe they did.

12 Q. And CenturyTel has not offered any rebuttal
13 testimony?

14 MR. SCHUDEL: Subject to our motion to
15 strike?

16 JUDGE PRIDGIN: Yes.

17 THE WITNESS: There was no need to provide
18 rebuttal testimony. It's not an issue that's yet ripe.

19 BY MR. HALM:

20 Q. Do you have a copy of the Joint DPL with
21 you?

22 A. Yes.

23 Q. At page 78, in the column that is
24 identified as CenturyTel's position, there's a -- one
25 paragraph right in the middle of that column, paragraph

1 begins the need for full six-month period. Do you see
2 that?

3 A. Yes.

4 Q. Can you read to us the last sentence in
5 that paragraph?

6 A. Because as the Illinois Bell court noted,
7 what the FCC said in paragraph 140 is that ILECs must
8 allow use of entrance facilities for interconnection at
9 cost-based rates. TELRIC is a cost-based rate, though not
10 the only one.

11 Q. Okay. Thank you. And then just above
12 that, right after the citation to the Illinois Bell case,
13 there's the last clause to the preceding sentence that
14 begins, one of the subjects.

15 A. Yes.

16 Q. Would you read that for us as well?

17 A. One of the subjects of discussion will be
18 the determination of the standard referenced by the FCC in
19 paragraph 140 of in the matter of unbundled access to
20 network elements order on remand, et cetera.

21 Q. And the standard that CenturyTel's lawyers
22 refer to there, what is that? When they use the term
23 standard, what do you understand that to mean?

24 A. With respect to what is meant by cost
25 based.

1 Q. Not the pricing standard?

2 A. Well, cost based for purposes of
3 determining prices.

4 Q. Right. The statute says they have to be
5 cost based. The question is what pricing standard
6 implements the statute?

7 A. That's correct.

8 Q. Charter has asserted that TELRIC is the
9 appropriate pricing standards?

10 A. You've made that assertion, yes.

11 Q. The language that you just read to us tells
12 us that CenturyTel doesn't believe that is correct?

13 A. The language I read to you says we need six
14 months time so that the parties can negotiate and decide
15 what is the appropriate cost-based standard to use to
16 resolve the pricing for the rates.

17 Q. This sounds like a dispute to me.

18 A. No.

19 Q. Should we add that to your list?

20 A. The language that the parties agreed to
21 purposefully put off the dispute of this issue until after
22 this proceeding was over. That was the purpose of the
23 language that the parties agreed to, to avoid this debate
24 at this point in time.

25 Q. Which language are you referring to?

1 A. The proposals are identical between
2 CenturyTel and Charter, other than the period of time for
3 the negotiation.

4 Q. They literally have the same words?

5 A. I think they have the same effect.

6 Q. They're not identical, are they?

7 A. Charter's language says Charter may lease
8 at cost-based rates pursuant to Section 251(c)(2). Upon
9 the effective agreement, the parties shall attempt to
10 negotiate cost-based rates. That's exactly what
11 CenturyTel has proposed to do.

12 Q. Well, is CenturyTel willing to accept our
13 language, then, is that what you're saying?

14 A. Your language doesn't differ from
15 CenturyTel's on that issue.

16 Q. Then we can resolve this issue right now
17 and you can accept our language, correct?

18 A. Your language doesn't say that TELRIC is
19 the cost-based standard that will be used.

20 Q. Okay. Putting aside -- that's the previous
21 question. If there's no difference, is CenturyTel willing
22 to accept Charter's proposed language?

23 A. I don't think so. I mean, there's other
24 subtle differences.

25 Q. There are other differences?

1 A. Yes.

2 Q. Which are they?

3 A. Well, the --

4 Q. How about the question of how to establish
5 the interim rate, have the parties agreed upon that?

6 A. We have. Well, we thought we agreed until
7 there was a discussion of 50 percent factor. That's the
8 difference of opinion on that issue.

9 Q. But didn't you testify on page 50 of your
10 rebuttal testimony that there's only two issues, and that
11 is the time period for negotiating rates and what dispute
12 resolution terms apply?

13 A. That was our understanding in going into
14 this arbitration. I did address the 50 percent reduction
15 that Mr. Gates explained in his testimony.

16 Q. When did you file your rebuttal testimony?

17 A. October 21st.

18 Q. What's the date at the top of this joint
19 DPL?

20 A. September 2nd.

21 Q. So seven weeks prior to filing your
22 testimony, Charter's proposed language was provided to
23 CenturyTel?

24 A. It was.

25 Q. Yes. And you've just told us that there's

1 another dispute about how the interim rate will be
2 applied?

3 A. Okay. So there's another issue which we --

4 Q. Okay.

5 A. -- picked up on and addressed in the
6 rebuttal.

7 Q. Okay. Let's add that to your list, shall
8 we?

9 A. Okay. We can.

10 Q. Would you be surprised to learn that
11 CenturyTel agreed to use the 50 percent relative use
12 factor in the interconnection agreement between Charter
13 and CenturyTel in Texas?

14 A. I don't know that.

15 Q. You did file testimony in that case?

16 A. I don't know that anybody's agreed to use
17 that, no.

18 Q. Okay. Then you would be surprised to learn
19 that?

20 A. I would.

21 Q. Okay. You told us that you'd reviewed the
22 parties' agreements prior to preparing your testimony?

23 A. For the issues that I was preparing
24 testimony on, yes.

25 Q. Does CenturyTel agree with Charter's

1 proposal that any payments made during the negotiations
2 period pending the establishment of the final TELRIC rate
3 should be subject to a true-up?

4 A. Yes.

5 Q. Can you point us to the language in the DPL
6 that reflects that position?

7 A. There is a -- a difference between the
8 language in the DPL and the language in the proposed
9 agreement that we filed. The proposed --

10 Q. When did you file that proposed agreement?

11 A. On that same day.

12 Q. On September 2nd?

13 A. Yes. And I point that out in my testimony.

14 Q. Where?

15 A. In my rebuttal.

16 Q. Right. Which page of your rebuttal?

17 A. Pages 52 and 53.

18 Q. Which lines?

19 A. Starting on page -- on line 15, on line
20 (sic) 52 through line 2 on 53, and I reference the section
21 in Article 5.

22 Q. I don't see a reference to the Joint DPL
23 that was filed.

24 A. No. The filed agreement does have slightly
25 different language than what was picked up in the DPL.

1 And the language in the filed agreement does say that the
2 rates will be trued up back to the effective date. So
3 there's no question that we agree on that.

4 Q. Good. So when we reconcile this, when the
5 Commission reconciles these disputes, they should look at
6 the language in the filed agreement? They shouldn't rely
7 on your language in the DPL?

8 A. That's correct.

9 Q. Any other places where they shouldn't rely
10 on your language in the DPL?

11 A. Not that I can think of right off the
12 handle, no.

13 Q. You have also offered testimony on Issue
14 No. 27 regarding the proposed number of the porting
15 service charges?

16 A. Okay.

17 Q. I wonder if we can give the Commission a
18 little bit of background on how and why these proposed
19 charges would be assessed? Number porting is a process
20 that is mandated by Section 251(b)(2) of the Telecom Act.
21 Do you agree?

22 A. Yes.

23 Q. And that statute requires both Charter and
24 CenturyTel to port numbers from their network to the other
25 party's network?

1 A. Yes.

2 Q. And this dispute arises in the context of
3 that number porting process mandated by federal law?

4 A. I do not agree, no.

5 Q. Is it true that CenturyTel proposes to
6 assess a charge every time a number is ported from
7 CenturyTel's network to Charter's network?

8 A. They're going to assess a charge not for
9 the number porting but for service order activity
10 associated with processing the service order, which is
11 separate and apart --

12 Q. My question is in timing.

13 A. What's that?

14 Q. My question is the timing.

15 A. The -- to the extent --

16 Q. Would these charges be assessed each time
17 that a number is ported from CenturyTel's network to
18 Charter's network?

19 A. If each time a number is ported there is a
20 local service request that must be processed, then yes,
21 each time a local service processing charge would apply.

22 Q. Okay. Every time a number is ported away
23 from CenturyTel's network, that represents another
24 CenturyTel subscriber that's leaving the company to take
25 service from another?

1 A. Yes.

2 Q. And you're telling us that the charges are
3 for the administrative costs of processing these requests?

4 A. Correct.

5 Q. So that for every local service request
6 that Charter submits to CenturyTel asking them to port the
7 number away because a subscriber's leaving CenturyTel,
8 you're going to propose -- CenturyTel proposes to assess
9 this service order charge?

10 A. That is the proposal, yes.

11 Q. What service is CenturyTel providing to
12 Charter?

13 A. The functions of processing the service
14 order, which I gave a general description of. And the
15 other CenturyTel witnesses in the derivation of the rate
16 development have accumulated the specific activities in
17 the cost. They can speak to that in more detail.

18 Q. But didn't you just tell us that CenturyTel
19 performs these number porting functions because it's
20 required to do so in federal law?

21 MR. MOORMAN: Argumentative.

22 JUDGE PRIDGIN: Overruled.

23 THE WITNESS: No. The number porting
24 functions that qualify for the separate cost recovery
25 related to number porting were separate and apart from the

1 costs that we are to recover through the service
2 processing charge.

3 BY MR. HALM:

4 Q. Okay. Putting aside the charges and the
5 costs, when Charter submits a request to port a number to
6 CenturyTel, CenturyTel does so because it's required to do
7 so by federal law, correct?

8 A. The number porting action is something
9 they're required to do by federal law, yes.

10 Q. The cost associated with responding to
11 Charter requests are specific to CenturyTel, aren't they?

12 A. I mean, the charges for the service
13 processing activities are those that CenturyTel performs,
14 yes.

15 Q. The FCC uses the term carrier-specific
16 cost. So these are carrier-specific costs?

17 A. I think you're referring to terminology
18 again that goes back to the number porting costs, which
19 are separate and apart from the costs that we are dealing
20 with here for the service processing activities.

21 Q. That's true, I am relying upon that
22 terminology. But the question is, are your costs specific
23 to CenturyTel?

24 A. I think that --

25 Q. It's self evident, isn't it, they are?

1 A. I think that's a common sense answer, yes.

2 Q. And do those costs include general network
3 upgrade costs?

4 A. I don't believe so.

5 Q. Is it possible to port a telephone number
6 without submitting a local service request?

7 A. I don't believe so.

8 Q. So then I think what you've told us, then,
9 is that these service order charges under this
10 interconnection agreement will be assessed for something
11 that has to do with absolutely nothing to do with porting?

12 A. No. It's -- it is a service order
13 processing set of functions that occurs when a port also
14 occurs.

15 Q. Okay. In your direct testimony, page 95,
16 on line 14, you testified that the issue of number porting
17 charges has been addressed in Missouri?

18 A. Yes.

19 Q. And you say there was a complaint case
20 between Charter and CenturyTel?

21 A. Yes.

22 Q. Have you read that decision?

23 A. I haven't read it in full, no.

24 Q. Have you read it in part?

25 A. No. I've just been --

1 Q. You haven't read any of it?

2 A. Haven't read it.

3 Q. Do you know what was decided?

4 A. I do know what was decided more or less on
5 this issue.

6 Q. Would you like to change your testimony now
7 that that decision's been rendered?

8 A. No. I think I'm quoting from a Staff
9 person whose testimony was reflecting upon the possibility
10 of there being an administrative charge and their analysis
11 of the costs that are incurred and seemingly would be
12 appropriate for recovery through a charge.

13 Q. Did this Commission affirm or deny
14 CenturyTel's right to assess number porting charges on
15 CenturyTel?

16 A. I would say they denied it, but they denied
17 it based upon a whole different set of facts that aren't
18 related to this case.

19 Q. So are you suggesting that the Commission's
20 decision was inconsistent with Mr. Voight's testimony?

21 A. I'm not prepared to give that analysis. I
22 stick with Mr. Voight's testimony.

23 Q. I would recommend you actually read the
24 decision. You might find it informative.

25 MR. MOORMAN: Argumentative, your Honor.

1 JUDGE PRIDGIN: Well, argumentative, wasn't
2 even a question. I think it was a request. Let's stick
3 to asking questions, please.

4 MR. HALM: Yes, your Honor.

5 BY MR. HALM:

6 Q. If I understand your testimony correctly,
7 you rely upon a decision rendered by the FCC in 2004
8 concerning BellSouth and certain costs?

9 A. I do.

10 Q. Do you believe that the FCC definitively
11 answered this question that is before this Commission in
12 that BellSouth case?

13 A. Which question?

14 Q. The question of whether or not service
15 order charges for number porting are permitted under
16 federal law?

17 A. They didn't answer that, but they certainly
18 was presented with the facts that carrier to carrier
19 charges were being imposed between carriers, addressed it,
20 and if there was any general prohibition against such
21 charges, I seriously doubt they would have let it go and
22 say that they were okay without saying something about it.
23 They didn't say --

24 Q. How did they address it?

25 A. -- it was prohibited.

1 MR. MOORMAN: Your Honor, can he please --

2 THE WITNESS: They clearly recognize that
3 such charges were being charged, I believe, between
4 BellSouth and Verizon Wireless, and if there was some sort
5 of prohibition, I would expect them to have noted that
6 those charges were prohibited, but they were silent on
7 that.

8 BY MR. HALM:

9 Q. And you said that they addressed the
10 question. How did they address it?

11 A. They addressed it by not -- by noting that
12 the charges exist without exclaiming that they are
13 prohibited.

14 Q. They addressed it by doing nothing?

15 A. Correct.

16 Q. And Footnote 49 of that Order is what
17 you've relied upon?

18 A. I don't have it with me.

19 MR. HALM: I would like to offer and share
20 with the witness an excerpt from the FCC decision that Mr.
21 Watkins relies upon.

22 MR. DODGE: May I approach, your Honor?

23 JUDGE PRIDGIN: You may.

24 BY MR. HALM:

25 Q. This is the FCC decision, FCC 0491. I'm

1 not sure that I have the formal citation, but I believe
2 it's in Mr. Watkins' testimony. We'll call this the
3 BellSouth case, if you like.

4 MR. MOORMAN: Just a matter of
5 clarification. Obviously, your Honor, if this is ever
6 moved for introduction, then the entire order would be --
7 you would agree that the entire order would be on --

8 MR. HALM: Absolutely.

9 MR. MOORMAN: And the other, I just want to
10 make sure that I'm seeing something in Footnote 49 that is
11 a modification that you provided to the Order; isn't that
12 correct?

13 MR. HALM: That's correct. I highlighted
14 the sentence.

15 MR. MOORMAN: You highlighted one single
16 sentence within Footnote 49?

17 MR. HALM: I did so for --

18 MR. MOORMAN: Just so the record's clear
19 that that's not what the document would look like if it
20 went to the FCC?

21 MR. HALM: Absolutely. And rather than
22 move this in, we could probably ask the Commission to take
23 administrative notice of this decision.

24 JUDGE PRIDGIN: We'll take notice and
25 certainly note for the record that the copy of this page

1 that's been supplied has bolded language in Note 49 that
2 Charter's counsel supplied that is not in the original
3 order. Is that -- am I correct?

4 MR. HALM: That is correct.

5 JUDGE PRIDGIN: All right. Thank you. You
6 may proceed.

7 MR. HALM: And I did so for ease of
8 reference.

9 JUDGE PRIDGIN: I understand.

10 BY MR. HALM:

11 Q. Mr. Watkins, would you please read into the
12 record that sentence that is in bold and highlighted?

13 A. Because this order only concerns end user
14 charges, this is not the appropriate proceeding to
15 evaluate charges assessed against other carriers.

16 Q. Thank you very much. Could I go back to
17 Issue 8 for a moment? We've only got a couple more
18 questions. Issue 8A involves the question of what
19 interest rate should be applied for refunds of
20 overpayments. You remember your testimony on that issue?
21 You're familiar with what I'm referring to?

22 A. Yes.

23 Q. And I'd like to ask you about a discussion
24 in your direct testimony at page 11, lines 16 and 17,
25 because there you testify that the parties -- and let me

1 just quote, the parties should accept their respective
2 responsibilities to ensure proper billing. What are
3 Charter's responsibilities in that situation?

4 A. I'm referring to Charter's responsibility
5 to review its bills on a timely basis so that any disputes
6 can be identified quickly and both parties can resolve
7 them as quickly as possible.

8 Q. And what are CenturyTel's responsibilities
9 in that situation?

10 A. Same thing.

11 Q. To review bills rendered by the other
12 party?

13 A. Correct.

14 Q. Do you know whether or not Charter renders
15 any bills to CenturyTel?

16 A. I don't.

17 Q. Does CenturyTel have any responsibility to
18 render accurate bills?

19 A. That's the whole purpose of the billing
20 dispute process and the rights of Charter to dispute bills
21 and not pay them if they're in dispute and then resolve
22 whatever the disagreement about the bills are. Those
23 rights are included in the agreement already. I believe
24 the parties have agreed to those processes.

25 Q. But I don't think you answered my question.

1 Does CenturyTel have a responsibility to render accurate
2 bills?

3 A. Yes.

4 Q. Yes. Okay.

5 A. To be carried out through the dispute --
6 billing dispute resolution process.

7 Q. So that's the stopgap for figuring out
8 whether the bills are accurate or not? Are there any
9 internal processes to ensure that the bills are accurate?

10 A. I don't know the internal processes of
11 CenturyTel.

12 Q. But you think it's sufficient to render
13 bills, leave it to Charter to figure out whether or not
14 they're accurate or not, and that's the process that this
15 Commission should approve?

16 A. I think that's the process that all
17 carriers in the country more or less use.

18 Q. But you're not aware of any internal
19 process that CenturyTel has to ensure that its bills are
20 accurately rendered?

21 A. I don't have firsthand knowledge. I
22 suspect they have their own management system to assure a
23 quality service.

24 Q. Continuing in this vein, does CenturyTel
25 have a responsibility not to assess charges that are not

1 set forth in the contract?

2 A. I would say that they don't believe they
3 have ever assessed charges that aren't set forth in the
4 contract knowingly.

5 Q. Knowingly?

6 A. They may have made errors along the way,
7 but disputes on how the interpretation of the contract are
8 are valid billing disputes.

9 MR. HALM: Okay. I've got a copy of the
10 complaint case. Would it be appropriate at this point to
11 offer that to the witness so that he can respond to that
12 question?

13 MR. MOORMAN: Your Honor --

14 JUDGE PRIDGIN: I'm sorry. Go ahead,
15 counsel.

16 MR. MOORMAN: Mr. Watkins already has
17 testified he's not familiar with that case. The
18 Commission's Order speaks for itself, and Mr. Watkins
19 hasn't submitted any testimony with respect to that.

20 JUDGE PRIDGIN: Are we talking about the
21 Charter/CenturyTel Report and Order that the Commission
22 issued recently in the last week or two?

23 MR. HALM: Yes, your Honor.

24 JUDGE PRIDGIN: It sounds to me -- he says
25 he hasn't read the Order. I'm not sure where -- the Order

1 certainly speaks for itself. We can certainly take notice
2 of the Commission's Orders.

3 MR. HALM: Okay, your Honor. Thank you.
4 That's what we'll do.

5 BY MR. HALM:

6 Q. Is it CenturyTel's responsibility not to
7 impose charges from a tariff when those tariff terms don't
8 apply to Charter, when those tariff terms are not
9 incorporated in the parties' interconnection agreement?

10 A. Yes.

11 Q. And is it Charter's responsibility to pay
12 CenturyTel invoices that it knows are inaccurate?

13 A. Repeat your question, please.

14 Q. Is it Charter's responsibility to pay
15 CenturyTel for invoices that Charter knows to be
16 inaccurate?

17 A. It is not Charter's -- Charter is not
18 required to pay bills that it believes are inaccurate. It
19 can dispute the bills, and it doesn't have to pay the
20 disputed portions pursuant to the terms of the agreement
21 that the parties have already agreed to.

22 Q. Okay. So I mean, let's walk through that
23 process a little bit. Charter receives a bill or an
24 invoice from CenturyTel. It looks in its contract.
25 There's no charge for it. It sends a dispute back to

1 CenturyTel. What happens next?

2 A. Then the dispute resolution process
3 proceeds as set forth in the agreement.

4 Q. And if CenturyTel believes that the charges
5 are appropriate, what happens then?

6 A. The dispute process still proceeds.

7 Q. How does the dispute process work as you
8 understand it?

9 A. Well, this issue has to do with terms and
10 conditions that provide incentives for the parties to
11 review the bills on a timely basis, and if Charter reviews
12 the bill, finds something that it doesn't believe it is
13 required to pay, it can dispute it and it doesn't have to
14 pay the bill, and then the parties have to figure out how
15 to resolve the unpaid amount.

16 Q. Are you familiar with how the parties have
17 tried to resolve unpaid amounts in the past?

18 A. No, but this agreement sets forth terms and
19 conditions for how billing disputes will be resolved, and
20 again, I think the parties agreed on that process.

21 Q. Okay. Could I point you to your direct
22 testimony at page 12, lines 15 through 17, and I think
23 there you're talking about Charter's proposal; is that
24 right?

25 A. Yes. As you recall, I was under the false

1 impression from confusion of reading the DPL, as your
2 witness was from time to time, too, that the intent of the
3 proposal was to allow Charter to get a refund before the
4 dispute is resolved, but I now know that's not the case.

5 Q. Okay. And the language that you were
6 referring to, that's agreed-upon language, there's no bold
7 face, there's no double underline?

8 A. I'm not certain I understand your question.

9 Q. The language that was the basis for your
10 confusion yesterday, it's in Section 9.

11 A. I think my testimony yesterday was that the
12 language that you-all had -- that Charter had proposed was
13 somewhat imprecise in exact construction of the sentence
14 that I read might have construed that the one-year time
15 might have been on the refunds or might have been on the
16 time period for when the dispute had to be made. That
17 particular phrase of the sentence wasn't clear what --
18 what it was referring to.

19 But if you say that's not your intent, then
20 we both agree that that's the proper interpretation, that
21 to the extent a refund is due, it's due at the end as part
22 of the dispute resolution process, not as an interim
23 matter.

24 Q. Did you just tell us you're not familiar
25 with the parties' past disputes in the billing problems

1 they've had?

2 A. I'm not -- not entirely familiar with the
3 exact details, no.

4 Q. I mean, because on page 12 of your rebuttal
5 testimony, you refer to a schedule in Mr. Miller's
6 testimony, lines 4 and 5, and you assert that the examples
7 provided --

8 MR. MOORMAN: Hold on.

9 THE WITNESS: Which page?

10 BY MR. HALM:

11 Q. Page 12 of your rebuttal testimony.

12 A. Oh, rebuttal.

13 Q. Lines 4 and 5.

14 A. Yes.

15 Q. You used the term a pattern of conduct by
16 Charter.

17 A. My testimony only concludes that by
18 reviewing that, a reasonable person would come to the
19 conclusion that there is a history of billing disputes and
20 long, drawn-out processes to resolve them.

21 Q. I mean, this pattern of conduct, if it were
22 determined that the invoices that were assessed were
23 improper, would that be a reasonable pattern of conduct to
24 continually dispute them?

25 A. I don't know. You'd have to ask Mr. Miller

1 the details of those.

2 Q. I will ask Mr. Miller about the details.
3 I'm asking you for your opinion.

4 A. My opinion only deals with the issue of
5 whether there should be a provision in the agreement to
6 provide incentives for the parties to review the bills on
7 a timely basis, and the pattern of history between the
8 parties makes the reason why we want the parties to review
9 the bills on a timely basis even more important.

10 Q. In your opinion, if invoices are rendered
11 which are inaccurate and the billed party disputes those
12 consistently, is that a reasonable pattern of conduct to
13 take?

14 A. That's a reasonable pattern of conduct.

15 Q. I'd like to then move to page 14 of your
16 rebuttal, lines 7 through 10. You say, the dispute
17 resolution terms will take into account the need to make a
18 party whole. And I guess reading between the lines, it
19 sounds like you're suggesting that that process will
20 ensure that any overpayments that are refunded following
21 the end of the dispute resolution process would be subject
22 to some form of interest; is that right?

23 A. That would be part of the ultimate
24 resolution of the dispute to whether interest should be
25 applied and what interest should apply.

1 Q. Okay. Can you show me the interest payment
2 provisions in CenturyTel's proposed language?

3 A. There isn't. That's just part of the
4 dispute resolution process.

5 Q. Is there any language in the dispute
6 resolution provision that says interest will be
7 considered?

8 A. There isn't explicit language, nor is there
9 any specific language that precludes it.

10 Q. It's not there?

11 A. It's presumed one way or the other.

12 Q. You presume?

13 A. It's not prohibited by the language.

14 Q. It's not there?

15 A. It's our intent that the dispute resolution
16 process determine what refunds are necessary and what
17 appropriate interest and for what period of times as part
18 of the dispute resolution process.

19 Q. It's not there?

20 MR. MOORMAN: Asked and answered, your
21 Honor.

22 JUDGE PRIDGIN: It's been asked. I don't
23 know if it's been answered.

24 MR. MOORMAN: To the extent the witness was
25 able to answer, it's been answered.

1 MR. HALM: It's a simple question of
2 whether or not the determined interest is in the proposal.

3 THE WITNESS: There is no explicit
4 addressing of interest, but the entire dispute resolution
5 process would include the potential to resolve the dispute
6 of how much interest should apply.

7 BY MR. HALM:

8 Q. Thank you, Mr. Watkins. Finally, my last
9 questions are on Issue 33 concerning the appropriate rate
10 for 911 facilities provided by CenturyTel to Charter.

11 A. All right.

12 Q. And do you understand Charter's position to
13 be that it seeks access to CenturyTel's 911 facilities?

14 A. I'm hesitant to say yes because I'm not
15 sure I do.

16 Q. Okay. Well, CenturyTel has deployed
17 certain facilities in Missouri in order to provide 911
18 service to its subscribers; is that right?

19 A. Yes.

20 Q. And those facilities include selective
21 routers?

22 A. Correct.

23 Q. Which are essentially specialized switches
24 routing 911 traffic?

25 A. Correct.

1 Q. And CenturyTel allows competitive LECs like
2 Charter to connect to those selective routers so that
3 those competitive LECs can also utilize that functionality
4 to ensure that all Missourians get 911 service, right?

5 A. That's essentially correct, yes.

6 Q. And so the 911 facilities at issue in Issue
7 33 is the connection between that CenturyTel selective
8 router and the Charter network; is that how you understand
9 it?

10 A. Yes, connections and facilities to connect
11 your network to their network.

12 Q. And so those are facilities that are used
13 for the provision of 911?

14 A. That Charter would use in connecting to
15 CenturyTel for Charter's provision of 911.

16 Q. Okay. And then you've had the selective
17 router here. You've got a Charter network over here.
18 You've got the PSAP over here, right?

19 A. Uh-huh.

20 Q. And CenturyTel establishes connections
21 between the selective router and the PSAP; is that right?

22 A. That's correct.

23 Q. CenturyTel assesses the PSAP for the cost
24 of those?

25 A. It's my understanding that that portion of

1 what CenturyTel performs is recovered from the PSAP.

2 Q. So that portion, the link between the
3 public, the selective router and the PSAP is not Charter's
4 responsibility?

5 A. That's -- only because they recover that
6 from the PSAP.

7 MR. HALM: Thank you, Mr. Watkins. I have
8 no more questions. Thank you, your Honor.

9 JUDGE PRIDGIN: Thank you. That concludes
10 cross?

11 MR. HALM: Yes, it does.

12 JUDGE PRIDGIN: See if we have any bench
13 questions. Mr. Couch?

14 MR. COUCH: No. I have none.

15 JUDGE PRIDGIN: All right. Thank you.
16 Ms. Dietrich?

17 MS. DIETRICH: I have several.

18 QUESTIONS BY MS. DIETRICH:

19 Q. First of all, I want to clarify the
20 question and answer that you had about the single POI.
21 The question was something along the lines that, is it
22 your position that a state commission has never ordered a
23 non-BOC to establish a single POI, and I think you said
24 you weren't aware of any, but there were so many negatives
25 in there, I wasn't sure what your answer was.

1 A. I have not seen a decision where -- where
2 one of my clients have been ordered to do a single POI.
3 I'm sure there's some. I'm just not aware which ones.

4 Q. Okay. In your direct testimony on
5 page 5 --

6 A. Okay.

7 Q. -- beginning at line 4, your discussion of
8 the definition of local traffic, and if I'm reading your
9 testimony correctly, you say the parties have agreed on a
10 definition of what qualifies as local traffic; is that
11 correct?

12 A. That is correct.

13 Q. Is it necessary to define any type of IP
14 traffic in the agreement since the definition of local has
15 been defined?

16 A. You know, that could be an approach, but I
17 think we are more concerned about being more careful than
18 that because, as I said yesterday, we have encountered
19 carriers who provide some new form of service and claim
20 some sort of Internet protocol aspect to the service and
21 say, oh, we don't owe access charges for long distance
22 calls we're terminating on your network. So we take a
23 more aggressive and more objective -- addressing those
24 more explicitly than leaving it silent.

25 Q. Okay. And on Issue 9, and it's on page 14

1 of your direct testimony if you want to refer to that,
2 you're talking about whether Charter should pay for
3 facilities that have been deployed but not used within six
4 months. Does Charter pay any type of charge for leasing
5 the facility whether it's used within six months or not?

6 A. There's actually both possibilities within
7 the agreement. There may be facilities that Charter
8 orders and Charter pays for. There may be facilities that
9 CenturyTel constructs to meet Charter at the POI. We
10 would intend the provisions to apply to both.

11 In the second case, even though CenturyTel
12 is not charging Charter, nevertheless, if Charter abandons
13 that, the facilities that lay stranded, and Charter might
14 decide to move its traffic to some other arrangements,
15 which then we would incur additional costs to move it to
16 some other arrangement. So I'm not certain that the fact
17 that whether we charge or not changes our position on the
18 proper treatment of stranded investment.

19 Q. Okay. And on page 19 of your direct, at
20 line 2, you're talking about the planning process for
21 deploying facilities, and you talk about Charter could
22 haphazardly or purposefully order facilities. If this is
23 a joint planning process between CenturyTel and Charter,
24 would CenturyTel know beforehand whether the -- it was
25 haphazardly planning or whether Charter was going to

1 actually use the facility?

2 A. We wouldn't know their motives necessarily.

3 Q. I'm sorry?

4 A. We wouldn't know Charter's motives in the
5 reason why it ordered facilities or not.

6 Q. So there's no discussion about these
7 facilities are needed because traffic's increasing or this
8 is what we intend to do or anything like that?

9 A. There's no way to be sure beforehand what
10 Charter's intent and motives might be.

11 Q. Okay. And that same sentence, if Charter
12 ultimately orders facilities, as you say, haphazardly or
13 purposefully, could CenturyTel file a complaint with the
14 Commission specifically addressing that action?

15 A. I think that's possible.

16 Q. And at page 50, your discussion at lines 3
17 through 16, that Q and A.

18 A. Uh-huh.

19 Q. Are you saying that Charter does not have a
20 right to indirect interconnection?

21 A. It doesn't have a right to dictate to
22 CenturyTel how CenturyTel will be indirectly
23 interconnected with other carriers. 251 is simply a duty
24 that's applied to each carrier. It doesn't provide rights
25 to one set of carriers to dictate to other sets of

1 carriers how they comply with that duty.

2 Q. But Charter itself has the right to use
3 indirect interconnection?

4 A. It does.

5 Q. And when can Charter use -- who has the
6 right to decide whether it should be indirect or direct
7 interconnection?

8 A. I think that we -- the answer to that is in
9 the terms and conditions that we have proposed. I might
10 use the drawing up here to perhaps explain a little bit.
11 The issue that has arisen in the indirect and direct
12 examples are whether Charter should connect to a
13 third-party carrier and then commingle its traffic through
14 the third-party's tandem over commingled trunks between
15 that third-party carrier and CenturyTel. So the issue is,
16 is that an appropriate arrangement between the parties for
17 anything other than a small amount of traffic. Even if
18 we --

19 Q. Excuse me. My question is, though, who has
20 the right to make that decision?

21 A. I'm not sure that Charter can still -- has
22 the right to interconnect indirectly even if it doesn't
23 use the transit arrangement of the third-party carrier.

24 JUDGE PRIDGIN: If I could interrupt just
25 very briefly. We're having trouble with folks hearing on

1 the Internet. So if you can just try to project as if
2 you're trying to get your voice across the room.

3 THE WITNESS: Do I need to point in this
4 direction more?

5 JUDGE PRIDGIN: That would be great. We've
6 got mics in the ceiling. We don't have microphone stands.
7 So if you can just project a little, I guess for everyone,
8 I appreciate it. Thank you very much. I know it's
9 unusual.

10 BY MS. DIETRICH:

11 Q. And then you had a discussion about interim
12 rates, and if I understand you correctly, your testimony
13 says that interim rates will be trued up. And if I'm
14 understanding the discussion you had earlier, the language
15 in the DPL does not say that, but the language in the
16 interconnection agreement does say that?

17 A. That is absolutely correct.

18 Q. And then on page 67 of your direct, at
19 lines 20 to 21, you say both parties have agreed to
20 interim rates to be used during the pendency of the
21 determination of final rates. Do you see that?

22 A. Yes.

23 Q. So the question of whether the interim
24 rates should be a tariffed rate or have the traffic factor
25 of 50 percent applied is not an issue?

1 A. No. The 50 percent is an additional issue.
2 What I was referring to there is both parties agreed that
3 the tariffed rates that were already proposed should be
4 the interim rates, but then they go a step farther and say
5 they should be arbitrarily reduced by 50 percent.

6 Q. And then on Issue 23, which discusses
7 unqueried calls by Charter as the end line carrier?

8 A. Right.

9 Q. Is the only dispute on this issue whether
10 CenturyTel will complete the call?

11 A. No. The dispute is what charter should pay
12 CenturyTel when Charter does not perform it's N-1
13 obligation and sends the call in a non-standard way
14 through an end office of CenturyTel that has to be routed
15 and queried in a non-standard way.

16 Q. Okay. So the issue is cost?

17 A. Cost. As well as the issue that Charter
18 says that it's obligated to perform it's N-1 obligation,
19 yet in the next breath it says it's not going to perform
20 its N-1 obligation when, in fact, if it did perform it,
21 the issue -- there would be no issue because there
22 wouldn't be any unqueried misrouted traffic.

23 Q. At page 99, line 6 and 7, you say
24 CenturyTel's language needs to be included to cover new
25 CLECs that may require other types of services or

1 facilities other than what Charter --

2 A. Right.

3 Q. -- currently uses. Why wouldn't CenturyTel
4 address this particular CLEC's individual needs in
5 amendment to the Charter/CenturyTel agreement if that CLEC
6 decides to opt into the Charter agreement?

7 A. Well, that would -- to the extent that
8 Charter needs a subset of possible arrangements with
9 CenturyTel, the possibility the agreement might be
10 adoptable by other carriers, it might be workable if we
11 put provisions in the agreement that says this agreement
12 does not apply to anything beyond what Charter currently
13 does, but Charter hasn't been generally willing to include
14 that. That would mean that a new carrier would come along
15 that would be clear that they'd have to negotiate
16 something that goes beyond what Charter does. So -- but
17 because it doesn't contain those provisions, it's
18 necessary to address all the eventualities that might
19 occur with other CLECs that have a different arrangement
20 than Charter.

21 Q. But if another CLEC opts into an agreement,
22 aren't they opting into the agreement as a whole, whatever
23 is included in that, so if there's something missing, that
24 would have to be addressed?

25 A. Well, you know, I think that's where

1 carriers sometimes get in disputes when there's something
2 missing, and then that missing thing is actually an
3 arrangement that occurs between the parties. They get
4 into disputes as to what terms and conditions should
5 apply. We've learned from those experiences and attempted
6 to include all possibilities so that kind of thing doesn't
7 arise.

8 Q. But wouldn't that dispute be an issue
9 between the other CLEC and CenturyTel, and how does that
10 affect Charter?

11 A. It wouldn't affect Charter at all as long
12 as Charter maintains the same current arrangements.

13 Q. Okay. And then still on page 99, at lines
14 9 through 11, you say Charter has already established
15 connectivity with and currently uses CenturyTel's E911
16 gateway. Charter paid the appropriate nonrecurring
17 charges at the time these facilities were placed in
18 service.

19 If I'm reading CenturyTel's language
20 correctly, the only charges that might still be applicable
21 to Charter are charges associated with the chance that
22 Charter might request an additional copy of the Master
23 Street Address Guide; is that correct?

24 A. No. There's a trunk charge and a
25 facilities charge for which there wouldn't be additional

1 nonrecurring charges at this time because they've already
2 established those trunks and facilities, and yes,
3 potential additional charge if they ask for another copy
4 of the guide.

5 Q. So they would have a recurring charge for
6 trunk charge and facility charge?

7 A. Yes, and facilities.

8 Q. Now, if we could move to your rebuttal
9 testimony. At page 5 you're discussing CenturyTel's
10 definition of IP enabled traffic. Are there different
11 compensation schemes or amounts applicable to IP traffic
12 that fits under Charter's definition versus the traffic
13 that fits under CenturyTel's definitions?

14 A. I don't think so. Charter's definition is
15 a subset of CenturyTel's, so I believe Charter's
16 definition would be accommodated within CenturyTel's
17 definition.

18 Q. Okay. If the compensation is the same,
19 then what implications arise from using Charter's
20 definition as opposed to CenturyTel's definition?

21 A. Similar to what I said a few minutes ago,
22 we have experience with CLECs who design new and different
23 Internet protocol type services and then they argue that
24 they don't owe access charges. And to the extent other
25 carriers adopt this agreement or to the extent Charter

1 does something different or CenturyTel does something
2 different beyond the Charter more confined definition,
3 then the agreement attempts to address all of those
4 possibilities so there isn't any dispute about
5 compensation.

6 Q. Okay. In your testimony and I believe in
7 other CenturyTel witness testimony, there's some
8 statements about Charter reviewing their bill in a timely
9 manner; is that correct?

10 A. Correct.

11 Q. How long does Charter have to pay a bill
12 from the time the bill is issued until payment is due?

13 A. I don't know. The terms are in the
14 agreement. There's a timetable of the bill date end and
15 sending it in a certain period of time before the amount
16 is due. I don't recall it off the top of my head.

17 Q. Is there another CenturyTel witness that
18 would know that?

19 A. I mean, we can look it up.

20 Q. That's okay, unless you have it readily
21 available.

22 A. I don't have it readily available. I don't
23 believe it's a term and condition that's in dispute as to
24 the timing of sending the bill and when the bill payment
25 is due.

1 Q. Okay. At page 35, at the -- at line 10 you
2 use the phrase CenturyTel to trans-- forced CenturyTel to
3 transport back and forth. Do you see that?

4 A. Uh-huh.

5 Q. What do you mean by back and forth?

6 A. Well, let me use this drawing up here. In
7 this example, CenturyTel's local exchange might be here.
8 Traffic that originates and terminates from two end users
9 within this exchange, Charter connected only at this point
10 (indicating), CenturyTel would have to send its
11 originating traffic up to this point, and it would have to
12 receive Charter's terminating traffic from that point even
13 though it's from one end user here to another end user
14 here.

15 Q. Okay. So you're talking about back and
16 forth on CenturyTel's side of the POI?

17 A. Well, that's a whole other issue. This is
18 CenturyTel's service territory, and the requirements for
19 the POI say the POI has to be within the incumbent LEC's
20 service territory. In this example, Charter would be
21 proposing a process arrangement where the POI would be up
22 here (indicating).

23 Q. Right.

24 A. And so CenturyTel is now responsible for
25 transporting traffic to and from a POI that's not only

1 beyond its service territory but would have resulted in an
2 arrangement that goes beyond what it does with its own
3 traffic today.

4 Q. But for your phrase back and forth, you
5 were just talking about --

6 A. Back and forth between here.

7 Q. -- CenturyTel's side?

8 Okay. And Charter's responsible for the
9 traffic on the other side of the POI back and forth?

10 A. To the extent that the POI is properly
11 established, as I've explained at length in my testimony.

12 MS. DIETRICH: Okay. That's all my
13 questions.

14 JUDGE PRIDGIN: Thank you. Mr. Van Eschen?

15 QUESTIONS BY MR. VAN ESCHEN:

16 Q. Good morning, Mr. Watkins.

17 A. Good morning.

18 Q. In regards to Issue No. 1, is the term IP
19 enabled services used in any of your other interconnection
20 agreements?

21 A. In any of the other CenturyTel
22 interconnection agreements?

23 Q. Yes.

24 A. I don't know that for a fact. I suspect
25 that they've attempted to make their agreements standard,

1 so I would expect that's their proposal in other
2 agreements they're working on these days. I don't know it
3 for a fact, though.

4 Q. I wasn't quite sure about, you know, the
5 reason why this was really an issue. I was wondering if
6 you could just clarify in my mind why you think that the
7 way Charter proposed definition may be an attempt to avoid
8 access charges?

9 A. It may not be an attempt necessarily for
10 Charter, but to the extent it leaves other forms of IP
11 related traffic beyond the scope of its definition
12 unaddressed, and to the extent those other forms of IP
13 related traffic arise, there could be disputes with
14 Charter or with CenturyTel or with other carriers that
15 adopt this agreement.

16 Again, our objective is to address all
17 possibilities with explicit terms to avoid having disputes
18 with other carriers in the future.

19 Q. Has CenturyTel actually experienced this
20 sort of problem with other carriers?

21 A. I don't know specifically about CenturyTel.
22 I'm pretty sure they have. I have experienced it directly
23 with other clients where carriers send traffic and send
24 letters and say, well, we don't owe you access charges
25 because this is some form of IP related traffic. And so

1 we've all become concerned about that and have attempted
2 to more explicitly address this in the agreements.

3 Q. In regards to Issue 8A, if a CLEC
4 underpays, does CenturyTel apply interest on the unpaid
5 amount?

6 A. If it is a nondisputed bill and it's simply
7 a matter that they haven't paid up on something that's
8 legitimately a charge, the agreement sets forth an
9 interest rate that applies. As I point out, though,
10 nondisputed nonpayments are a different matter than those
11 that are the subject of a bona fide dispute between the
12 parties for which there is a more -- more lax set of
13 terms and conditions that apply.

14 Q. What is the interest rate, do you know?

15 A. It's set forth in the agreement. One and a
16 half percent, I believe.

17 Q. And if a carrier overpays what they owe
18 CenturyTel, what does CenturyTel do in that situation?

19 A. If it overpays a nondisputed bill, the
20 terms are not in dispute, they would -- if it's not
21 disputed and CenturyTel realizes that the other carrier
22 pays and if it's not in dispute and they called it up,
23 they'd send the money back.

24 Q. So CenturyTel would actually return the
25 money?

1 A. If it was not in dispute between the
2 parties.

3 Q. All right.

4 A. If Charter called up and said, hey, we sent
5 you more money, and CenturyTel said, no, we billed you the
6 right amount and you sent us the right amount, then it
7 would become in dispute.

8 Q. And I -- and I gather that this issue
9 pertains to whether interest ought to be paid on that
10 overpaid amount?

11 A. Only in the case of disputed amounts.

12 Q. In disputed amounts?

13 A. Right.

14 Q. Okay.

15 A. Which, as the proposed agreement states,
16 would be resolved through the bill dispute process.

17 Q. And is that part of the -- I know you
18 talked about how Charter can always petition the
19 Commission for relief. How would they do that? Would
20 they file a complaint or what?

21 A. Again, I believe the terms of the agreement
22 set forth the process for billing disputes which
23 eventually escalate to some form that might involve the
24 Commission resolving the dispute. I just don't know the
25 terms off the top of my -- but they're in the proposed

1 agreement.

2 Q. Okay. In regards to Issue No. 9, the way
3 CenturyTel frames this particular issue, you talked about
4 CenturyTel reserves the right to assess a stranded
5 interconnection plant slash facility charge on Charter.
6 How would you -- how would CenturyTel determine the amount
7 of that particular charge?

8 A. Actually, there is a process for the
9 parties to mutually negotiate and resolve what the to be
10 determined rate should be, and they've agreed to that
11 process. So it's some sort of collaborative process to
12 examine what costs were incurred and stranded.

13 There's so many different possibilities
14 that might occur and the likelihood that the provision
15 would not apply if everyone acts as good carriers, it's
16 just not efficient for either party to decide what the
17 rates are until the situation arises. So there's a
18 process where the parties get together and talk about what
19 the costs are. There's a process to resolve it if they
20 disagree.

21 Q. Okay. I guess I wanted to ask you a couple
22 questions about Issues 18, 19, 21 and 22. You sort of
23 discuss those issues in a group; is that correct?

24 A. I think that's -- that's partially
25 accurate, yes.

1 Q. And in talking about Issue No. 18, you talk
2 about that there's a lot of different possible factors
3 that -- and variables that go into determining a POI. Can
4 you explain the process of how CenturyTel works through
5 this sort of issue with other CLECs?

6 A. No, but I think there's pretty detailed
7 proposed language that sets forth all of the criteria to
8 be evaluated and to whether a transit arrangement is
9 available up to a certain threshold of traffic, and when
10 dedicated end office trunks should be deployed, when
11 levels of traffic are reached and which tandems are
12 available. You'd have to read all of the -- the language
13 in Article 5 to get a flavor for that.

14 Q. In your discussion about Issue 19, you
15 claim Charter's asking for terms that require CenturyTel
16 to transport traffic to distant locations beyond
17 CenturyTel's points of transport of any other local
18 traffic. Can you elaborate on that concern?

19 A. Yeah. It's exactly the same example I said
20 here. Today CenturyTel for local calls between parties in
21 this exchange doesn't transmit its local traffic to the
22 AT&T tandem, but when Charter decides it wants to connect
23 there and use a transit arrangement, CenturyTel is then
24 required to do this extraordinary trunking responsibility
25 up to the AT&T tandem, something it doesn't do today.

1 Q. Okay.

2 A. The same might occur even with a CenturyTel
3 tandem where the tandem is not used for local traffic, so
4 local traffic that originates and terminates in this
5 exchange, Charter might want to connect at the CenturyTel
6 tandem, but Century doesn't trunk local traffic to and
7 from the tandem for its own local purposes, so that would
8 create a new cost to CenturyTel to transport that traffic
9 to the tandem.

10 Q. Can you clarify for me if CenturyTel's
11 position is -- is really attempting to force Charter to
12 minimize the number of indirect interconnection
13 arrangements it might have?

14 A. It's not -- it's not attempting to minimize
15 indirect interconnections. It's attempting to keep to a
16 minimum the arrangement where traffic is transited through
17 a third-party tandem and then delivered to CenturyTel over
18 commingled access trunks to migrate away from that when a
19 traffic -- certain traffic threshold is reached, which by
20 the way the parties actually agree that when a traffic
21 threshold is reached, they will migrate away from that
22 third-party transit arrangement.

23 Q. In regards to that, is the real dispute
24 about Issue No. 19 the level of that threshold?

25 A. I think it does reduce to that, yes.

1 Q. Okay. Where CenturyTel says that threshold
2 is 200,000 minutes and Charter wants 240,000?

3 A. That's correct.

4 Q. Is there a basis for, say, 200,000 minutes
5 or --

6 A. It's just an amount that CenturyTel has
7 used in the past and I believe had in terms and conditions
8 with Charter in the past, as well as I don't know what the
9 basis for the 240,000 is either.

10 Q. Okay. In regards to Issue 21, when you
11 state that one-way trunks should be only needed if two-way
12 trunks failed to properly identify, measure and bill for
13 traffic. Can you explain how and by whom this would be
14 determined?

15 A. You know, I don't think that's going to
16 arise very often, and as I said in my testimony, it's not
17 clear where that would arise. There may be cases where
18 for some reason or another you can't capture some
19 component of traffic that both parties may be interested
20 in capturing, and that by going to one-way trunks it's
21 easier, but beyond that, I don't know the situation where
22 that would arise.

23 Q. Okay. In regards to Issue 22, how and by
24 whom would projected traffic be determined?

25 A. Only -- only Charter provides forecasts.

1 As I would explain, there's facts that the parties could
2 look at and then there's forecasts that Charter could
3 provide.

4 For example, here's a fact. If Charter won
5 a customer who had large amounts of traffic, the amount of
6 traffic that that particular customer has today is a known
7 fact, and that that customer transferred to Charter, that
8 would immediately create a large new amount of traffic.
9 It's not a matter of in dispute. It's more or less a
10 fact. So that's one example. But the agreement calls for
11 forecasts from Charter.

12 Q. Okay. Help me out here. On Issue No. 20,
13 I know Charter's attorney questioned you a lot about that
14 particular issue, and I'm still confused. Can you explain
15 to me what your understanding of this issue is?

16 A. Issue 20?

17 Q. Yes.

18 A. The parties decided that they couldn't
19 arrive at what they thought the proper answer should be
20 for cost-based rates, so they decided to delay the
21 resolution of that through further negotiations after the
22 effective date of this agreement. They came up with
23 language to -- for the terms and conditions to conduct
24 that further negotiation.

25 The difference of opinion has to do with

1 how long a period they should be afforded to perform that
2 negotiation and perhaps what form of resolution they
3 should proceed if they are not able to negotiate the
4 answer.

5 Q. I know that negotiation period is the
6 difference in the time period between the parties, but how
7 do Charter and CenturyTel differ in the dispute resolution
8 terms?

9 A. You know, I'm not certain I fully
10 understand what Charter's position may be. CenturyTel's
11 position is, is that the normal dispute resolution process
12 that's already in the agreement should apply at the end of
13 the negotiation period, but there isn't any reason to come
14 up with a new form of dispute resolution if there's
15 already one set forth in the agreement.

16 Q. Okay. And discussing Issue 20, you
17 indicate Charter's characterization of the issue is wrong
18 because the parties have already agreed Charter may lease
19 interconnection facilities from CenturyTel at cost-based
20 rates. When you say cost-based rates, are you in
21 agreement as to referring to TELRIC-based rates?

22 A. We haven't yet crossed the bridge of what
23 we intend cost-based rates to be. That's left --

24 Q. When you use the term cost-based rates,
25 what do you mean?

1 A. That's what the parties will need to
2 negotiate.

3 Q. And in addressing Issue 20, both parties
4 appear to defer what the proper rate should be and apply
5 an interim rate for a temporary time period. I wasn't
6 quite sure. I know Ms. Dietrich had questions about the
7 true-up. Is CenturyTel opposed to a true-up?

8 A. No. No.

9 Q. Okay.

10 A. If you look to the terms in the CenturyTel
11 proposed agreement, even though it didn't get reflected in
12 the DPL, there is definitely sentences in there that say
13 it will be trued up with the new rate back to the
14 effective date of the agreement.

15 Q. Okay.

16 A. So that's not an issue.

17 Q. All right. Just want to be clear in my
18 mind. Issue No. 23, and I know Charter's witness
19 Mr. Gates indicated the parties seem real close in
20 agreement on Issue No. 23. What's your understanding of
21 the remaining disagreement? Is it what you were telling
22 Ms. Dietrich, that it's really what Charter should pay
23 CenturyTel?

24 A. Well, I'm not certain I understand what
25 Charter believes that we are close to being in agreement

1 with. I can certainly explain what CenturyTel's position
2 is. First we think they ought to be responsible for their
3 own N-1 obligations, in which case the issue wouldn't
4 arise in the first place.

5 But CenturyTel is willing to be a good
6 citizen here and complete these misrouted calls as best
7 they can, provided they're paid for all the individual
8 network functions they perform and completing them for the
9 nonqueried calls. I'm not certain what part of that
10 Charter disagrees about.

11 Q. When I listened to the testimony the other
12 day, I thought the disagreement centered on the
13 application of the, what's called the NP query charge?

14 A. No. Well, if -- if Charter sends a call to
15 CenturyTel that hasn't been queried, then CenturyTel will
16 have to perform the query, and it seems obvious that
17 CenturyTel should be compensated for the query charge.
18 The whole issue is related to a call that Charter sends to
19 CenturyTel, a call that hasn't been queried. So I don't
20 think there's any -- shouldn't be any question about that.

21 Q. All right. In regards to Issues 27 and 40,
22 you currently charge other CLECs for porting a telephone
23 number?

24 A. I -- I --

25 Q. Maybe I mischaracterized that, because I

1 know earlier you were saying, well, it's really to process
2 a service order.

3 A. I know that there are carriers across the
4 country who routinely charge local service order charges
5 for number ports. I think CenturyTel does somewhere in
6 the United States, but I'm not certain. Maybe one of the
7 other witnesses could confirm that later, but I know there
8 are carriers who charge local service request charges.

9 Q. Just so I'm clear, the charge when I look
10 at the DPL, it looks like it's a \$14.02 charge at least
11 for an initial service order charge; is that right?

12 A. You know, actually, I don't have it
13 memorized. Actually, we have another witness who's going
14 to testify more about the specific rates.

15 Q. Okay. I guess the last question I really
16 had pertaining to Issue Nos. 33 and 39. I'm a little bit
17 unclear about the charges that you would apply for
18 connection -- connecting a CLEC to the 911 network, and I
19 was wondering if you could maybe explain that and maybe
20 even diagram it out for me, because I -- I get a little
21 confused as to -- I see these charges in the DPL, and I
22 know Mr. Webber in his testimony, he lists what CenturyTel
23 would like to apply. I was wondering if you could just
24 clarify for me what each of those charges would be.

25 A. Okay. This is a CenturyTel selective

1 router location and a PSAP. This is -- Charter's network
2 ends there. CenturyTel is proposing to charge Charter two
3 possible charges, one for the facilities that CenturyTel
4 may provide to Charter from connecting here to here, and a
5 trunk charge for connecting those facilities to the
6 selective routers on the side where the facilities and the
7 trunks come from the various Charter offices into the --
8 into the selective router location. It was the A and B
9 section of prices I believe in the pricing attachment.

10 Q. Okay. So this \$85 trunk charge, that
11 pertains to what on your diagram?

12 A. It would pertain to the function of
13 connecting those trunks into the selective router system.

14 Q. All right. And the -- the special access
15 rates, where would they kick in?

16 A. They would kick in for this mileage
17 facility that they provide from here to here (indicating).

18 Q. All right. Is there any disagreement over
19 the other charges that are listed under this section?

20 A. No. I think that I have resolved that the
21 other charges apply to other situations that Charter --
22 doesn't involve Charter and clarified in my rebuttal as to
23 which ones applied and which one doesn't apply. So I
24 think that I cleared that up.

25 MR. VAN ESCHEN: Okay. Fair enough. No

1 other questions. Thank you.

2 JUDGE PRIDGIN: Mr. Van Eschen, thank you.

3 Ms. Dietrich?

4 FURTHER QUESTIONS BY MS. DIETRICH:

5 Q. On your 911 drawing you have an X where
6 Charter is?

7 A. Right.

8 Q. Where is that located? Not like St. Louis
9 or anything like that, but I mean is that in --

10 A. It's wherever Charter brings its 911 trunks
11 to to meet the facilities of CenturyTel, so it would be
12 somewhere within the CenturyTel service area.

13 Q. Okay. And then --

14 A. It might even be the same properly
15 established POI that Charter uses for exchange of traffic.

16 Q. Okay. And then the square that is
17 CenturyTel's router, where is that located?

18 A. Wherever they're located. I'm not sure
19 where they are.

20 Q. Is it, like, in a central office or --

21 A. They probably are located in conjunction
22 with a central office somewhere, yes.

23 MS. DIETRICH: Okay. Thank you.

24 THE WITNESS: I don't know that for a fact,
25 though.

1 JUDGE PRIDGIN: Further bench questions?
2 I'm hesitant to break in the middle of a witness. Am I
3 correct in my hunch that we're going to have
4 cross-examination based on bench questions?

5 MR. HALM: Yes, your Honor.

6 JUDGE PRIDGIN: I assume we'll have some
7 redirect?

8 MR. MOORMAN: Yes.

9 JUDGE PRIDGIN: Since we've been going for
10 a while, this looks to be a convenient time to break.
11 It's 10:15 according to the clock here in the room. Let's
12 reconvene at about 10:30. Is there anything from counsel
13 before we go off the record?

14 MR. MOORMAN: No, your Honor.

15 JUDGE PRIDGIN: Thank you. We will be in
16 recess until 10:30 then.

17 (A BREAK WAS TAKEN.)

18 JUDGE PRIDGIN: We are back on the record
19 after a break. If I'm not mistaken, we are finished with
20 bench questions, and we have cross based on bench
21 questions; is that correct?

22 MR. HALM: Yes, your Honor.

23 JUDGE PRIDGIN: All right. If Charter's
24 ready to proceed on cross....

25 RE-CROSS-EXAMINATION BY MR. HALM:

1 Q. Mr. Watkins, I'd like to go back to your
2 discussion of the 911 trunk charges and facilities
3 charges. With respect to the 911 facilities, which
4 represents the blue line between the X and the selected
5 router, now, is there a single rate element to that charge
6 or are there multiple rate elements?

7 A. I believe there are multiple rate elements
8 in the tariff that applies.

9 Q. Do you know what those are?

10 A. They're mileage based and termination of
11 circuit based charges.

12 Q. Okay. So mileage based would be how many
13 miles the facility runs from the router back to the
14 Charter network?

15 A. Correct.

16 Q. Termination, what does that mean?

17 A. It's the -- on the ends of the special
18 access piece. It's just the costing and the rate. Rate
19 framework has both mileage and a non-mileage-sensitive
20 basis for the rates.

21 Q. So termination, can you describe to us what
22 termination is?

23 A. It's the termination on the ends of the
24 special access, which I know where you're going with your
25 question, is a different termination than the trunks, the

1 trunk connections to the selective router that's designed
2 in the other charge that's in the proposal.

3 Q. Is termination the process of taking that
4 facility, inserting it into the appropriate port in the
5 selective router?

6 A. Not the termination of the special access,
7 but a separate charge for connecting trunks to the
8 selective routers.

9 Q. What functionality does CenturyTel provide
10 for termination when we pay a termination charge?

11 A. Termination for -- the termination rate
12 element for the special access or the trunk charge for
13 connecting to the selective router?

14 Q. For the special access facility.

15 A. I'm not sure. There's a longstanding
16 history of how the rate structure and rates are developed
17 for private line circuits, and you'd have to go back
18 through that whole process. It's an established history.

19 Q. I'm sorry. I'm trying to understand
20 physically what happens.

21 A. I'm not sure that there is an exact
22 physical one to one correspondence of what you can explain
23 happens with the rate structure. Again, it is decided
24 that certain parts of the cost of providing private lines
25 are distance sensitive and certain parts are not distance

1 sensitive, and the emerging historical rate structure
2 divides it into two pieces. One is called facility
3 mileage and one is called terms, terminations.

4 Q. Is it effectively hardware connection to
5 the selective router?

6 A. No. I think the other charge for the
7 connection to the selective router is something different
8 that is specific to the selective router functions that
9 CenturyTel is providing to Charter.

10 Q. I'm looking at -- this is CenturyTel's
11 proposed contract, and it's the 911 article, Section 4.4.
12 Do you-all have a copy for Mr. Watkins?

13 MR. MOORMAN: Do you have a copy of that?

14 THE WITNESS: I don't have it up here. I
15 perhaps could help here. In my rebuttal testimony, I went
16 through an explanation of each one of the elements that
17 are in the pricing attachment and what the explanation for
18 each is.

19 MR. MOORMAN: Mr. Watkins -- if I can
20 approach?

21 JUDGE PRIDGIN: Certainly.

22 MR. MOORMAN: Here's the contract
23 (indicating).

24 BY MR. HALM:

25 Q. So I'm looking at Article 7, which is the

1 911 article, page 6 of 13, Section 4.4.1.

2 A. Yes.

3 Q. That says CLEC will be charged a monthly
4 recurring and one-time charge per trunk to establish the
5 hardware connection to the selective router that provides
6 an activity for incoming 911 trunks to enable competitive
7 local exchange carrier access to the emergency services
8 network. Is that the termination element of the
9 facilities charges?

10 A. That is the reference to the selective
11 router trunk charges that I explained and doesn't have
12 anything to do with the facility.

13 Q. Okay. So this describes the trunk charges?

14 A. Yes. Let me double check. Again, I think
15 I explained this in detail. I believe that's correct.

16 Q. Okay. Do you know where the description
17 for the termination charges is in this section?

18 A. The --

19 Q. The description for the termination element
20 of the facilities charge?

21 A. That's part of the rate structure of
22 private line special access circuits. So the reference to
23 special access tariffs includes that rate structure which
24 has multiple rate elements, some of which are distance
25 sensitive and some of which are per trunk rated.

1 Q. It's not described in Article 7?

2 A. It is to the extent that it refers to the
3 special access rates.

4 Q. Do you know if it does?

5 A. Well, the special access rates are included
6 in the pricing attachment as the appropriate pricing
7 approach.

8 Q. Okay. So there are potentially three
9 separate charges for 911 facilities, mileage, 911
10 facilities termination, 911 trunk charges?

11 A. That's correct.

12 Q. Those -- those -- each of those rate
13 elements could also include both recurring and
14 nonrecurring; is that right?

15 A. I believe that's true, yes.

16 Q. Okay. Putting aside that group of charges,
17 have you told this Commission that the only other
18 potentially applicable charge is the additional file copy
19 of the MSAT?

20 A. To the extent that Charter maintains its
21 same relationship by connecting to the selective routers,
22 that would be the only additional charge, yes.

23 Q. Can we agree right now that we should
24 strike the rest of the charges that are put forward?

25 A. No, because as I explained in my testimony,

1 they're there again for other CLECs that may come along
2 that don't have exactly the same arrangement, or for that
3 matter if you change your arrangement, then those -- those
4 particular elements would arise.

5 Q. And if we changed our arrangement, we could
6 amend the contract, couldn't we?

7 A. Yes, but again, that's an unwieldy process
8 that is unnecessary.

9 MR. HALM: I have no further questions.
10 I'm going to yield to my co-counsel on the first issue in
11 Mr. Watkins' testimony.

12 JUDGE PRIDGIN: When you're ready,
13 Mr. Dodge.

14 MR. DODGE: Thank you, your Honor.

15 RE-CROSS-EXAMINATION BY MR. DODGE:

16 Q. Good morning, Mr. Watkins.

17 A. Good morning.

18 Q. Just a couple of follow-up questions from
19 Mr. Dietrich and Mr. Van Eschen. I believe you had a
20 discussion with Ms. Dietrich about the definition that
21 CenturyTel has proposed for IP enabled services; is that
22 correct?

23 A. That's correct.

24 Q. And do I recall, and I'm not trying to get
25 the exact wording down, but do I recall your

1 representation that CenturyTel's position is that you'd
2 like to take a more aggressive approach on the definition
3 that would be included in the interconnection agreement?

4 A. To be more explicit so that we're sure that
5 we address as many and all possibilities as possible.

6 Q. Has Charter ever made a claim, your word,
7 claim to CenturyTel to exchange a new IP enabled service?

8 A. I don't believe so.

9 Q. In fact, Charter has never requested to
10 exchange IP traffic with CenturyTel at all; isn't that the
11 fact?

12 A. I don't know that. I wouldn't --
13 wouldn't -- it seems to me that even within Charter's
14 proposed definition, you could -- it could be considered
15 IP traffic.

16 Q. Does Charter send IP traffic to CenturyTel?

17 A. I think the definition you use,
18 interconnected VOIP would be considered IP traffic.

19 Q. Does Charter send IP traffic to CenturyTel?

20 A. I think yes.

21 Q. Okay. In response to some questions from
22 Mr. Van Eschen, you indicated that this definition that
23 CenturyTel is proposing is intended to capture all
24 possibilities of IP enabled services. Do you remember
25 that discussion?

1 A. Yes.

2 Q. A fact question for you, Mr. Watkins. Does
3 CenturyTel's proposed definition address all possibilities
4 of IP enabled services?

5 A. I don't think I can absolutely say it
6 addresses all because I don't even think anyone in the
7 room knows what all the possibilities may be, but it
8 definitely addresses a wider scope than the Charter
9 definition.

10 Q. Thank you. And you also mentioned in
11 response to a question from Mr. Van Eschen, and it may
12 have been Ms. Dietrich, I apologize, that CenturyTel has
13 been surprised in the past by the types of IP traffic or
14 new IP traffic that other CLECs have attempted to exchange
15 with CenturyTel?

16 A. Yes.

17 MR. DODGE: That's all I have. Thank you,
18 your Honor.

19 JUDGE PRIDGIN: Thank you. No further
20 recross?

21 MR. DODGE: No, your Honor.

22 JUDGE PRIDGIN: Redirect?

23 MR. MOORMAN: Thank you, your Honor.

24 REDIRECT EXAMINATION BY MR. MOORMAN:

25 Q. Mr. Watkins, there's been a lot of

1 discussion, questions by Mr. Halm to you dealing with
2 technical feasibility associated with interconnection. Is
3 that the fullest extent of the issue that is currently
4 before the Commission in the interconnection issues?

5 A. No. The whole discussion of POIs and what
6 interconnection arrangements result from the establishment
7 of POIs and the full set of criteria under Section
8 251(c)(2), in addition to the technical feasibility
9 criterion, there's also the conditions of the POI has to
10 be within the incumbent network of the -- of CenturyTel,
11 and the provision that says CenturyTel is not required to
12 provision interconnection arrangements that go beyond what
13 it does with itself or with other carriers.

14 Q. And yesterday in the discussion on the
15 further notice of proposed rulemaking, I believe also the
16 notice of proposed rulemaking in the intercarrier
17 compensation proceeding at the FCC, are there alternatives
18 that you're aware of included within that proposal or
19 those notices that would address some of the issues here
20 as well?

21 A. The FCC hasn't decided in the course of
22 that proceeding what its ultimate conclusions about POIs
23 should be, and, in fact, it discusses those questions, the
24 possibility that POIs could be developed that do result in
25 extraordinary costs, and the question that remains,

1 shouldn't the CLEC be responsible for those extraordinary
2 costs? So those are proposals that are fully still before
3 the FCC in that proceeding.

4 Q. There's been a lot of discussion associated
5 with the creation of points of interconnections or POIs.
6 Is it your understanding that Charter has in place all
7 required POIs for the exchange of traffic with CenturyTel
8 today?

9 A. For the five exchanges that we were
10 discussing this morning with the confidential page, I
11 believe that Charter already has established POIs for
12 their competitive traffic in all five exchanges, and it's
13 my understanding that those POIs would still be allowable
14 under the terms of the agreement that CenturyTel has
15 proposed.

16 Q. Is it your understanding that as a result
17 of the existing connectivity that you've just described
18 between Charter and CenturyTel, that there would be any
19 need for any additional POIs by Charter?

20 MR. DODGE: Objection. Calls for
21 speculation.

22 JUDGE PRIDGIN: Would you ask the question
23 again, please. I'm sorry.

24 BY MR. MOORMAN:

25 Q. Based on your understanding of the network

1 connectivity between Charter and CenturyTel today, is it
2 your opinion that there would -- there would not need to
3 be any additional POIs required by Charter?

4 A. For those five exchanges, I think the
5 parties already have POIs in place.

6 MR. DODGE: Your Honor?

7 JUDGE PRIDGIN: I'm sorry. I'll overrule.

8 MR. DODGE: Thanks.

9 THE WITNESS: For those five exchanges,
10 there are POIs in place that I think fully address both
11 parties' needs.

12 BY MR. MOORMAN:

13 Q. Under the existing interconnection
14 arrangement connectivity of the networks between
15 CenturyTel and Charter in Missouri today, is there any
16 traffic that is indirectly exchanged?

17 A. I do not believe so. Through a -- there
18 isn't any traffic through a tandem third-party transit
19 arrangement, if that's what you mean.

20 Q. On the -- on the Issue 23, I believe it's
21 Issue 23, dealing with the N-1 queries and those sort of
22 items, is one of the questions that is before the
23 Commission whether or not CenturyTel should be required to
24 complete versus making commitments to try to complete
25 unqueried calls that may be delivered to the CenturyTel

1 network?

2 A. That might be an issue that is construed to
3 still be in dispute, yes.

4 Q. In the -- in your discussion about POIs,
5 have you had an opportunity to refresh your recollection
6 with respect to your statements dealing with what your
7 clients have -- what decisions your clients have been
8 involved in with respect to single POIs?

9 A. Yes. I misspoke --

10 MR. HALM: Objection, your Honor. Was
11 there a question about what decisions his clients have
12 been involved in? I don't think there was.

13 MR. MOORMAN: I'm trying to clarify a
14 statement that Mr. Watkins had made associated with -- his
15 statement was whether or not his clients had been subject
16 to a single POI per LATA, and I'm trying to clarify his
17 refreshed recollection on that.

18 JUDGE PRIDGIN: I'm sorry. What was the
19 objection?

20 MR. HALM: This goes beyond my cross of the
21 witness.

22 MR. MOORMAN: No, I think -- I think -- if
23 I could respond, your Honor?

24 JUDGE PRIDGIN: Go ahead.

25 MR. MOORMAN: Your Honor, he made a

1 statement, I believe to Ms. Dietrich, as well as to
2 Mr. Halm, associated with what his -- the clients that he
3 had been involved with and the issue of whether or not
4 those clients were required to provide connectivity at a
5 single POI per LATA, and I'm just trying to correct the
6 record and to refresh and clarify the record as to what
7 his -- his recollection was.

8 JUDGE PRIDGIN: I'll overrule. If you
9 could ask the question again, please.

10 BY MR. MOORMAN:

11 Q. Mr. Watkins, do you recall -- do you have
12 any refreshed recollection of what requirements may have
13 been imposed upon your clients with respect to single POI
14 per LATA requirements?

15 A. Yes. I believe I said I couldn't remember
16 any instances, but I refreshed my memory. I can remember
17 one, and that was in Indiana.

18 MR. MOORMAN: Just one second, your Honor.

19 JUDGE PRIDGIN: Certainly.

20 MR. MOORMAN: Nothing further.

21 JUDGE PRIDGIN: Thank you. Nothing further
22 from the bench? All right, thank you. Mr. Watkins, thank
23 you very much. You are excused, sir.

24 THE WITNESS: Thank you.

25 JUDGE PRIDGIN: If I'm not mistaken, we'd

1 be ready for Mr. Reynolds now.

2 (Witness sworn.)

3 JUDGE PRIDGIN: Please have a seat.

4 Anything from counsel before he stands cross?

5 MR. OVERCASH: Yes, your Honor. There are
6 no errata. Counsel would offer 15, 15P and 16.

7 JUDGE PRIDGIN: All right. 15, 15P and 16
8 have been offered. Any objections?

9 MR. DODGE: Subject to the pending motion,
10 no objections.

11 JUDGE PRIDGIN: And we'll show the pending
12 motion to strike will be ruled upon later, and 15, 15P and
13 16 are all admitted with the caveat that the motion to
14 strike may later be granted.

15 (EXHIBIT NOS. 15, 15P AND 16 WERE RECEIVED
16 INTO EVIDENCE.)

17 JUDGE PRIDGIN: Anything else before he
18 stands cross?

19 MR. OVERCASH: No, your Honor.

20 JUDGE PRIDGIN: All right.

21 Cross-examination.

22 MR. DODGE: Thank you, your Honor.

23 JEFFREY W. REYNOLDS testified as follows:

24 CROSS-EXAMINATION BY MR. DODGE:

25 Q. Good morning, Mr. Reynolds.

1 A. Good morning.

2 Q. My name is John Dodge, and I'm here
3 appearing on behalf of Charter this morning. If you could
4 turn, Mr. Reynolds, to page 5 of your direct testimony,
5 please.

6 A. I'm there.

7 Q. Thank you. And starting on page 5, and
8 continuing through to page 7, you list, by my count, some
9 15 activities that you say CenturyTel must undertake to
10 port a number; is that correct?

11 A. Those are the -- and it's kind of my
12 abbreviated list because there are many more steps for the
13 service order that surrounds the request by Charter to
14 take on a new customer and port the number.

15 Q. Subject to check, though, you've listed
16 about 15 of those activities?

17 A. Yes.

18 Q. Who at CenturyTel informed you of this list
19 of 15 or so?

20 A. I spoke with a number -- I had to kind of
21 review this with a number of the CenturyTel folks to
22 understand the process. Some of them are in this room
23 today.

24 Q. Thank you. Do you know what the -- this is
25 my phrase, what the data source is for these 15

1 activities? Is there a manual? Is there any sort of
2 guide or written materials that one would access to look
3 at the steps you've identified and the others you've
4 alluded to on the stand?

5 A. Okay. Let me -- this is -- this is my
6 list, my interpretation of -- and it's been made clear to
7 me by the CenturyTel folks that there are a myriad of
8 steps beyond this, but this -- these are the -- these are
9 kind of the big chunks of it. My sense is that there
10 is -- there's a process in place that underlies all the
11 steps that a CSR and the CenturyTel staff would have to
12 undergo to convert a customer from a CenturyTel customer
13 to a Charter customer.

14 Q. And my question is, is there a single maybe
15 multiple written source that identifies these 15 steps and
16 the other steps that you've alluded to here today?

17 A. I'm not aware of that.

18 Q. So you're relying on discussions with
19 CenturyTel personnel?

20 A. That is correct.

21 Q. Thank you. As part of your preparations
22 for the case, this case Mr. Reynolds, did you personally
23 observe any Charter personnel engage in any of these
24 activities?

25 A. I did not.

1 Q. Did you personally access CenturyTel's
2 systems to obtain the operating parameters for these
3 activities?

4 A. I did not.

5 Q. I apologize. Mr. Williams has corrected
6 me. Let me go back to a question here. As part of your
7 preparation for this case, did you personally observe any
8 CenturyTel personnel?

9 A. CenturyTel.

10 Q. You probably interpreted it that way. If
11 you'd seen Charter personnel, we'd all be in trouble I'm
12 sure. But to clarify, you saw no CenturyTel personnel
13 engage in any of these activities?

14 A. I did not.

15 Q. Thank you, sir. Did you personally access
16 CenturyTel's systems to obtain any operating parameters
17 for these activities?

18 A. No, sir.

19 Q. Did you personally validate against either
20 the systems or books of accounts or records of CenturyTel
21 any of the information that was given to you by CenturyTel
22 personnel?

23 A. Could you repeat that?

24 Q. Sure. Did you personally validate against
25 the systems and processes that you mentioned earlier, did

1 you personally validate any of the data, the systems, the
2 books of account, anything else against anything at
3 CenturyTel or did you just rely on the spoken word from
4 CenturyTel personnel?

5 A. I relied on a review of the process with
6 the CenturyTel personnel.

7 Q. Thank you. Do you know how many different
8 CenturyTel personnel you spoke with about these
9 activities?

10 A. Two primarily.

11 Q. Do you recall their names?

12 A. Yes.

13 Q. And their names are?

14 A. Oh, Susan Smith and Mr. Miller.

15 Q. And that's Guy Miller?

16 A. Mr. Guy Miller, yes.

17 Q. Thank you. Mr. Reynolds, it's my
18 understanding, and correct me if I'm wrong, that to
19 support its costs in this case, CenturyTel undertook a
20 special study with respect to the activities that you've
21 identified; is that correct?

22 A. That is correct.

23 Q. In fact, you testified at page 12 of your
24 direct testimony, line 14, to that very fact, that
25 CenturyTel performed the cost studies of its various

1 nonrecurring functions; is that correct?

2 A. What line are you referring to, just so I
3 can get there precisely?

4 Q. Line 14, page 12. Take a moment.

5 A. Yes, I'm there.

6 Q. Mr. Reynolds, to the best of your
7 knowledge, did CenturyTel perform any sort of similar cost
8 studies prior to initiating negotiations for an
9 interconnection agreement with Charter?

10 A. I do not have any knowledge of what the
11 timing was.

12 Q. When was the cost study performed that is
13 attached to your testimony?

14 A. It was performed prior to my testimony. I
15 don't know the precise time frame.

16 Q. Do you know the year?

17 A. Being as that the study had been provided
18 to Charter at an earlier point in time, I would -- I would
19 think that it had been performed early in 2008, but I have
20 no specific knowledge of when the study was actually
21 constructed.

22 Q. Thank you. To the best of your knowledge,
23 and only if you have knowledge, Mr. Reynolds, has
24 CenturyTel performed similar cost studies since the
25 inception of negotiations with Charter leading to these

1 proceedings?

2 A. We have not. And when I say that, our
3 consulting firm has not been involved in that. So if they
4 have performed additional cost studies, I am not aware of
5 them.

6 Q. Thank you, sir. In your expert opinion,
7 would a company such as CenturyTel routinely or normally
8 perform a cost study such as is attached to your
9 testimony?

10 A. They would -- in my opinion, companies
11 would produce cost studies when there was a need to
12 respond to negotiations and situations like this, yes.

13 Q. Thank you. That's good clarification.
14 Here's something that I'd like to understand, country
15 lawyer that I am. It's pretty basic and I apologize for
16 asking the question. Does CenturyTel propose to assess a
17 service order charge because it uses the LSR process or to
18 recover costs?

19 A. I'm not sure I understand the distinction
20 between --

21 Q. Is the LSR the trigger or are costs the
22 trigger?

23 A. The LSR is -- is an amalgam of costs. The
24 request by Charter or by any CLEC to initiate this
25 sequence of activities is the trigger.

1 Q. Thank you. If you know, Mr. Reynolds, how
2 did it come to pass that CenturyTel knew how to make these
3 steps and activities that you've listed in order to port a
4 customer to a CLEC like Charter? For example, did it have
5 any prior experience before 1996 or whenever somebody came
6 to them and said we want to interconnect and we want you
7 to start porting customers to us?

8 A. I have no knowledge. I have no idea of how
9 CenturyTel acquired that process.

10 Q. Do you know if CenturyTel has any other
11 similar types of experience for other services it might
12 provide aside from local exchange service?

13 MR. OVERCASH: Your Honor, I object to the
14 question as vague, if he's asking is any other service
15 they provide besides local exchange service company wide?

16 MR. DODGE: I'm happy to try to clarify.

17 JUDGE PRIDGIN: That's fine.

18 BY MR. DODGE:

19 Q. Porting, as we've used it in this case,
20 applies, as I understand it, to the switching of a local
21 customer from CenturyTel to Charter; is that correct?

22 A. That is correct.

23 Q. Are there other examples of porting that is
24 switching customers from CenturyTel to other
25 telecommunications carriers that CenturyTel would have

1 experienced before?

2 A. Without having specifically studied that
3 within CenturyTel, there have certainly been requirements
4 throughout the, you know, telecommunications in the last
5 20 years that would require those sorts of transitions and
6 changes.

7 Q. Well, let's keep it at just the industry
8 level or ILEC level, then. Would that include changing
9 customers who switch long distance carriers?

10 A. Yes.

11 Q. And as you've alluded, ILECs have been
12 switching long distance carriers for 25 or 30 years now;
13 is that correct?

14 A. Since divestiture essentially.

15 Q. I don't recall if that was '82 or '84, but
16 it's been a while since divestiture. Do you agree with
17 that?

18 A. That's -- yeah.

19 Q. In your expert opinion, Mr. Reynolds, are
20 the activities that an ILEC such as CenturyTel take --
21 undertakes the switch of a long distance customer similar
22 to the activities that an ILEC such as CenturyTel
23 undertakes to port a local service customer?

24 A. I am not at all aware of what efforts
25 CenturyTel goes through to switch out an interexchange

1 carrier.

2 Q. Have you ever examined that issue for any
3 ILEC?

4 A. Yes, I have.

5 Q. Well, going back to my question, in your
6 expert opinion, are the steps that an ILEC such as
7 CenturyTel, but not necessarily CenturyTel, an ILEC such
8 as CenturyTel would undertake to port a long distance
9 customer, are they similar to the activities that the ILEC
10 would take to port a local service customer?

11 A. In my opinion, the steps are less
12 exhaustive in switching an interexchange carrier because
13 it's -- at that point in time it's not the ILEC customer.
14 You're actually acting as an intermediary, so there's less
15 verification, a lot of -- I won't say less control, but
16 certainly fewer steps, I would think. That's not based on
17 my experience with CenturyTel. That's based on my
18 experience with other ILECs.

19 Q. Understood. Understood. You made that
20 clear. You have examined it for other ILECs but not for
21 CenturyTel?

22 A. That's correct.

23 Q. Do you know, Mr. Reynolds, what amount an
24 ILEC such as CenturyTel is permitted to charge when it
25 ports a long distance customer?

1 A. First a clarification. I don't think it's
2 referred to as porting a long distance customer.

3 Q. What phrase or term would you prefer to
4 use?

5 A. I would go with the standard industry term
6 of the PIC change charge, presubscribed intercarrier
7 charge. My recollection is that there was a federally
8 mandated charge for that.

9 Q. Do you recall that amount?

10 A. If I recall, that amount was \$5.

11 Q. I recall it was 5.50, but if you want to
12 short CenturyTel 50 cents, that's okay with me. But it's
13 in the neighborhood of \$5; is that correct?

14 A. It's in the neighborhood of \$5 for the PIC
15 change charge.

16 Q. Now, here's my question. The first
17 question is, what does CenturyTel propose for its service
18 order charge each time it ports a local service customer?

19 A. You're referring to the -- to the LSR
20 charge with the port?

21 Q. I am.

22 A. The -- just the simple one?

23 Q. Let's stick with the simple one.

24 A. I believe that's -- it's in my proprietary
25 attachment.

1 Q. And we don't necessarily -- actually, let's
2 go in-camera for a few, about three questions.

3 MR. OVERCASH: I think if you're just
4 asking him the total charge and not going through details
5 of it, I don't think just the total charge on the record
6 would be proprietary.

7 MR. DODGE: I'm not going to go into the
8 elements of the charge so --

9 JUDGE PRIDGIN: We can stay public; is that
10 correct?

11 MR. OVERCASH: Correct.

12 MR. DODGE: I believe so

13 BY MR. DODGE:

14 Q. Mr. Reynolds, take a second --

15 A. I just need to get to that page. The
16 charge -- the local service request charge for a simple
17 order is \$13.71.

18 Q. And you testified before, I believe, that
19 the PIC change charge, to switch a long distance carrier
20 is in the neighborhood of \$5; is that correct?

21 A. That was in response to my question on the
22 PIC change charge, yes, sir.

23 Q. So my question is, in your expert opinion,
24 is there enough of a difference in the processes of
25 switching long distance carriers and porting local service

1 customers to account for a more than two to one ratio in
2 the charges that CenturyTel would assess for those
3 processes?

4 A. I've not made a side by side comparison of
5 the components that would be involved, so without
6 constructing a study for PIC change charge, I could not
7 respond to that question.

8 Q. All right. Well, let's keep it at the ILEC
9 level where you've actually made some examination of the
10 PIC changes. Does it usually take twice as long for an
11 ILEC to switch a local customer than it does to switch a
12 long distance customer?

13 A. Once again, without taking the CenturyTel
14 process for either of those two and comparing them, I
15 don't know that I could make that comparison. In
16 addition, with the PIC change charge, there was not an
17 opportunity to actually produce costs. It was essentially
18 an FCC mandated charge. So the process itself is
19 different.

20 Q. Your testimony here today is that the FCC
21 caps absolutely PIC change charge at \$5 or thereabouts?

22 A. I'm not positive enough without having to
23 go back through those orders to make that statement
24 absolutely.

25 Q. Is it possible, Mr. Reynolds, that the FCC

1 lets ILECs prove up their costs above the \$5 or
2 thereabouts mark if they submit a cost study to the FCC?

3 A. I do not recall that.

4 Q. Thank you. In the case or circumstance of
5 a switch in long distance customers that CenturyTel
6 affects on behalf of a long distance carrier, who is the
7 cost causer in that circumstance?

8 A. I would say that -- and this is in my
9 opinion, and -- is that whoever initiates the request to
10 change the interexchange carrier.

11 Q. And who is the who in your sentence?

12 A. In -- the who could be either the
13 interexchange carrier acting on behalf of the end user or
14 it could be the end user in that case.

15 Q. Does that reply -- by that reply, do you
16 mean that it's always the end user who's the cost causer?

17 A. No. I don't mean that at all.

18 Q. In what circumstances would you consider
19 the long distance carrier making the switching request to
20 be the cost causer?

21 A. The cost causer in any of these instances
22 are the ones that initiate the trigger of events. So --
23 and it's happened in both instances in the -- in the PIC
24 change world that it could either be the interexchange
25 carrier operating on behalf or because they've gained a

1 new interexchange customer to initiate that request. In
2 that regard, they are the ones that are initiating the,
3 you know, the number of work activities associated with
4 that.

5 Q. In the circumstance where a long distance
6 carrier interexchange carrier initiates a request to
7 switch a customer from a competitor to itself, who pays
8 the PIC change charge?

9 A. I'm not certain I recall that.

10 Q. Would you be surprised to learn that it's
11 always the end user that pays that \$5 or thereabouts
12 charge?

13 A. I don't know that I can comment on that.

14 Q. Do you know if CenturyTel has a PIC change
15 charge built into its local exchange tariff here in
16 Missouri?

17 A. I am not aware.

18 Q. Thank you. Mr. Reynolds, if we could turn
19 to the cost study that you attached to your direct
20 testimony, Schedule JWR-1.

21 A. Yes, sir.

22 MR. DODGE: Your Honor, I'm going to
23 endeavor not to ask questions that give rise to
24 proprietary answers. Mr. Overcash, I know, will stop me
25 if I do, but for now I think we can remain on the public

1 record.

2 BY MR. DODGE:

3 Q. Are you there, Mr. Reynolds?

4 A. I am.

5 Q. For all of the data inputs that are listed
6 on the two pages that constitute this proprietary exhibit,
7 did you personally verify the accuracy of the data inputs
8 from their original sources?

9 A. No. I reviewed the cost study that was
10 prepared and it was, I guess what I would call a
11 reasonability review of that.

12 Q. Thank you. For example, under the first
13 line under the heading, and I don't think it's proprietary
14 just to say what that line is. I'm not going to give the
15 dollar figure associated with it. Customer service rep
16 hourly rate, do you see that line?

17 A. Yes, sir.

18 Q. Did you review the labor rate model or its
19 inputs to verify that the dollar figure associated with it
20 was accurately transferred from the original source?

21 A. Yes, that was part of my review of this
22 study.

23 Q. So you went back to the original data
24 sources and made sure that the data that was in the
25 original data source, here I believe it's called the labor

1 rate model, you verified that they were transferred
2 completely and accurately in the cost study?

3 A. I think that's a two-step question. So let
4 me just respond to the part that I reviewed, which was
5 that the -- we took the numbers from the labor rate model
6 to see whether they transported into the cost study
7 properly.

8 Q. So that was a verification exercise that
9 you personally undertook?

10 A. I did a review of that.

11 Q. What do you mean by review?

12 A. Okay. We worked at two different levels on
13 this. I -- my in-depth -- my review of the CenturyTel
14 cost study is not as in depth as other members of our team
15 did.

16 Q. For example, Mr. Schultheis

17 A. For example, Mr. Schultheis. But I am
18 familiar with the CenturyTel study and did a fairly
19 comprehensive review of it.

20 Q. Thank you. A little further down the
21 page -- well, actually, just the next line down, the
22 source for a labor hours figure is listed out as carrier
23 relations slash accounting tables, or is that accounting
24 slash tables? Do you see that?

25 A. That's correct, yes.

1 Q. Can you tell me what that is?

2 A. This is essentially the --

3 methodologically this is what I would call the time and
4 motion. How did you put the demand units against the
5 cost.

6 Q. And did you review that source?

7 A. Yes.

8 Q. Did you -- by review, what do you mean?

9 You looked and said it says four over here, it says four
10 in the cost study?

11 A. That constitutes the extent of my review of
12 the cost study.

13 Q. Thank you. Mr. Reynolds, how many hours
14 did your comprehensive review take you to complete?

15 A. Approximately ten hours.

16 Q. Thank you. Now, the results that we see
17 here on your schedule reduced to two pages, are they
18 printed out from an Excel spreadsheet, a special computer
19 program? What's the source of this printout?

20 A. These are -- these are Excel spreadsheets,
21 and this is just to explain what these two pages are.
22 These are essentially the summary sheets from the cost
23 study.

24 Q. And I presume you were provided with the
25 underlying program itself?

1 A. Yes.

2 Q. Did you perform any tests or calculations
3 to determine if the math is correct in that program?

4 A. I did not.

5 Q. Was the program provided to Charter?

6 A. I am not aware of what was provided to
7 Charter. I know that hard copy was certainly provided.

8 Q. This was provided Charter?

9 A. That's correct.

10 Q. Are there other hard copies that you're
11 aware of resulting from the execution of that program?

12 A. Not that I'm aware of.

13 Q. Let's turn to page 2 of that schedule, and
14 in the source column on the far right of the schedule --

15 A. Yes, sir.

16 Q. -- there's a reference to the average time?

17 A. Correct.

18 Q. How were average times determined?

19 A. Through time and motion studies.

20 Q. How many data points were used to sample?

21 A. I'm not sure.

22 Q. Were the times referenced in the source
23 code based on Charter port requests?

24 A. I don't know the answer to that.

25 Q. Staying on page 2 of your schedule, under

1 the second general block at the bottom, the underlying
2 portion of the text says local service request porting
3 specific to changes -- is that changes or charges?

4 A. I'm sorry. I'm not sure what line we're
5 on.

6 Q. The middle of the page. It's not a
7 numbered line.

8 A. Associated with which -- which item list?

9 Q. Page 2 of your schedule attached to your
10 testimony.

11 A. Correct.

12 Q. There are two blocks of numbers. The
13 second block is headlined as indicated by underscored
14 language, local service request porting specific
15 charges-complex. Do you see that?

16 A. Okay. I'm there.

17 Q. And right under that there is a phrase
18 service provision. Do you see that?

19 A. Yes, sir.

20 Q. What is service provision?

21 A. Service provisioning with this title is
22 just really establishing the service as -- the service
23 being the end user service as a -- as a Charter account,
24 as the customer becomes a Charter account.

25 MR. DODGE: Your Honor, my next question

1 may involve a proprietary answer, so out of an abundance
2 of caution, I think we should go in-camera.

3 JUDGE PRIDGIN: All right. Let's go
4 in-camera, and let me ask counsel to see if there is
5 someone in the room that needs to be excused before we go
6 in-camera.

7 (REPORTER'S NOTE: At this point, an
8 in-camera session was held, which is contained in
9 Volume No. 4, pages, 444 through 448 of the transcript.)

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1 JUDGE PRIDGIN: We're back in public forum.

2 BY MR. DODGE:

3 Q. The schedule we were just discussing, the
4 proprietary schedule, is that the full cost study or just
5 the results page?

6 A. That's just the summary page.

7 Q. Summary or results? Is there a distinction
8 in your mind?

9 A. I couldn't -- results is fine.

10 Q. Thank you. Let's go to your rebuttal, page
11 2, and specifically I would direct you to your testimony
12 at lines 20 through 22.

13 A. Yes, sir.

14 Q. There you state, I believe it is important
15 to note that CenturyTel no longer has an end user LNP cost
16 recovery charge; is that correct?

17 A. That's correct.

18 Q. LNP I presume stands for local number
19 portability?

20 A. That is correct.

21 Q. Why doesn't CenturyTel have that charge
22 anymore?

23 A. The charge in the FCC's LNP end user cost
24 recovery order set forth a five year recovery period, and
25 that has run out for CenturyTel.

1 Q. When did that period expire?

2 A. I don't know specifically.

3 Q. Do you know the amount of the LNP charge
4 that CenturyTel used to be able to assess?

5 A. I do not.

6 MR. DODGE: That's all I have, your Honor.
7 Thank you.

8 JUDGE PRIDGIN: All right. Thank you. No
9 further cross; is that correct?

10 MR. DODGE: No, your Honor.

11 JUDGE PRIDGIN: Bench questions, Mr. Couch?

12 MR. COUCH: Yes.

13 QUESTIONS BY MR. COUCH:

14 Q. Mr. Reynolds?

15 A. Hi there.

16 Q. I guess it occurs to me that, of course,
17 when CenturyTel loses a customer to another company, in
18 this case I believe it's Charter, that there is a cost
19 involved in -- with the service order to disconnect the
20 customer; is that correct?

21 A. Not only to remove the customer, but also
22 to send them over to Charter.

23 Q. Do you charge for that?

24 A. It's essentially that's -- it's all built
25 into this sequence of events. In the process of moving

1 the customer to Charter, you're removing them
2 simultaneously from CenturyTel, so you don't have
3 duplication.

4 Q. What if the customer doesn't want his
5 number ported, what if he just determines he'll take a
6 different number, is there a cost for that?

7 A. I have to say that I've not studied that
8 and haven't worked through that scenario. I think there's
9 certainly costs involved, but I don't know that I could
10 tell you what that cost is.

11 Q. I guess I'm not so concerned about the cost
12 as I am about the charge. Any charge to the customer or
13 any charge to Charter when the customer is disconnected,
14 there's no porting of the number?

15 A. CenturyTel has a number of local service
16 request charges that the position -- and I think I stated
17 in my testimony, that not only are there LSRs associated
18 when the number is ported, but there are also LSR charges
19 that are associated with changes. And so any activity
20 that's -- that generates, you know, kind of this list of
21 tasks and functions has a charge associated with it, and
22 if Charter is the initiator of that request, regardless of
23 whether there's a port or not, there -- it's CenturyTel's
24 position that there should be a charge that applies to the
25 CLEC.

1 Q. So in other words, whether the customer is
2 ported or not, then Charter will be charged a service
3 order charge when a customer moves from CenturyTel to
4 Charter?

5 A. That's correct. That's CenturyTel's
6 position.

7 Q. Is there -- if the number's not being
8 ported, is it the same charge?

9 A. I believe that there is -- I -- I can't
10 answer that with good knowledge.

11 Q. If a customer were to just disconnect and
12 not move to Charter, is there a service order charge? I
13 mean, there's a service order involved in that. Is the
14 customer then charged for disconnecting?

15 A. I'm not -- I'm not aware of what
16 CenturyTel's local tariff would say in that instance.
17 I -- whether they've built those -- presumed those costs
18 into their service order charges that go to or service
19 initiation charges to go to end user customers, I don't
20 know. It's certainly difficult to, as a cost recovery
21 matter, in my opinion, to recover costs from an exiting
22 customer.

23 Q. So in other words, you may -- you may
24 presume that when the customer is initially gained, you
25 know, that the service order charge at that time which

1 will cover the disconnect for that customer later on?

2 A. I've worked in costing environment where as
3 you do your rate design around basic costs, that you would
4 include the exit costs along with the entry costs. I am
5 not aware at all on how Century's rates were developed.

6 Q. But you would -- I guess it's your opinion
7 at least, anyway, that every service order that is -- that
8 is processed on behalf of a customer or on behalf of a
9 competing local exchange company, that there's always a
10 charge that's made for those service orders?

11 A. There's always a cost certainly involved,
12 and whether there is, in fact, somebody that you can
13 recover the cost from is -- is the issue that you have to
14 design around. I think in the case of Charter clearly
15 requesting an LSR to move a customer onto their -- as one
16 of their customers, it seems very clear to me that they
17 are the initiators of these activities, and they are the
18 appropriate party to go to to recover those costs.

19 It's less clear when you have somebody
20 purely exiting how you can render a charge to them even
21 though they may be the folks that have made the decision
22 to move and cause work to be created to take them out of
23 the CenturyTel system. So I'm making a distinction
24 between the costs and how you actually recover those
25 costs, what the charging mechanism is.

1 MR. COUCH: Okay. Thank you.

2 JUDGE PRIDGIN: All right. Thank you.

3 Thank you Mr. Couch. Ms. Dietrich?

4 QUESTIONS BY MS. DIETRICH:

5 Q. Just a couple questions. You said that the
6 cost studies were provided to Charter, but I wasn't clear
7 what was provided to Charter. Can you clarify?

8 A. Yes. There's -- I think it's the more
9 exhaustive study is part of Mr. Schultheis' testimony. So
10 the entire package, including the underlying detail, was
11 provided to Charter, and I'm aware of two separate
12 occasions prior to -- well, once in discovery and then
13 sometime prior to that.

14 Q. But it was in paper, it wasn't the model so
15 that they can --

16 A. My belief is that it was in paper. I do
17 not believe or I do not know whether an electronic version
18 was provided.

19 Q. And do you know if Charter challenged the
20 cost studies?

21 A. We saw in one -- let me back up a moment.
22 They have not comprehensively challenged the cost study.
23 They did point out some changes, I believe, relating to
24 labor rate that they didn't quite concur with, but only
25 kind of what I would call a very limited foray into

1 responding to the cost studies.

2 MS. DIETRICH: Okay. Thank you. Nothing
3 else.

4 JUDGE PRIDGIN: All right. Thank you.
5 Mr. Van Eschen?

6 QUESTIONS BY MR. VAN ESCHEN:

7 Q. Good morning, Mr. Reynolds.

8 A. Good morning.

9 Q. I guess the relationship between your
10 testimony and Mr. Schultheis' testimony --

11 A. Schultheis, that's correct.

12 Q. -- testimony, both of are you sponsoring
13 the same cost study; is that correct?

14 A. That is correct.

15 Q. Okay. Mr. Schultheis' testimony maybe gets
16 into more details in the cost study.

17 A. That's correct, yes.

18 Q. I guess overall, how would you identify
19 that cost study? Is it a TELRIC cost study or something
20 different?

21 A. Yeah. I -- my review primarily was a
22 methodological review, although I did kind of foot the
23 numbers. I would characterize it as a TELRIC compliant
24 cost study.

25 Q. What's it mean to be TELRIC compliant?

1 A. To be TELRIC compliant in my mind, and I
2 think consistent with the definition that the FCC uses,
3 and I also believe that that's pretty much the Missouri
4 definition, is that it needs to be forward-looking, it
5 needs to be a long run incremental cost, and this study
6 does all of that.

7 Q. Are there any significant differences
8 between, say, a TELRIC cost study versus another type of
9 incremental cost study?

10 A. I think in my experience in debating those
11 issues over the years, is that largely you get down to
12 discussions of how long run is or how long is the long
13 run, whether it -- you know, how long are you trying to
14 basically look forward? And I think the other issue that
15 you get into is a discussion of, you know, what joint and
16 common costs are included. Those are the -- that's been
17 primarily in my mind where the distinction comes down.

18 Q. Okay. In your direct testimony, I think
19 it's on pages 5 through 7, you go through the steps that
20 you think are necessary in order for CenturyTel to process
21 a local service request; is that right?

22 A. That's correct. And this is -- this is
23 pretty much my -- the big steps, what I took away from my
24 discussions with the CenturyTel folks as to, you know, the
25 logical steps that go through to assure a good transition

1 from being a CenturyTel customer to a Charter customer and
2 without having an unhappy end user in the process.

3 Q. Okay. Is it possible to break those steps
4 down and assign costs to them so you can see which cost
5 steps are more costly in comparison with one another? Do
6 you understand what I'm saying?

7 A. Oh, sure. That would be an extremely
8 detailed study, and I think that theoretically it's
9 possible. I don't know that it would enhance the
10 efficiency of the -- of the result or the precision of the
11 result, but they are identifiable functions.

12 Q. Like, if I asked what's the most costly
13 aspects of, you know, of the -- I don't know, items
14 A through O on pages 5 through 7, what -- what's the most
15 costly aspect of handling an LSR? Is there -- can you --

16 A. I couldn't specifically pick out in the
17 CenturyTel process. I can tell you from my professional
18 experience that any time there's an aberration and you
19 have to go outside of the standard flow is where you
20 generally --

21 Q. I mean, is one of these tasks, you know,
22 really generating most of the costs for this charge, or --

23 A. I have not performed that study, so I
24 couldn't tell you. It is certainly a very labor intensive
25 process, and --

1 Q. Okay. When Mr. Dodge was asking you about
2 the, I guess we'd call it the LNP charge that CenturyTel,
3 I guess, applied a number of years ago, and you weren't
4 sure when --

5 A. When it expired?

6 Q. -- when it expired and consequently don't
7 know when it started, don't know the amount of the charge,
8 do you know if a cost study was performed for that charge?

9 A. I -- I'm not -- I'm not aware that a cost
10 study was performed but --

11 Q. You have not -- you have not ever seen --

12 A. I have not seen --

13 Q. -- the cost study?

14 A. I have not seen that cost study.

15 Q. Okay. All right. In regards to Issue
16 No. 29, you talk about -- I guess this issue pertained to
17 recovering unspecified costs of providing access to
18 upgraded or enhanced OSS. You talk about how Charter
19 would be required to pay those charges only if CenturyTel
20 first obtained Missouri PSC approval and the Missouri
21 Commission also determined that Charter would be
22 responsible for those -- for the payment of those charges?

23 A. That's CenturyTel's position, yes, sir.

24 Q. Okay. Is that process, I mean, is that
25 interconnection agreement amendment process, is that what

1 you're referring to there?

2 A. I'm not clear on what you're asking me.

3 Q. In order to bring this -- that sort of
4 matter to the Missouri Commission, would you -- would it
5 be an amendment to the interconnection agreement or would
6 it be some other avenue that this would somehow get before
7 the Missouri Commission?

8 A. I'm not sure what the vehicle would be.

9 Q. But in any event, it would have to be
10 brought somehow to the Missouri Commission, and you're not
11 entirely sure what that process is?

12 A. Yeah. I'm not sure what -- you know, how
13 that would launch, but certainly the intent behind this is
14 that as CenturyTel dynamically incurred improvements to
15 their operating support systems, that while those would go
16 in before those charges, the change in the costs would be
17 reflected in the rates to any competitor, that certainly
18 they would have the opportunity to have that aired before
19 you-all.

20 MR. VAN ESCHEN: Okay. No other questions.

21 JUDGE PRIDGIN: Mr. Van Eschen, thank you.

22 Ms. Dietrich?

23 FURTHER QUESTIONS BY MS. DIETRICH:

24 Q. In response to the questions about the
25 various steps that you used to summarize the steps that

1 CenturyTel employees go through for the LSRs, you said
2 it's a very labor intensive process. Is that a manual
3 process or electronic process?

4 A. Yeah. I probably misstated that a bit.
5 There are customer service reps involved, so there's --
6 it's one of the interesting things about LSR and trying to
7 do a TELRIC type study on something that's really not
8 asset driven. You're talking about people and systems as
9 the resource. So it's a human -- there are systems
10 involved. So there are system costs, but it's folks, it's
11 real life bodies interfacing with them.

12 So I'm just saying that kind of aside from
13 the system cost, the other variable on this is not a fixed
14 asset sort of cost but it's a human resource. So that's
15 what I meant by that statement. And if that wasn't really
16 clear, I apologize.

17 JUDGE PRIDGIN: Further bench questions?
18 Recross?

19 MR. DODGE: A little bit, your Honor.
20 Thank you.

21 RE CROSS-EXAMINATION BY MR. DODGE:

22 Q. Mr. Reynolds, Mr. Couch asked you some
23 questions, I believe, and you were turned and I couldn't
24 quite hear you.

25 A. I'm sorry.

1 Q. If this is beyond what you were talking
2 about, just let me know and I'll move on. I thought you
3 were talking about and he asked you about including some
4 disconnection costs in initial service order charges. Did
5 you have a brief discussion with him about that?

6 A. We had a discussion about that, and I
7 believe we were having a conversation in context of end
8 user customers disconnecting service and how did
9 CenturyTel construct their service order charges in
10 their -- what I would assume would be in their local
11 tariff.

12 Q. Given your industry level experience, do
13 you believe it to be true that telecoms generally include
14 the future cost of disconnection, say measured on a
15 present value basis, in initial service order charges?

16 A. I don't know that -- I don't really know
17 the answer to that.

18 Q. If it were the case that CenturyTel or any
19 ILEC included some or all of its present value disconnect
20 charges in its initial service order, to the extent that
21 ILEC tried to assess them again through a disconnect
22 charge of one form or another, that would be double
23 recovery, wouldn't it?

24 MR. OVERCASH: Your Honor, I object. I
25 think it calls for speculation. He's already said he

1 didn't know whether something's included or not.

2 JUDGE PRIDGIN: I'm going to overrule. I
3 think he asked him a hypothetical and whether -- whether
4 Charter can tie that together with the evidence is another
5 question. I think he's asking him a hypothetical.

6 MR. OVERCASH: Thank you, your Honor.

7 THE WITNESS: I think that if the costs of
8 disconnection were built into a charge for pure
9 disconnection for somebody disappearing from the network
10 and -- or from -- from CenturyTel in this case and then
11 they were -- would -- then CenturyTel would attempt to
12 levy that charge as the end user customer left, that that
13 would, in fact, constitute double recovery.

14 BY MR. DODGE:

15 Q. Thank you. In response to a couple of
16 questions from Ms. Dietrich, you referenced a limited
17 foray by Charter into the cost study; is that correct?

18 A. If I used the word foray, that's probably
19 what I said.

20 Q. It's a pretty highfalutin word, I would say
21 that.

22 A. I'm sure I just learned it.

23 Q. Do you recall by measure of percentage so
24 we don't have to go back into camera what that limited
25 foray did to the simple rate?

1 A. I do not recall.

2 Q. Lastly, in response to questions from
3 Mr. Van Eschen about local number portability issues,
4 would Mr. Miller know specifics about that, do you think?

5 A. Could you re --

6 Q. Sure.

7 A. Which questions are we talking about?

8 Q. You professed not to know very much about
9 the local number portability charge that CenturyTel used
10 to assess its end users. Do you suppose Mr. Miller might
11 be a better source of information on that?

12 A. I do not know who would be the best
13 CenturyTel person.

14 MR. DODGE: I think I've telegraphed it
15 well now. I'll conclude there, your Honor.

16 JUDGE PRIDGIN: There's no further recross,
17 then redirect?

18 MR. OVERCASH: Yes, your Honor, thank you.

19 REDIRECT EXAMINATION BY MR. OVERCASH:

20 Q. Mr. Reynolds, are you familiar with whether
21 CenturyTel's PIC change, change in IXCs process, is
22 performed manually or is it automated?

23 A. I have no idea.

24 Q. Assuming it is automated for sake of this
25 next question, would you expect CenturyTel's PIC change

1 costs, would they be less than the costs for an LSR?

2 MR. DODGE: Objection, your Honor. Goes
3 beyond the scope of my direct and my cross-examination.

4 MR. OVERCASH: Your Honor?

5 JUDGE PRIDGIN: Go ahead.

6 MR. OVERCASH: There were a lot of
7 questions in regards to IXC and PIC charges and trying to
8 draw an analogy between those PIC charges and an LSR.

9 JUDGE PRIDGIN: I'll overrule. He can
10 answer the question.

11 THE WITNESS: I would expect that -- it to
12 be significantly less than the LSR charge. That would be
13 the PIC change charge would be less than the LSR charge.

14 BY MR. OVERCASH:

15 Q. Why would you expect it to be less?

16 A. The PIC change charge is, once again,
17 merely reassigning interexchange carriers, not all the
18 verification process, I suspect that, No. 1, the process
19 has been going on for quite a long period of time, and
20 No. 2, there's considerably fewer steps and lends itself
21 fairly easily to automation.

22 Q. Do you know if CenturyTel has a charge to
23 its customer when they disconnect their service?

24 A. I do not know.

25 Q. Do you know if the steps for disconnecting

1 the customer are the same steps as you outlined in your
2 testimony for an LSR, local service request?

3 A. I have not made a study of the
4 disconnection of service steps.

5 Q. Mr. Van Eschen talked about -- asked you
6 some questions about the five year, I'll call it a five
7 year charge in regards to number porting relationship to
8 the rules of the FCC. Do you remember those questions?

9 A. Yes, I do.

10 Q. Are the costs that are recovered through
11 that charge and that FCC time frame, are those costs the
12 same costs that are addressed in the cost study that is
13 the subject of your testimony?

14 A. No, they are not.

15 Q. Could you briefly describe the type of
16 costs that were recovered under the five year charge on
17 the FCC process?

18 A. Yes. The -- the FCC end user LNP cost
19 recovery orders were fairly narrow and very specific in
20 the types of costs that were intended to be covered. They
21 were largely developmental costs, system type costs to
22 allow local number portability to be made available to end
23 users ubiquitously. And the costs that we're talking
24 about with these LSRs are very event driven and outside
25 the scope of the costs that were in the LNP end user

1 recovery order.

2 MR. OVERCASH: I have no further questions,
3 your Honor.

4 JUDGE PRIDGIN: All right. Thank you.

5 MR. DODGE: Your Honor, at this time, if I
6 may, we would like to reiterate our motion to strike, and
7 I'd also like to read into the record additional grounds
8 for objecting to admissibility of the schedule attached to
9 Mr. Reynolds' direct testimony. We made certain
10 allegations in our motion, and I think there are separate
11 grounds that have arisen today, and I'd like to put them
12 on the record.

13 MR. OVERCASH: Your Honor, we agreed those
14 were going to be in the brief. They also had their
15 opportunity on their motion, when they originally filed
16 it, what those grounds were. We then have stipulated to
17 let the rest of the evidence into the record after the --
18 I'll say subject to the motion that had already previously
19 been filed. I don't believe it's proper at this point to
20 add additional grounds that they may think affects the
21 admissibility of his testimony. It's in the record
22 currently.

23 JUDGE PRIDGIN: Mr. Dodge?

24 MR. DODGE: If your Honor would guarantee
25 us the right to raise these additional grounds on

1 briefing, I'm happy to do it then.

2 MR. OVERCASH: Your Honor, I don't believe
3 raising additional grounds at this point is proper. I
4 don't think it makes sense from an efficiency standpoint
5 or from the arbitration process for all of us now to go
6 back and to file objections on every piece of testimony
7 that's been filed on additional grounds when it's already
8 been entered and put into the record. That's cause -- I
9 don't think that's the process we've had. I don't think
10 it's appropriate at this point.

11 JUDGE PRIDGIN: I'm going to -- I'm going
12 to overrule at least to the extent that -- that you want
13 to read something into the record. If it's something that
14 you want to raise on briefs, because parties do have a
15 chance for reply briefs. That's something I'll allow you
16 to do. I don't know how persuasive I might find it at
17 this last minute that you're raising other grounds, but
18 again because you do get a chance to respond, I will let
19 him raise that in briefs, because you do have a chance for
20 reply briefs.

21 MR. DODGE: Thank you, your Honor.

22 JUDGE PRIDGIN: Nothing further for
23 Mr. Reynolds? Thank you very much, sir. You may be
24 excused.

25 Because it is almost noon, this looks to be

1 an appropriate time to break for lunch. Let's try to
2 resume -- I'll give you ample time, try to resume at 1:30.
3 Go back on the record at 1:30. Is there anything further
4 from counsel before we go off the record?

5 MR. SCHUDEL: If I could just pose a
6 question. I would presume we would all at least share one
7 point of agreement, and that is if we can finish today,
8 that would be a good thing.

9 JUDGE PRIDGIN: I wholeheartedly agree.
10 I'm afraid that my schedule dictates that I'm going to
11 have to leave very close to five.

12 MR. SCHUDEL: I just wondered if everybody
13 would agree to come back at one as opposed to 1:30, giving
14 us another half hour to try to --

15 JUDGE PRIDGIN: I'm seeing nods. That's
16 perfectly fine. I'm just trying to accommodate --

17 MR. SCHUDEL: I didn't want to suggest that
18 you would be able to stay late. I understand.

19 JUDGE PRIDGIN: One o'clock is fine with
20 me. Very good. We'll resume at one. Thank you very
21 much. We're off the record.

22 (A BREAK WAS TAKEN.)

23 JUDGE PRIDGIN: We are back on the record.
24 I understand that we will be moving on to the next
25 CenturyTel witness who will be Mr. Schultheis; is that

1 correct?

2 MR. OVERCASH: Correct.

3 (Witness sworn.)

4 JUDGE PRIDGIN: Thank you very much, sir.

5 Please have a seat. And anything to clear up before he's
6 tendered for cross?

7 MR. OVERCASH: Your Honor, I would offer
8 Exhibit 17, 17P and 18P.

9 JUDGE PRIDGIN: 17, 17P and 18P have been
10 adm -- excuse me, have been offered. Any objections?

11 MR. MOORMAN: There's some pending motions.

12 MR. DODGE: There's a pending motion to
13 strike, but other than that, no, your Honor.

14 JUDGE PRIDGIN: I think my records show a
15 17, 17P, 18 and 18P. Is that what was offered?

16 MR. OVERCASH: I believe it's just an 18P.
17 I believe it's just a proprietary version.

18 JUDGE PRIDGIN: So it's just 17, 17P and
19 18.

20 MR. OVERCASH: 18P.

21 JUDGE PRIDGIN: 18P only.

22 MR. OVERCASH: Only. There is no 18 that I
23 know of.

24 JUDGE PRIDGIN: Thank you very much. I
25 apologize. Those are offered and admitted pending the

1 motions for striking portions of that testimony which will
2 be ruled upon later.

3 (EXHIBIT NOS. 17, 17P AND 18P WERE RECEIVED
4 INTO EVIDENCE.)

5 MR. OVERCASH: Your Honor, I'd have nothing
6 further.

7 JUDGE PRIDGIN: Cross-examination?

8 MR. DODGE: Yes, your Honor.

9 M. SCOTT SCHULTHEIS testified as follows:

10 CROSS-EXAMINATION BY MR. DODGE:

11 Q. Good afternoon, Mr. Schultheis.

12 A. Good afternoon.

13 Q. Thank you for your patience in the back of
14 the room for the last couple of days. When were you
15 engaged by CenturyTel to work on this case?

16 A. I believe it was either late August,
17 early Sept -- no. It was August. It was not September.
18 It was August of 2008.

19 Q. Thank you. Thank you very much. You
20 testified at page 3 of your rebuttal testimony, which is
21 the only testimony you filed in this case, that CenturyTel
22 provided its cost study to Charter in July of 2008; is
23 that correct?

24 A. That's correct.

25 Q. And you also mentioned that CenturyTel also

1 provided a cost study on September 8th, 2008 in response
2 to a discovery response; is that correct?

3 A. That's correct.

4 Q. Does that mean, given when you came aboard
5 for CenturyTel, that the cost study had already been
6 completed and shared with Charter before your engagement?

7 A. I think I said I was engaged in August, and
8 it was provided to you in July, so yes.

9 Q. Thank you. You include a copy of the cost
10 study as a schedule to your rebuttal testimony; is that
11 correct?

12 A. Yes.

13 Q. Why?

14 A. I reviewed and analyzed the cost study
15 after I was engaged by CenturyTel to determine whether or
16 not those costs in the study comply with Section 251 as it
17 relates to interconnection rates.

18 Q. My question is not quite so high level.
19 Mr. Reynolds already attached the cost study to his
20 testimony, correct?

21 A. Correct.

22 Q. Why did you attach the cost study to your
23 testimony?

24 A. Well, the purpose of my testimony as I say
25 on page 3 -- or page 2, excuse me, lines 18 through 21 and

1 continuing on to page 3, is to state that Charter did
2 receive the cost study on multiple occasions, and whether
3 they looked at it or not is not my testimony. It's I'm
4 providing that cost study in case they didn't get it for
5 some reason, which I believe that they did get it.

6 Q. Are there differences between the schedules
7 that you provided in association with your testimony and
8 the schedules that Mr. Reynolds provided?

9 A. Are there differences?

10 Q. Yes.

11 A. I have more schedules than Mr. Reynolds
12 does.

13 Q. Can you generally describe without
14 disclosing any proprietary information what those
15 differences are?

16 A. The underlying data in the study that was
17 provided to Charter is contained with my testimony. What
18 Mr. Reynolds has in his testimony is the summarized
19 version that shows what the rate is and a couple of other
20 line items that go into the development of that rate.

21 Q. And did you prepare the additional
22 schedules that you've just referenced?

23 A. The additional schedules in my testimony?

24 Q. Yes.

25 A. Did I prepare those?

1 Q. Yes.

2 A. No. Those are exact replications of what
3 was sent to Charter.

4 Q. And you presume or do you know if they were
5 prepared by Charter -- excuse me, CenturyTel personnel?

6 A. I believe that they were prepared by
7 CenturyTel personnel.

8 Q. Thank you. Did you personally access
9 CenturyTel's systems to obtain the operating parameter of
10 reference in those schedules?

11 A. I did not -- do not have access to
12 CenturyTel's systems, nor did I access those. I reviewed
13 the study that CenturyTel performed to make sure in my
14 opinion that what they captured was accurate and complies
15 with the costing requirements of Section 251 for
16 interconnection agreements.

17 Q. Did you speak with CenturyTel personnel
18 about your review?

19 A. Yes, I did.

20 Q. And are those people here today?

21 A. I spoke with some of the folks that are
22 here today, but not directly related to this study or the
23 details of this study. The other folks I talked to at
24 CenturyTel are back at CenturyTel headquarters.

25 Q. Not to put anybody on the spot, but who is

1 here today from CenturyTel with whom you previously spoke
2 about the cost study?

3 A. Ms. Smith.

4 Q. Thank you. I noticed from your testimony
5 that you previously worked at a consulting firm called
6 Parish Blessing; is that correct?

7 A. That's correct.

8 Q. And what did you do professionally at
9 Parish Blessing?

10 A. Consulted with telecommunication companies
11 on various issues that relate to regulatory work, cost
12 work, interconnection work.

13 Q. You mentioned cost work. Does that imply
14 that you worked on cost studies while at the consultancy?

15 A. Yes.

16 Q. What sort of cost studies did you either
17 work on, prepare or review while at Parish Blessing?

18 A. From interconnection studies, UNE studies,
19 resale studies, Part 69, Part 36 studies for the FCC,
20 contribution studies.

21 Q. Were there certain methodologies that you
22 feel that you concentrated on or did not concentrate on?

23 A. I've covered many methodologies, spent more
24 time, quote, growing up as a younger lad on the Part 36-69
25 because the interconnection telecommunication act of '96

1 had not come about to offer up TELRIC as a costing
2 standard.

3 Q. So your formative years were spent doing
4 more of embedded cost studies; is that a fair
5 characterization?

6 A. Cost studies compliant with Part 36. There
7 were forecasted studies to those as well that were done
8 for my clients.

9 Q. Were the forecasted studies that you
10 performed or reviewed pursuant to Part 36 TELRIC studies?

11 A. Not if it was before 1996.

12 Q. Thank you. What rates are -- excuse me,
13 are required in Section 251 of the act?

14 A. What rates? I don't believe they list the
15 rate elements. Just that rates are to be just and
16 reasonable and nondiscriminatory.

17 Q. Before you may have meant 252. I think you
18 said 251. I just want to give you an opportunity to
19 clarify.

20 A. Okay. Thank you.

21 Q. Do you believe that TELRIC is the
22 appropriate standard for establishing rates in this case?

23 A. For interconnection?

24 Q. Yes.

25 A. I do.

1 Q. When you worked at PTI, did you have
2 occasion to consult for a company called Penn Telecom?

3 A. I did not work for PTI.

4 Q. When you were at Parish Blessing, did you
5 have an occasion to consult for Penn Telecom?

6 A. I was -- I was a consultant for Penn
7 Telecom in that case.

8 Q. And did you have an occasion during that
9 consultancy to prepare a cost study on behalf of Penn
10 Telecom?

11 A. I did.

12 Q. What state did you perform that for?

13 A. In Pennsylvania.

14 Q. Was that the last cost study you performed
15 while at Parish Blessing?

16 A. That probably was the last cost study I
17 performed at Parish Blessing that is in any record. I
18 have, of course, continued to do costing work for clients
19 on other issues as mundane as how much an opt -- a calling
20 feature might cost, but that wouldn't be filed in the
21 public record.

22 Q. So that was the last publicly filed cost
23 study, although there may have been proprietary parts to
24 it?

25 A. I think so. I think that was in June or

1 July of '07 is when that case was.

2 Q. I apologize. Did you submit that cost
3 study to the Pennsylvania PUC?

4 A. That was to the Pennsylvania Public Service
5 Commission or Public Utility Commission.

6 Q. Is that cost study considered by an
7 administrative law judge of the Pennsylvania PUC?

8 A. The hearing was in front of an
9 administrative law judge between PTI and Verizon, yes, and
10 it was part of the record.

11 Q. Did that administrative law judge reach any
12 conclusions about the cost study you prepared for Penn
13 Telecom?

14 A. I don't think he really reached a
15 conclusion about the cost study. He didn't think it was a
16 cost study, and that has since been reversed since he
17 rendered his decision.

18 Q. It's your testimony that that decision was
19 reversed?

20 A. I've come to find out since I've departed
21 Parish Blessing & Associates, was contacted by counsel in
22 that case, that the Commission did not adopt the ALJ's
23 decision and it is being reworked.

24 Q. I have a very specific question.

25 A. Okay.

1 Q. You used the word reversed. Was the ALJ's
2 recommended decision reversed, to the best of your
3 knowledge?

4 MR. OVERCASH: Your Honor, I would object
5 from the standpoint if we're going to ask about a specific
6 order in a hearing in another state, if we could have a
7 copy of the order to see or ask what the specific in terms
8 of the language being reversed is or isn't or what the
9 original ALJ decision did or did not look like.

10 JUDGE PRIDGIN: I'm going to overrule. He
11 seems to know the answers to these questions, and if he
12 doesn't know, he can say he doesn't know. If you could
13 ask the question again.

14 BY MR. DODGE:

15 Q. Do you know if ALJ Wisemander's order or
16 recommended decision was reversed, using your term, by the
17 Pennsylvania PUC?

18 A. Well, let me correct my term then,
19 reversed. His decision was not implemented.

20 Q. Fair enough. Good clarification.

21 MR. DODGE: Just a moment, your Honor.

22 JUDGE PRIDGIN: Certainly.

23 BY MR. DODGE:

24 Q. Let's go to page 2 of your rebuttal
25 testimony, please. Are you there?

1 A. Yes.

2 Q. Let's take a look at lines 7 through 11.

3 A. Okay.

4 Q. We touched on this a little bit earlier.

5 You mentioned you've been involved with all sorts of
6 costing methodologies; is that correct?

7 A. I have been involved with many different
8 costing methodologies, yes.

9 Q. How many TELRIC studies have you supported
10 in testimony before a commission or another public agency
11 or even a court?

12 A. I don't believe I've testified to any
13 TELRIC study. I have supported many TELRIC studies in my
14 work as a consultant.

15 Q. All right. Fair enough. Let's turn ahead
16 to page 4 of your rebuttal testimony, please, and I direct
17 your attention to line 18.

18 A. Okay.

19 Q. I touched on this a little bit with
20 Mr. Reynolds earlier. Were you in the room for that
21 discussion?

22 A. I was.

23 Q. Thank you. At line 18, you note the
24 initial service order charge simple, and I understand and
25 want to confirm with you that that is for zero or one to

1 nine lines for local number portability; is that correct?

2 A. That is my understanding.

3 Q. Is it lines or customers?

4 A. I believe it's numbers.

5 Q. And numbers are assigned to lines?

6 A. I mean, to lines.

7 Q. Okay. Another clarifying question. For

8 that initial service order charge single, can the requests

9 that come in, up to nine requests, can they be for

10 different addresses or different customers, if you know?

11 A. I don't know.

12 Q. Do you know how the -- that porting process

13 mechanically physically labor-wise, can you give us a

14 sense of how it's accomplished for zero to nine port

15 requests?

16 A. How the process is -- can you rephrase

17 that, please?

18 Q. Sure. Let's presume that Charter wins a

19 customer from CenturyTel. From that moment on, can you

20 describe the process from CenturyTel's side of the aisle

21 as to what transpires? I know that Mr. Reynolds included

22 more than a dozen steps. If you could sort of summarize

23 your understanding of what happens, please?

24 A. The interface between the -- between

25 Charter and CenturyTel on a service order?

1 Q. Sure. Let's start there.

2 A. I have not followed that through. My
3 understanding, however, from -- from experience is that
4 the contact is made, the information is given via
5 electronically or manually, whatever the process is.
6 There's an entry into the system. There's a confirmation
7 of that entry. There's a communication that the entry was
8 made and everything was correct if there aren't any
9 errors, and the order is complete.

10 Q. That's a good summary. Thank you. Turning
11 ahead to page 5 of your testimony, please, specifically
12 lines 13 through 17.

13 A. Uh-huh.

14 Q. And I just want to confirm that this is
15 CenturyTel's first attempt at cost justifying the rates
16 that you're here to support; is that correct?

17 A. I believe that the existing rates that
18 CenturyTel has for interconnection with Charter came from
19 a previous contract, so this would be the first time.

20 Q. Thank you.

21 MR. DODGE: Just a moment, your Honor.

22 JUDGE PRIDGIN: Certainly.

23 MR. DODGE: I apologize, your Honor.

24 JUDGE PRIDGIN: That's all right.

25 BY MR. DODGE:

1 Q. Turning ahead to page 8 of your rebuttal
2 testimony, please, at the top of the page. There you
3 represent that CenturyTel has forecasted zero change in
4 demand essentially; is that correct?

5 A. Yes.

6 Q. How do you know that's accurate?

7 A. I don't know that's accurate. I don't know
8 that any forecasts are accurate.

9 Q. Fair enough. If you included a --
10 hypothetically a 25 percent increase in demand, what would
11 have happened to the proposed rate?

12 A. Mathematically, all else being held equal,
13 if nothing changes in the numerator and the denominator
14 goes up by 25 percent, then the rate will go down.

15 Q. Thank you. Let's go to page 10 of your
16 testimony, please, specifically lines 24 through 27.
17 Would you accept, subject to check, Mr. Schultheis, that
18 these elements that you've identified account for or
19 comprise more than 50 percent of the labor rate that is
20 contained in the schedules attached to your testimony?

21 A. Let's look at those schedules then.

22 Q. Take your time.

23 MR. OVERCASH: Just a clarification, are
24 you starting with the sentence on 24 that starts with the
25 word direct?

1 MR. DODGE: I think we can start at line
2 25, starting with payroll benefits.

3 MR. OVERCASH: So include -- that would
4 include -- I'm just trying to make sure. I didn't want --

5 MR. DODGE: The elements that I'm
6 referencing include payroll benefits, payroll taxes,
7 supervision and support, departmental overhead and
8 indirect overhead.

9 MR. OVERCASH: Thank you.

10 THE WITNESS: Okay. And the question now?

11 BY MR. DODGE:

12 Q. Would you accept, subject to check, that
13 those cost elements comprise more than 50 percent of the
14 rate that is referenced in your -- for the simple charge
15 is referenced in your schedules?

16 A. I don't believe it's more than 50 percent.

17 Q. Fair enough.

18 A. What I'm looking at in this schedule, if I
19 can continue, is the supervision, department and indirect
20 overhead compared to the direct labor, payroll benefits
21 and payroll taxes. Those three lines of direct labor,
22 payroll benefits and payroll taxes do not appear to be one
23 half or two times the supervision and support line,
24 departmental overhead line and indirect overhead line, and
25 I'm specifically looking. If you want me to identify that

1 schedule, I can.

2 Q. No. It will be in the record, so I don't
3 think we need to do that.

4 A. Okay.

5 Q. Would you accept, subject to check, that
6 direct labor is approximately 40 percent of the costs for
7 an initial service order simple version?

8 A. Well, I can just look at the numbers and
9 tell you that it's close to that. I don't -- we can talk
10 about the numbers, but they're proprietary, and I don't
11 mind going to the proprietary schedules if we just want to
12 talk what's that number and what's that number.

13 Q. I'm just asking you to accept it subject to
14 check. If you're uncomfortable doing so, you can feel
15 free to say no.

16 A. Okay.

17 Q. Let's turn to page 11 of your testimony,
18 lines 10 through 14.

19 A. Yes.

20 Q. And there you say that the costing
21 methodology is compliant with Section 251 essentially; is
22 that correct?

23 A. Just and reasonable and nondiscriminatory
24 Section 251 language, yes.

25 Q. Are you referring to TELRIC-based pricing

1 there?

2 A. I'm referring to Section 251 of
3 nondiscriminatory, just and reasonable.

4 Q. And in your mind, is that a TELRIC
5 methodology?

6 A. It's not in 251, FCC orders talk about
7 TELRIC.

8 Q. I want to make sure I understand the
9 question -- your answer. The rates that you believe are
10 compliant with 251, were they derived using a TELRIC
11 methodology?

12 A. I believe that these rates are TELRIC
13 compliant.

14 Q. What's the difference between TELRIC
15 compliant and using a TELRIC methodology?

16 A. I can look at rates from a study and
17 determine with the experience I have that they're TELRIC
18 compliant, and the methodology that was used could be
19 totally different than the methodology that's here. Not
20 all methodologies, TELRIC methodologies are defined exact.
21 Two parties can have two different ways of doing something
22 with a TELRIC methodology.

23 Q. Am I correct that your analysis starts by
24 looking at the rate itself?

25 A. I looked at the rate, and I looked at the

1 process involved and I looked at the steps taken.

2 Q. Which did you look at first?

3 A. Probably the steps taken.

4 Q. And so when you say something's TELRIC
5 compliant, you look at the steps that were undertaken in
6 the cost study to make sure those steps are TELRIC based,
7 TELRIC compliant?

8 A. That they're TELRIC compliant.

9 MR. DODGE: That's all I have, your Honor.

10 JUDGE PRIDGIN: Thank you. No further
11 cross, then?

12 MR. DODGE: No, your Honor.

13 MR. DODGE: Bench questions, Mr. Couch?

14 QUESTIONS BY MR. COUCH:

15 Q. Something I'd asked Mr. Reynolds, and maybe
16 I can just ask you, too. I asked him concerning the
17 porting, the Order porting the costs behind that, and I
18 said if a customer was disconnected, there's similar
19 costs, is there not, to just a customer being disconnected
20 as to being ported?

21 A. There's a cost. Similarities might not be
22 the right word. When a customer disconnects, CenturyTel
23 no longer has that customer, doesn't need to continue that
24 relationship with that customer, doesn't need to get back
25 to that customer about what they may have ordered if this

1 was a local service order charge or any other transaction
2 where the customer wanted to change something on the
3 disconnect. CenturyTel no longer has to perform those
4 functions or double check the information provided.

5 Q. When a customer is ported, are you saying
6 that the relationship continues after the customer is
7 ported?

8 A. The retail relationship does not continue.

9 Q. Let me ask you, and I asked him, I said
10 companies endeavor to recover their costs, and that's what
11 your job is all about is helping recover costs, the cost
12 of disconnection that's not charged to Charter in this
13 case. Is it charged to the customer?

14 A. I don't believe there's a tariff rate
15 element or any charge to the customer when they
16 disconnect.

17 Q. Is that recovered someplace else?

18 A. I don't know if it's recovered.

19 MR. COUCH: Okay. Thank you. That's all.

20 JUDGE PRIDGIN: Ms. Dietrich?

21 QUESTIONS BY MS. DIETRICH:

22 Q. First of all I'd like to follow up on the
23 exchange you were having with Mr. Couch, and you said that
24 you -- he was having you compare a customer -- retail
25 customer being disconnected versus a customer ported to

1 Charter.

2 A. Uh-huh.

3 Q. And you were talking about in the case of
4 the retail customer there is no additional contact,
5 there's no need to follow up, there's no need to verify if
6 information is correct and that type of thing. So if a
7 customer is ported to Charter, is that the labor
8 intensive, to use Mr. Reynolds' words, part of the charge?

9 Is that where the charge comes from is
10 because CenturyTel -- I mean, right, CenturyTel not only
11 has to transfer the customer, but also has to review the
12 paperwork, has to follow up with Charter to make sure
13 information's correct and those type of things, so it's
14 those steps that are creating the cost?

15 A. Right, and to make sure that the form was
16 filled out properly on the change of customer, to verify
17 the customer wanted their line changed to Charter, there
18 could be a -- and if there's a -- we talked about the PIC
19 charge, the PIC charge was discussed earlier where there's
20 a PIC freeze charge, there could be a line freeze charge
21 where that's not a transferable line without some
22 affirmation from the customer so no one gets ported
23 without their consent.

24 Q. Now, I'd like to ask you a couple questions
25 about your schedules, and I'm going to try to do it

1 without having to go in-camera, but --

2 A. Okay.

3 Q. -- please let the judge know if you need
4 to. If you look at page 10 of your testimony at lines 8
5 through 10, there are some rates there that are CenturyTel
6 rates, and if I understand the correct rates would be the
7 bolded rates, the 13.71, 17.48 and 7.39; is that correct?

8 A. Yes.

9 Q. In your Schedule MSS-3, there are rates
10 that Charter are proposing -- Charter is proposing for
11 these same elements, and the -- Charter comes up with
12 different rates. Can you explain what Charter did to
13 arrive at the different rates?

14 A. Yes, I'll try.

15 Q. Okay.

16 A. Since it's Charter's -- it's my exhibit,
17 but it was Charter's response to discovery that is in MSS
18 Schedule 3 proprietary.

19 Q. Let's back up a second, then. Before you
20 explain, why did you include Charter's study in your
21 testimony?

22 A. As I said in testimony, this confirms --
23 Schedule MSS-3 confirms that Charter did receive our cost
24 study prior to direct testimony. Where Mr. Gates said
25 that they had not or he just recently received, this

1 schedule shows that they did receive this well in advance
2 of testimony being due, and that's why I included it.

3 Q. Okay. Now, could you explain what it
4 shows?

5 A. I'll try. What Charter in my opinion tried
6 to do was to list the labor rates that are in CenturyTel's
7 proprietary nonrecurring charge study, and Charter has
8 line by line accepted or rejected that rate. So when it
9 appears in the first column of numbers, that's the
10 CenturyTel numbers. If we're looking at the same page,
11 and I'm looking at the Schedule MSS-3, and for ease of
12 notation down at the bottom it has a 000061.

13 Q. Right.

14 A. Okay. If that's the page that we're
15 looking at, line by line, when the far right column, which
16 is labeled Charter proposed rate, two columns to the left
17 or the first line from the right that has a dollar and
18 cents is the CenturyTel rate. Charter goes by and, in my
19 opinion, either accepts it or rejects it.

20 And when we get down to the fourth line,
21 supervision and support, you'll see nothing in the Charter
22 column. So Charter doesn't believe that any of these
23 customer service reps in this study need to be supervised.
24 Continuing down, that there needs to be no overheads in
25 this study on Charter's exhibit, and I was just starting

1 at the first labor group.

2 Q. Right.

3 A. And this will continue for the other two
4 labor groups on this page. Charter continues in this
5 response to data on the 000062 page, and they accept the
6 time from the time and motion study, and all they've done
7 is replaced the labor rate with those three labor items
8 from the previous page where they don't believe any
9 supervision is needed for any customer service reps or any
10 overheads.

11 Q. Okay. And did Charter provide any kind of
12 documentation as to why they made those adjustments or
13 were you just going on the face of this document?

14 A. I'm just going on the face of this
15 document. Charter has barely commented about the
16 nonrecurring charge study, except in minimal testimony
17 from Mr. Gates.

18 Q. Now I'd like to switch to MSS-2. Using the
19 page numbering that you referenced earlier, I'm looking at
20 CTL0011.

21 A. Okay.

22 Q. There's two different sets of actions on
23 that page, and they each have a return on investment. Can
24 you tell me how that return on investment was determined?

25 A. There was no study done to determine what

1 the rate of return would be. This is the rate of return
2 from the federal jurisdiction.

3 Q. Okay. And on the depreciation rates,
4 there's two different numbers, one for -- a different one
5 for each set of activity?

6 A. Uh-huh.

7 Q. Can you tell me how those were derived?

8 A. The first one on the upper half of that
9 page was set at that amount to recover that investment
10 over a short period of time, which would be the
11 forward-looking life of that asset.

12 Q. Okay. And the second?

13 A. The second one is a different system. The
14 billing system, which has a longer life, economic life,
15 and that is why that number was placed into the
16 depreciation line for the billing system.

17 MS. DIETRICH: Okay. That's all I have.

18 Thank you JUDGE PRIDGIN: Ms. Dietrich,
19 thank you, Mr. Van Eschen?

20 QUESTIONS BY MR. VAN ESCHEN:

21 Q. I just wanted to follow up on some of the
22 questions Mr. Dodge had. So this cost study, is it a
23 TELRIC cost study or not?

24 A. I believe it complies with the Section 251,
25 it's just, reasonable, nondiscriminatory and it's TELRIC

1 compliant.

2 Q. So you would say yes, that it's a TELRIC
3 cost study?

4 A. This is cost study, and what makes this
5 different than like a UNE cost study is there's very
6 little investment here. This is almost all labor. So if
7 we're going to do a forward-looking TELRIC labor study,
8 then there's not much to -- to put into this study for
9 depreciation or for a rate of return because that's a
10 minimal part of this study.

11 This is about labor rates and how much of
12 that labor is used to perform these tasks of processing a
13 service order. There's no return on that investment
14 because it's expense, it's labor expense, which in a
15 really forward-looking world, if I were going to project
16 this out to 2010 or forecast this out, I would expect the
17 labor rates to go up.

18 Q. Just so I understand, you didn't actually
19 perform the cost study; is that correct?

20 A. Right. I analyzed it and reviewed it.

21 Q. Okay. And who actually performed the cost
22 study?

23 A. At CenturyTel?

24 Q. Was it CenturyTel?

25 A. CenturyTel.

1 Q. Personnel?

2 A. Uh-huh.

3 Q. Did you talk to the people that --

4 A. Yes, I did.

5 Q. -- put together the cost study?

6 A. Yes.

7 Q. Have you personally developed a cost study

8 that looked at these same costs for other clients?

9 A. Yes, I have looked at nonrecurring charges

10 for other clients.

11 Q. Did you use the same method? Was the same

12 method used?

13 A. Method would be identify the labor rates,

14 forecast them if you -- to get them up to TELRIC, if

15 that's what this requirement is. Do a time in motion

16 study to capture the labor that it takes for the folks to

17 process this, and if there is some systems cost, to

18 identify those and build that also into the cost of the

19 service order.

20 Q. Okay. In your professional opinion, in

21 your review of how CenturyTel conducted this cost study,

22 would you have done anything differently?

23 A. I would have -- I would have done a few

24 things differently.

25 Q. Can you elaborate on that?

1 A. Sure. This is -- to borrow a term I've
2 heard before, this is kind of like baking a cookie, and I
3 might have put more of an ingredient in something or less
4 of another. I might -- or I probably would have
5 forecasted labor rates out to 2010 because this contract I
6 believe is a two or three-year contract, I forget which,
7 and I want to get the costs forecasted out to maybe the
8 middle point of that contract period. So I would have
9 increased the labor rates by going to the Bureau of Labor
10 and Statistics, some federally --

11 Q. So that would have inflated the loaded
12 labor rate?

13 A. That would have increased the rate to
14 reflect what the rate would be in the 2010 time period.

15 Q. Okay. Is that the only --

16 A. That would have been --

17 Q. -- only thing you would have done
18 differently?

19 A. I would have sampled more customer service
20 reps' time. I would have increased the sample.

21 Q. How many -- what was in the sample?

22 A. One.

23 Q. One?

24 A. One.

25 Q. Okay. So they -- so in terms of

1 determining the length of time to do various tasks, they
2 simply looked at one service rep?

3 A. One person, yes.

4 Q. One person. And how many service reps
5 performed this work for CenturyTel?

6 A. I don't know the exact number. I don't
7 think it's more than a dozen.

8 Q. Okay.

9 A. For CLEC Service.

10 Q. Do you think that the amount of time could
11 vary quite a bit between service reps?

12 A. I don't think -- without knowing the
13 experience of all the service reps, how automated the
14 process is, not how automated the process, how -- when the
15 automation fails, and as Mr. Reynolds said, the time to
16 work the order when something's wrong, the experience of
17 how to take the order when it is rejected and communicate
18 that back. I don't know how many of the folks that are
19 customer service reps, what their experience level is, as
20 that -- whether they would handle those non-normal
21 functions any faster or any slower than the one that was
22 sampled.

23 Q. Have you observed CenturyTel's reps
24 performing this work?

25 A. I have not.

1 Q. Do you think that would be important to do
2 in order to evaluate --

3 A. Me personally?

4 Q. -- the cost study?

5 A. I don't think it's a requirement for me
6 personally. Issuing some guidelines, some orders through
7 the channels at CenturyTel to have the customer service
8 rep supervisor initiate the study where I've picked maybe
9 the day, the time, the week, randomly pick the customer
10 service reps and have them clock their times, opposed to
11 me walking around and clocking it.

12 Q. Do you know in looking at the one service
13 rep that was used to derive the amount of time that it
14 took to perform each of these tasks, was that just -- how
15 many orders did they observe that service rep handle?

16 A. I don't know the number.

17 Q. Could have been just one?

18 A. I don't know the number.

19 Q. It could be one?

20 A. It could be 101. I don't know. I don't
21 have that readily available to me. I've seen it. I just
22 don't know what it is.

23 Q. Don't you think that would be important to
24 know?

25 A. Sure.

1 Q. I asked Mr. Reynolds, I know on pages 5
2 through 7 he lists all the different tasks --

3 A. Right.

4 Q. -- that are involved in this process.
5 Which task is, I guess, the most time consuming to perform
6 that he lists here? He lists A, B, C, D through O. Which
7 one takes a lot of time to perform?

8 A. Because the time in motion study is not
9 designed with those 12, 15, A Through O steps. I can't
10 tell you which one was the more or most time consuming.

11 MR. VAN ESCHEN: I don't believe I have any
12 other questions.

13 JUDGE PRIDGIN: Mr. Van Eschen, thank you.
14 Any further bench questions? Recross?

15 MR. DODGE: A few questions, thank you,
16 your Honor.

17 RE CROSS-EXAMINATION BY MR. DODGE:

18 Q. Mr. Schultheis, in response to some
19 questions from Ms. Dietrich about how labor intensive the
20 process is, are you aware of FCC rules which limit the
21 validation of LSRs?

22 A. I'm not aware of rules. Is there something
23 you can point me to?

24 Q. If you're not aware, we can move on.

25 Also in response to Ms. Dietrich's

1 questions, you went through MSS-3; is that correct?

2 A. Yes, we did.

3 Q. Is it your testimony here today that this
4 schedule represents Charter's position in this case
5 vis-a-vis a proper cost study per CenturyTel's LSR
6 process?

7 A. This Exhibit MSS-3 is Charter's response to
8 a discovery request.

9 Q. Do you recall what that discovery -- let me
10 apologize for interrupting. Did you want to say something
11 else?

12 A. The question to me from the bench was, what
13 do I think it was? And I gave my answer as to what I
14 thought that schedule meant or what that schedule means to
15 me.

16 Q. And my question is slightly different. Do
17 you believe that represents Charter's position on
18 CenturyTel's proper cost of the LSR process?

19 A. I believe it could.

20 Q. Do you know what Charter's position is?

21 A. I don't know what your position is because
22 you haven't performed or taken any actions toward the cost
23 study that's been in your hands, other than this response
24 in discovery, which looks to me like you have gone through
25 it and decided what was a labor rate that should be

1 included and what's a labor rate that shouldn't be
2 included, and the time that was in that study seemed on
3 that schedule was not adjusted.

4 Q. In response to Mr. Couch's question
5 regarding end users who leave CenturyTel's local service,
6 is it your testimony that CenturyTel currently does not
7 recover the cost associated with those customers who leave
8 CenturyTel?

9 A. My testimony is I don't know if that's
10 costs that is recovered or not.

11 Q. You discussed with Mr. Van Eschen some of
12 the potential changes you would have made had you
13 originated the cost study. Do you recall those questions?

14 A. Yes.

15 Q. I noticed you didn't forecast any decreases
16 in cost or lessening of time intervals. Is there any
17 element where you would have lowered a rate, lowered a
18 cost, shortened a time interval had you done the cost
19 study originally?

20 A. If the demand would have grown, that would
21 have lowered it. If it would have been forecast to be
22 lower, then that would have raised the rate.

23 Q. I want to make sure I'm clear. Are you
24 saying you would have forecasted greater than zero demand
25 had you originated the cost study?

1 A. If I would have had the opportunity to do
2 the cost study before, I might have, but given just 12
3 data points for demand and developing a forecast on that
4 is a little suspect when it comes out to whether that
5 forecast is reasonable. Labor rates, though, are a
6 different story. There's mountains of data series from
7 the federal government that can be used by region to
8 forecast labor rates. There's a much bigger base, much
9 more data points to use.

10 Q. And aside from the labor rate, any other of
11 the inputs to the cost study that you would have changed
12 to lower a rate, lower a cost, shorten a time interval?

13 A. I can't think of one right now.

14 Q. Have you examined the LSR process for other
15 ILECs for whom you've consulted?

16 A. I have. Not in this level of detail for
17 what we're discussing today.

18 Q. Do you know if any of their processes are
19 automated?

20 A. I believe most of the ILECs that I consult
21 with have automated processes with the exception of the
22 small rural companies that I also consult with, which are
23 manual. But even in the -- let's just say midsize
24 companies, and I'll put CenturyTel in a midsize company,
25 even with some of the midsize companies I've consulted

1 with, the process is automated. However, there's still
2 manual intervention required when the process or the
3 system is -- kicks out the order for whatever reason.

4 MR. DODGE: Thank you. That's all I have,
5 your Honor.

6 JUDGE PRIDGIN: Thank you. Redirect?

7 MR. OVERCASH: Your Honor, could I have a
8 moment, please?

9 JUDGE PRIDGIN: Certainly.

10 MR. OVERCASH: I have no questions, your
11 Honor.

12 JUDGE PRIDGIN: All right. Thank you.
13 Mr. Schultheis, thank you very much. You may step down.
14 I believe the next witness would be Ms. Hankins; is that
15 correct?

16 MR. MOORMAN: Yes, your Honor.

17 JUDGE PRIDGIN: Ms. Hankins, if you'd step
18 forward and be sworn, please.

19 MR. MOORMAN: Your Honor, before she is
20 sworn in, we have the same issue. We prepared the errata
21 yesterday. We'll just use it off the paper and not have
22 her go through.

23 JUDGE PRIDGIN: That's fine.

24 MR. MOORMAN: I think Mr. Dodge agrees.

25 MR. DODGE: I agree.

1 (Witness sworn.)

2 JUDGE PRIDGIN: Thank you very much.

3 Please have a seat. Anything before she's tendered for
4 cross?

5 MR. MOORMAN: Your Honor, I would like to
6 enter -- or move to enter into evidence Exhibit 19,
7 Exhibit 19A and Exhibit 20.

8 JUDGE PRIDGIN: All right. Exhibit 19,
9 19A and 20 have been offered. Any objections?

10 MR. DODGE: No objection, your Honor.

11 JUDGE PRIDGIN: Exhibit 19, 19 A and 20 are
12 admitted.

13 (EXHIBIT NOS. 19, 19A and 20 WERE RECEIVED
14 INTO EVIDENCE.)

15 JUDGE PRIDGIN: Anything else before she
16 stands cross?

17 MR. MOORMAN: No, your Honor.

18 JUDGE PRIDGIN: All right. Thank you.
19 Cross-examination?

20 MR. DODGE: Ms. Hankins, I have no
21 questions for you.

22 THE WITNESS: Okay.

23 JUDGE PRIDGIN: Bench questions, Mr. Couch?

24 MR. COUCH: No.

25 JUDGE PRIDGIN: Ms. Dietrich?

1 PAM HANKINS testified as follows:

2 QUESTIONS BY MS. DIETRICH:

3 Q. First of all, earlier this morning I asked
4 Mr. Watkins how long Charter has to pay a bill from the
5 time the bill is issued until payment is due. Can you
6 answer that question?

7 A. Yes, ma'am, I can. It's in Section 9, I
8 believe. Let me look at that. I can tell you exactly.
9 The reference in -- yes. It's in 9.2. It's 30 days after
10 the bill date.

11 Q. And when you say 9.2, you're talking about
12 the interconnection agreement?

13 A. Yes.

14 Q. Okay. So 30 days?

15 A. 30 calendar days after the bill date.

16 Q. Okay. In your direct testimony on page 8,
17 at lines starting at the end of line 4, you say this
18 requirement is important in order to allow CenturyTel to
19 monitor and ensure itself that the need for and level of
20 the deposit is and remains appropriate. Can you explain
21 what you mean by monitor?

22 A. This is in regard to the deposit language
23 that we're proposing in the agreement where we would want
24 to be able to get updated information as to the
25 creditworthiness of the CLEC, and so we believe that

1 there's language needed in order to allow us to review
2 information that's available so that we can have a better
3 appreciation for what the creditworthiness is of that
4 customer.

5 Q. Okay. And when you talk about reviewing
6 information on the creditworthiness, what type of
7 information are you talking about?

8 A. I actually have examples of that in my
9 testimony, and also in the proposed language of CenturyTel
10 we talk about things such as the payment history of the
11 company, financial information that's available from
12 sources, including SEC filings that -- bond rating
13 information, things of that nature that were attached as
14 exhibits to my testimony.

15 Q. And are these all public sources that
16 you're talking about --

17 A. Yes.

18 Q. -- that you'd be monitoring?

19 A. Yes.

20 Q. On page 9.

21 A. Of my direct?

22 Q. Yes.

23 A. Starting at line 2, you say since the
24 parties would have already disagreed with respect to the
25 level of the deposit, there is no need to go through the

1 Section 20 dispute resolution process. Can you explain
2 what you mean by that?

3 A. Yes. If you'll look at the proposed
4 language of Charter, in that section, that is talking
5 specifically about Section 6.1.2 language where the first
6 line actually says that the parties will be meeting
7 together to determine whether there is a need for a
8 deposit or an increase in the deposit.

9 So actually the parties are already in
10 discussion about the deposit, and Charter is proposing
11 that dispute resolution per Section 20 of the agreement be
12 initiated when, in fact, the parties have already been in
13 negotiation. And we believe that that would just prolong
14 those discussions, and so our proposed language is that
15 Charter would file for Commission intervention at that
16 time to resolve the dispute.

17 Q. Are there things in the dispute resolution
18 process, are there steps that are different from just a
19 general discussion negotiation type process?

20 A. Well, I'd have to look at the provisions of
21 this agreement. Normally each party would have a person
22 who is knowledgeable of that area responsible for their
23 company, and they would talk about the issues and try to
24 resolve those issues, and then if they can't resolve those
25 issues, then it would -- then one or the other parties

1 would escalate to, in this case, as I say, we're proposing
2 the Commission.

3 Q. Okay. On page 12 of your direct testimony,
4 starting at line 6, you discuss a \$5,000 deposit. Can you
5 tell me how the \$5,000 was determined?

6 A. No, I cannot. I was -- I don't have that
7 knowledge.

8 Q. Okay. Do you know if the \$5,000 amount
9 compares to the historical amount of payments that
10 Charter's typically assessed by CenturyTel?

11 A. I have looked at some of Charter's
12 historical billing, and 5,000 is a reasonable amount if
13 we're looking at assuming a two-month -- on a two-month
14 average.

15 Q. When you say on a two-month average, is the
16 \$5,000 the average of the two months or that's what two
17 months billing would be?

18 A. No. I'm saying it would be a close
19 approximation from what I've seen of some of their
20 billing, that \$5,000 would not be unreasonable. Of course
21 what we're proposing is that they could either choose a
22 flat rate \$5,000 amount or a two-month forecasted amount.
23 I believe Charter came back with the -- they said we
24 might -- they've come up with a different proposal since
25 then. I did not hear them say anything about the 5,000,

1 but we would propose either that two-month or the 5,000.

2 Q. Okay. And I guess I'm still not
3 understanding when you said you reviewed the bills and the
4 5,000 is comparable, comparable to what?

5 A. Two months, two months of charges.

6 Q. Okay.

7 A. I'm sorry.

8 MS. DIETRICH: Okay. That's all. Thank
9 you.

10 JUDGE PRIDGIN: Ms. Dietrich, thank you.

11 Mr. Van Eschen, any questions?

12 QUESTIONS BY MR. VAN ESCHEN:

13 Q. Good afternoon, Ms. Hankins.

14 A. Good evening.

15 Q. Is there a significant difference between
16 CenturyTel's position and Charter's position on how to
17 calculate the amount of the deposit?

18 A. Well, I think Charter has proposed
19 something different since we've been here. The language
20 that is in the agreement that was filed, and let me look
21 at that specifically, we felt was a little bit vague
22 because it just said it would be based on the total of two
23 months of charges from the previous six months period, and
24 it didn't say what two months would be looked at.

25 Theoretically you could pick the lowest two months or any

1 two months. And since then I've heard them say that if,
2 since we've been here, that they would agree to the
3 highest two months level.

4 Q. So given that, is there a --

5 A. Well, we had --

6 Q. -- difference between the two parties?

7 A. We had suggested a forecasted two-month
8 period.

9 Q. Forecasted. And they would say actual?

10 A. Yes, based on the past six month period.

11 Q. Okay. Can you just briefly explain the
12 process for asking for a deposit? I take it you want to
13 be able to ask for a deposit at any time, right?

14 A. Right. It could be either at an initial
15 entry phase, any new entrant.

16 Q. Let's say Charter's been in business for
17 some time and then all of a sudden CenturyTel wants to ask
18 for a deposit. Oh, by the way, do you hold a deposit
19 right now from Charter?

20 A. I don't think so.

21 Q. You don't think so. Okay. So if you asked
22 for a deposit, how long do you give Charter to produce the
23 deposit?

24 A. I don't know that we've actually got that
25 laid out in here. Normally we would probably ask for a

1 30-day period.

2 Q. Okay.

3 A. Just like on the bill, we would ask for a
4 30-day period for the bill, we would probably ask for a
5 30-day payment for deposit.

6 Q. And under CenturyTel's proposal, if the
7 deposit isn't produced at the end of 30 days, then what
8 happens?

9 A. Well, that's pretty -- we would want to
10 know -- I mean, we would assume that they're delinquent at
11 that point. If they haven't come to us and said,
12 CenturyTel, I dispute your reason for asking me for this
13 deposit, it would be just like a bill that we've sent to
14 them for services that they have not paid and have not
15 disputed. At that point in time, we don't know why they
16 haven't paid it. We're just -- they just have not paid it
17 and have not communicated to us as to why they haven't
18 paid it.

19 So at that point, it would become a
20 delinquent request for payment, and we would then send
21 them a notice of delinquency basically saying, you know,
22 laying out, we sent you this bill for X dollars, you have
23 not paid it, and demand payment.

24 Q. Okay. Assuming you ask for a deposit,
25 charter disputes the need to post a deposit, how's that

1 going to be resolved?

2 A. Well, there are -- that goes back to the
3 dispute resolution provisions of the agreement. That then
4 becomes a disputed charge, and we would have, you know,
5 they would -- so potentially you could go through a
6 dispute resolution at that time.

7 Q. Okay. If that gets brought before the
8 Missouri Commission, who would have the burden of proof in
9 that situation?

10 A. Well, I think whenever something -- it's my
11 experience that both parties present their sides to the
12 Commission, and the Commission takes both sides' positions
13 and information and makes a decision.

14 Q. You feel that CenturyTel would bear a
15 burden of justifying their deposit?

16 A. Absolutely.

17 Q. Okay. All right. In regards to Issue 8B,
18 which you testified on, if Charter fails to pay an
19 undisputed charge, tell me a little bit more about the
20 process that CenturyTel would follow to discontinue
21 processing Charter's orders.

22 A. Okay. Here again, these are undisputed
23 charges?

24 Q. Correct.

25 A. So when we have billed Charter and they

1 don't pay us by the due date or they have not disputed the
2 charges, we just know that the -- that the billed amount
3 is at that point late, has not been paid, and so we would
4 send them, per the terms that we're proposing, a notice
5 that they are, in fact, late, delinquent in payment of the
6 charge. And it would also spell out, per the terms that
7 we have proposed, the number of days that they would have
8 to cure the default before, you know, we would stop
9 processing their orders.

10 And I might also point out, because I think
11 this was some concern, we do, it is our -- our past
12 practice and will continue to be our practice to let the
13 Commission know when we have sent such letters to a CLEC.

14 Q. When you notify the CLEC that we haven't
15 received your payment, we're going to stop processing your
16 orders on such and such a date, how much advance notice is
17 that?

18 A. It's laid -- that is laid out in our
19 proposed terms.

20 Q. Okay. Can you tell me what that is?

21 A. Let me look at the -- let me look at that
22 specific language. I believe that's in Section 9. -- 9.5
23 of the proposed agreement. 9.5.1. Do you want me to read
24 this or -- or just kind of summarize it?

25 Q. You would give them 10 days, 20 days?

1 A. Well, I think -- let me look myself.

2 Q. It's not a --

3 A. No. It's -- first of all, let me read
4 this. There's a -- because there's actually two
5 components to this, the way I appreciate this language, is
6 we would notify them and give them at least five calendar
7 days before we'd discontinue the processing of service
8 orders, and I believe the proposal is at least seven
9 business days prior to disconnection of service, of unpaid
10 services. Here again, this is for undisputed charges.

11 Q. Okay. So five or seven days, and if
12 Charter wants to somehow stop CenturyTel from
13 discontinuing processing orders, what's their recourse?

14 A. Well, I think we have an example of that
15 already. They -- when they went to the Commission in this
16 last case and appealed to the Commission to intervene and
17 the Commission had CenturyTel not take action against
18 them. We actually --

19 Q. So they would have to, I guess, make a
20 filing with the Commission during that five-day window
21 or --

22 A. Well, let's back up one even beyond that.
23 If they're disputing the charges, they would file a
24 dispute with us.

25 Q. Okay.

1 A. You know, we would review the dispute. I
2 think where we were before is that there was -- we were in
3 disagreement as to those charges. That's when they went
4 to the Commission.

5 Q. Okay. Thank you. In regards to Issue 30,
6 based on Ms. Lewis' testimony yesterday, do you feel
7 there's still an unresolved issue here?

8 A. Well, I don't know. I haven't --

9 Q. I mean, basically my recollection of
10 Ms. Lewis' testimony, and I may be wrong, is that Charter
11 simply wanted to see these things continue in regards to
12 directory assistance notification; is that your
13 understanding?

14 A. I heard her say that, that what I
15 understood the Charter witness to say was that what they
16 were receiving today was sufficient for their needs.

17 Q. Okay.

18 A. And we have no intention to stop providing
19 what we're providing today.

20 Q. Okay. Very good. Thank you. I have no
21 other questions.

22 JUDGE PRIDGIN: Thank you very much. Any
23 further bench questions, Mr. Couch?

24 MR. COUCH: Yes. Based on Mr. Van Eschen's
25 question.

1 QUESTIONS BY MR. COUCH:

2 Q. You presently hold deposits from your
3 retail customers, some of your retail customers?

4 A. Yes, sir.

5 Q. What percentage of interest do you pay on
6 those deposits?

7 A. Well, that's kind of out of my realm, but
8 my understanding is that the Commission -- I don't know if
9 this Commission does, but I know there are commissions who
10 actually mandate what the rate should be. Is that
11 correct?

12 MR. COUCH: Is that correct?

13 MS. DIETRICH: Uh-huh.

14 BY MR. COUCH:

15 Q. Whatever that percentage is, would you pay
16 that same percentage of interest to Charter should you
17 require a deposit of them?

18 A. I think we do. Well, let me look and see
19 if that's actually in -- I don't know if that's provided
20 for in here. 6.5? Apparently it is. Let me see that.
21 I've got the language here. It says here CenturyTel will
22 pay interest on each cash deposit in accordance with the
23 state requirements for end users. So we would.

24 MR. COUCH: Thank you. That's all.

25 JUDGE PRIDGIN: Any further bench

1 questions? Recross?

2 RECROSS-EXAMINATION BY MR. DODGE:

3 Q. Two quick questions. My apologies. I
4 hoped not to ask you any. You talked with Mr. Van Eschen
5 about the process that CenturyTel would engage itself in
6 for undisputed unpaid charges; is that correct?

7 A. That's correct.

8 Q. You also referenced a recent Missouri
9 Commission proceeding. Were you a participant in that
10 proceeding for CenturyTel?

11 A. Yes, I was.

12 Q. You were a witness on CenturyTel's behalf?

13 A. Yes, I was.

14 Q. And you're familiar with that case?

15 A. Yes.

16 Q. Would the disputes submitted by Charter in
17 the Missouri complaint case deemed by CenturyTel to be
18 disputed or undisputed charges?

19 A. There was a question as to -- CenturyTel
20 had a question as to whether or not those disputes were in
21 actuality -- well, let me back up. We actually did not
22 think that Charter had filed all dispute -- or had
23 disputed all the charges in that case.

24 Q. Let me make sure I understand. Was
25 CenturyTel's issue with Charter that it hadn't disputed

1 all of the relevant charges or that it was not properly
2 disputed?

3 A. Well, that all the charges had been
4 disputed.

5 Q. You also talked, I think, with
6 Mr. Van Eschen a little bit about contract language at
7 Section 9.5.2.

8 A. Okay.

9 Q. Just generally, is it your understanding
10 that CenturyTel's proposed language would allow you to
11 disconnect 911 services?

12 A. Charter does not -- my appreciation is that
13 Charter is porting numbers from us, and I'm not sure if we
14 terminated -- when we say terminated services to Charter,
15 if that would affect 911 or not.

16 MR. DODGE: Fair enough. That's all I
17 have, your Honor.

18 JUDGE PRIDGIN: Thank you. Redirect?

19 MR. MOORMAN: None, your Honor.

20 JUDGE PRIDGIN: All right. Thank you.

21 Ms. Hankins, thank you very much. You may step down. And
22 do I understand that Mr. Miller is CenturyTel's last
23 witness?

24 MR. SCHUDEL: Yes. And respectfully, I may
25 be the oldest guy in the courtroom, but I would appreciate

1 a five-minute break.

2 JUDGE PRIDGIN: Old or not, that's
3 certainly fine. Why don't we take more like ten minutes
4 since we have so many people, and we'll resume about 2:20.

5 MR. SCHUDEL: Thank you.

6 (A BREAK WAS TAKEN.)

7 (EXHIBIT NO. 21A WAS MARKED FOR
8 IDENTIFICATION BY THE REPORTER.)

9 JUDGE PRIDGIN: We're back on the record.
10 My understanding is that Mr. Miller is the next and looks
11 like the final witness; is that correct?

12 MR. SCHUDEL: That's true, your Honor.

13 JUDGE PRIDGIN: Mr. Miller, if you would
14 raise your right hand to be sworn, please, sir.

15 (Witness sworn.)

16 JUDGE PRIDGIN: Thank you very much, sir.
17 Please have a seat. And anything before he's tendered for
18 cross?

19 MR. SCHUDEL: Yes, your Honor. I have laid
20 before yourself and your Staff members and have provided
21 to Charter's counsel a document, two-page document which
22 has been labeled Schedule GEM-2. Last night I discovered
23 that the GEM-2 document in the premarked Exhibit 21
24 actually relates to CenturyTel of Dallas, Texas, which was
25 an error, and so we pulled the comparable provisions out

1 of the CenturyTel of Missouri, LLC tariff. I would
2 respectfully ask leave to withdraw Schedule GEM-2 that is
3 in Exhibit 21, and I would like to offer together with
4 Exhibit 21, if you give me approval to amend it, Exhibit
5 21A is what I marked this new GEM-2, and I would also
6 offer Exhibit 22 and Mr. Miller's errata which we've
7 marked as 22A.

8 THE WITNESS: May I correct, counselor,
9 please, I don't think we're withdrawing all of GEM, only
10 the first page, which is the tariff page. The rest of it
11 does remain, and replacing the one tariff page with the
12 two Missouri specific tariff pages.

13 MR. SCHUDEL: Thanks for correcting me so I
14 didn't duplicate another error.

15 JUDGE PRIDGIN: So -- I don't want to
16 misspeak. If I could get -- if I could get you to again,
17 for the record, to make sure everybody knows what you're
18 offering.

19 MR. SCHUDEL: I am offering Exhibit 21, the
20 direct testimony of Mr. Miller, what has been marked as
21 Exhibit 21A, which is Schedule GEM-2 that has CenturyTel
22 of Missouri, LLC, Section 2, original sheets 7 and 8 of
23 the Missouri tariff, and I am offering the Miller
24 rebuttal, which has been marked as Exhibit 22 and Exhibit
25 22A, which is his errata.

1 JUDGE PRIDGIN: All right. 21, 21A, 22 and
2 22A have been offered. Any objections?

3 MR. DODGE: Subject to the pending motion,
4 no objection.

5 JUDGE PRIDGIN: I will show the exhibit --
6 Exhibits 21, 21A, 22, 22A all admitted subject to pending
7 motions for strike which will be ruled upon later.

8 (EXHIBIT NOS. 21, 21A, 22 AND 22A WERE
9 RECEIVED INTO EVIDENCE.)

10 JUDGE PRIDGIN: Anything further before
11 Mr. Miller stands cross?

12 MR. SCHUDEL: No, sir.

13 JUDGE PRIDGIN: All right. Thank you.
14 Cross-examination?

15 MR. DODGE: Yes, your Honor.

16 GUY MILLER testified as follows:

17 CROSS-EXAMINATION BY MR. DODGE:

18 Q. Good afternoon, Mr. Miller.

19 A. Mr. Dodge.

20 Q. My name is John Dodge and I'm appearing
21 here on behalf of Charter. It's good to meet you in
22 person. In going through your professional background,
23 which is impressive, I couldn't tell whether you had any
24 training as an engineer. Do you?

25 A. I don't have specific formal training as an

1 engineer. I do have -- how should I phrase it? I hung
2 around engineers a lot during my 30-plus years with the
3 telephony industry and spent a lot of time with the
4 engineers in the various roles I had to understand various
5 processes.

6 Q. To the extent that was a favorable hanging
7 around, I think that's great.

8 A. They liked me for the most part.

9 Q. And so do we. So do we. Have you ever
10 served as a technician or other field personnel for any of
11 the companies you've worked for?

12 A. No. I have accompanied field personnel and
13 had familiarity with what they've done and a lot of
14 contact with them, but I have not actually served in that
15 capacity officially as a job title.

16 Q. Nonetheless, I'm confident that you know a
17 great deal more about CenturyTel's network and facility
18 than I do, so I'm going to look to you to guide me on some
19 questions that I have.

20 A. Certainly.

21 Q. If we could turn to your direct testimony,
22 please, on page 7, and in particular line 5, and correct
23 me if I'm wrong, but I think you state that you see as the
24 crux of the disagreement under Issue 2 whether Charter can
25 unilaterally use CenturyTel's network interface device or

1 NID, spelled N-I-D, for free. Am I correct in that?

2 A. That is the impression I have from
3 Charter's position, yes.

4 Q. Did you mean to imply in that sentence and
5 in your testimony that you believe Charter to have asked
6 to use CenturyTel's entire NID?

7 A. No. I firmly understand Charter's position
8 that they believe that they can access the customer access
9 side of the NID and use that in one of several ways and do
10 so without paying for that.

11 Q. I'm sure we'll get into that. At the risk
12 of putting you on the spot, Mr. Miller, would you happen
13 to have a NID here with you today?

14 A. Why, certainly, counselor, I just happen
15 to. In my testimony there are a couple of pictures of a
16 NID, and I have taken the liberty to procure an actual NID
17 of the model that I have those illustrative pictures.

18 Q. All right. And thank you. If you want,
19 feel free at any time to hold that up or point to things
20 as I ask you questions about. Thank you, Vanna. From an
21 equipment perspective, Mr. Miller, can you tell me what
22 purpose a NID serves?

23 A. Essentially the NID serves, I guess I would
24 characterize it as three main purposes. It is the
25 connection device or interconnection device between a

1 local exchange carrier's drop to a premise and the
2 customer's inside wiring. It also serves as a protection
3 device for lightning strikes, and then further it is a
4 weatherproof housing of the same to obviously protect the
5 connections and the lightning protector from the elements.

6 I'm sorry. And I would add in retrospect a
7 fourth purpose, which is it does serve as a test point
8 should there be trouble on the network, it's -- allows the
9 customer to access the customer access side of the NID and
10 to use the test jack, which is located right here
11 (indicating), to unplug the connection that's normally
12 here, and to plug in a telephone set directly into this
13 jack and determine whether or not dial tone with or
14 without static or other problems exists. That will help
15 isolate whether or not the problem's on the telephone
16 company side or may be somewhere within the interior of
17 the premise.

18 Q. And that activity you just described would
19 fall under the fourth main purpose of a NID?

20 A. Yes, a test device.

21 Q. Thank you. Are there any moving parts in a
22 NID?

23 A. Yes, there are moving parts to the NID.
24 Obviously the covers. The covers to the various sides of
25 the NID move, and in this particular model, there is a

1 cover over the test port which moves.

2 Q. Do those pieces of equipment that you just
3 described, do they move independently after the NID is
4 installed at a premise?

5 A. I'm not sure I understand the question,
6 counselor.

7 Q. Once you install -- or not you, but one of
8 your technicians installs a NID at a premise, do the piece
9 parts of the NID that you've just described, do they move?

10 A. They move when they are accessed.

11 Q. So there needs to be some human
12 intervention for them to move?

13 A. That would be correct.

14 Q. Is there any kind of machinery in a NID?

15 A. I'm not sure I understand what you mean by
16 machinery.

17 Q. Well, for example, any gears in a NID?

18 A. No. There are -- there are obviously many
19 pieces and elements of a NID, which like any piece of
20 equipment is -- is subject to deterioration over time or
21 to deterioration with use by removing, disconnecting
22 wires, by opening things up, by a lightning strike which
23 could protect the network but it could damage a piece in
24 here. I don't know that I'd characterize it as machinery.

25 Q. On the lightning piece, does it serve as a

1 ground?

2 A. Yes, there's a ground wire.

3 Q. Thank you. Are there any electronics in a
4 NID, for example, an amplifier or power booster or a
5 static filter, anything like that?

6 A. No. Typically a telephone network is
7 powered through the central office, so there's no external
8 power attached to this NID.

9 Q. So can we agree, Mr. Miller, that but for
10 human intervention or maybe nonhuman intervention such as
11 lightning or weather or maybe an animal, this is a static
12 piece of equipment; is that correct?

13 A. I think static to the degree that, yes,
14 absent any need to access it, such as testing, repair,
15 installation, maintenance for some purpose, that it would
16 go untouched other than those reasons.

17 Q. If you know, how much did that NID cost
18 CenturyTel?

19 A. I do not know.

20 Q. Do you recall that Mr. Gates testified that
21 he had located a new NID for sale for approximately \$70?

22 A. I recall that he testified such.

23 Q. Do you agree or disagree that a NID can be
24 purchased for around \$70?

25 A. I have no knowledge to comment on that.

1 I've heard a higher price as well.

2 Q. What's the higher price that you've heard?

3 A. I've heard a three figure price for a NID.

4 I assume it depends on the manufacturer, the specific
5 model, the quantity purchased.

6 Q. And does CenturyTel buy NIDs individually
7 or do you buy them in some sort of lots?

8 A. I'm not responsible for purchasing and I
9 wouldn't know that.

10 Q. If we could skip forward to your rebuttal
11 testimony, and I apologize, I'm trying to keep the idea
12 train together here. Pages 11 and 12, I believe you
13 testified, and correct me if I'm misidentifying this, that
14 it is economically more efficient, your phrase, for
15 CenturyTel to leave a NID at the former customer's premise
16 than to remove it for later deployment once CenturyTel has
17 lost that premise owner as a customer; is that correct?

18 A. It is economically more efficient to do
19 that on a presumption that we will be winning that
20 customer back at some point or otherwise providing service
21 to a subsequent owner of the premise, and since we do
22 expect to be providing service at that premise at some
23 future date, that's the only reason we leave it.

24 Q. Does that presumption suggest anything to
25 you, Mr. Miller about the recurring NID cost?

1 A. No, it does not.

2 Q. What is CenturyTel's recurring NID cost,
3 recurring cost for a NID, please?

4 A. I do not know that.

5 Q. Am I correct that CenturyTel has not done
6 any sort of cost study or cost analysis to answer that
7 question?

8 A. I am not aware that that's an accurate
9 statement. I believe it may have been studied, but I have
10 no knowledge of specifics.

11 Q. Okay. Let's move into another area. I
12 want you to characterize for me if you can when Charter
13 proposes to use a CenturyTel NID, what do you perceive
14 that Charter wants to do?

15 A. Based on Charter's own testimony, Charter
16 wishes to -- we're talking using the NID? We're not
17 talking access a NID for the purpose --

18 Q. Start from the moment that Charter
19 technician walks up.

20 A. No, no, no. I understand, counselor. I
21 was going to clarify that we are talking about actual use
22 of the NID and not access to the NID for the purpose of
23 disconnecting and capping off the customer's service,
24 where you're going to be providing service within the
25 house or somewhere else, or accessing it and disconnecting

1 and capping off CenturyTel's service.

2 My understanding of Charter's desire to use
3 the NID is to open this up, to disconnect CenturyTel's
4 service, and to either use the connection points that are
5 built in on the customer access side for Charter to access
6 its network to the customer wiring right there, or to
7 otherwise disconnect the customer wiring from that point
8 and to connect Charter's wire to the customer wiring
9 within this side of our NID, and then use the weatherproof
10 housing to secure that and keep it safe from the elements.

11 Q. All right. Let's break those steps down.
12 When the Charter technician -- let's presume that a
13 customer decided to leave CenturyTel and pick up Charter
14 as its local service provider. When the Charter tech
15 walks up to the CenturyTel NID, and let's presume it's a
16 typical residential deployment that's on the side of the
17 house, and that technician opens up the CenturyTel NID,
18 how much does that action cost CenturyTel, if you know?

19 A. I'm not aware that I would assess a cost
20 for that action.

21 Q. When the technician goes inside the NID and
22 disconnects the house wire from the local loop owned by
23 CenturyTel, how much does that action cost CenturyTel?

24 A. Counsel, I think you're leading me down a
25 path that I -- we're talking about cost for Charter's

1 action versus cost to CenturyTel as the owner of the NID,
2 which is being left on the side of the house for potential
3 use of Charter. The NID which does provide functionality
4 to Charter does provide functionalities for Charter's
5 service to the customer and is subject to deterioration,
6 repair and everything else, which CenturyTel would be
7 obligated to handle because it is the owner of the NID.
8 So if you want to talk about cost for Charter actions, I'm
9 not sure how to keep addressing those.

10 Q. Do you not understand my questions?

11 A. I understand what I think you're asking.

12 Q. Well --

13 A. You're asking me to associate a cost to
14 CenturyTel for a Charter technician's performance.

15 Q. That's exactly what I'm trying to have you
16 do. I think we're in agreement. So let's back up. When
17 the Charter technician opens the NID door, does that
18 impose any cost on CenturyTel?

19 A. It may, if the Charter technician breaks
20 the NID, as I have seen happen elsewhere.

21 Q. You've actually seen a Charter technician
22 break a NID?

23 A. I have seen a NID in person that was broken
24 by a Charter technician.

25 Q. All right. We'll get to that a little

1 later on. When the Charter technician has opened the NID
2 door and disconnects, whether it's a cross connect or a
3 hard wiring, disconnects the inside wire owned by the
4 premise owner from the local loop terminated by CenturyTel
5 in that NID, what is the cost to CenturyTel?

6 A. Again, are we stipulating that the Charter
7 technician is not damaging the NID --

8 Q. Correct.

9 A. -- or cutting the CenturyTel plant?

10 Q. Correct.

11 A. I'm not aware that there would be a cost at
12 that point.

13 Q. You described two other possibilities once
14 we've completed those steps, as I recall your testimony,
15 that the Charter technician would either use the
16 connection points which are inside the NID to somehow wrap
17 its wire around, is that -- or splice its wire to?

18 A. Yes.

19 Q. Or otherwise make a disconnection and
20 secure a new connection within the NID, and you had
21 pointed to an open space maybe three inches by three
22 inches?

23 A. Well, I assume you're talking about this
24 side of the NID (indicating)?

25 Q. I need to have Lasix, so if it's more or

1 less than three by three, you can correct me.

2 A. I would say it's about four by five.

3 Q. Perfect. In either of those circumstances,
4 how much cost to CenturyTel from a Charter technician's
5 actions?

6 A. Could you rephrase the question, please?

7 Q. I can try. We've walked through the step
8 that the Charter technician has come up to the NID, opened
9 the door.

10 A. Yes.

11 Q. Has disconnected the inside wiring from the
12 local loop, and then you indicated I thought that there
13 were two final steps that a Charter technician could take?

14 A. Yes.

15 Q. Either he could do a direct wiring of the
16 Charter local loop or its facilities to a post or a screw
17 in the NID, is that one of the steps?

18 A. Yes. That's a potential one.

19 Q. Okay. Let's stop it right there. If the
20 Charter technician does that, what cost does that cause to
21 CenturyTel?

22 A. At that point, counselor, is the assumption
23 that Charter has now used the NID to provide service to
24 the customer?

25 Q. I'm just asking for the attachment

1 activity.

2 A. Well, I see two potential costs that are
3 triggered from that point going forward.

4 Q. Please describe them.

5 A. The first would be that, again, this NID is
6 CenturyTel property. So to the extent that Charter has
7 now disconnected CenturyTel's drop from it and is using it
8 for their own purposes, it still remains CenturyTel's
9 property as my exhibit in the tariff shows, which means
10 that anything that happens to this we have a cost. We
11 have maintenance cost, we have replacement cost and so
12 forth.

13 Q. Let me stop you right there. I'm not
14 talking about maintenance, depreciation, lightning hits
15 it. I'm asking you, the Charter technician activity of
16 connecting a Charter wire to a screw or a post in the NID,
17 what cost does that cause to CenturyTel?

18 A. And I thought I was answering the question,
19 counselor, that I see a prospective cost based on that
20 activity.

21 Q. A prospective cost, how --

22 A. And I see a second cost as well.

23 Q. Before you go to your second cost, I want
24 to clarify this, and I apologize for the interrupting.

25 Can we agree, will you stipulate that the attachment

1 activity at that moment causes CenturyTel no cost,
2 reserving your right to claim that there are future costs
3 associated with maintaining the NID?

4 MR. SCHUDEL: I'm going to try to not be
5 as -- I try to be as little disruptive as I can on this,
6 but I want to posit an objection and see whether you're
7 prepared to rule on this, and that is, I think all this
8 talk about costs ultimately must relate to rates, because
9 otherwise I don't see how there's any conceptual relevancy
10 or actual relevancy.

11 If your Honor were to look at Article 11,
12 Section 2 of the ICA, either attached to the petition or
13 to the response, or the dialog in the Joint DPL which
14 shows the respective pricing positions, you will clearly
15 observe that there is no dispute on the rates, whether
16 they're monthly recurring or nonrecurring.

17 And we all want to move this along, so I'll
18 just say this once, but I would respectfully object to a
19 continuation of this line unless Mr. Dodge can somehow
20 demonstrate that there is some relevancy here over and
21 above the rates.

22 JUDGE PRIDGIN: Mr. Dodge?

23 MR. DODGE: I'm prepared to do extensive
24 argument on this if your Honor wants, but the bottom line
25 is, if CenturyTel's presumption that its \$1.91 rate is not

1 in dispute is simply incorrect. Charter's position is
2 that no charge, a zero charge should apply for the
3 activities that I've described and a continuing connection
4 to that screw or post in the NID.

5 JUDGE PRIDGIN: I'm --

6 MR. SCHUDEL: I'm sorry, but if I can just
7 respond? If that's the case, and there are other examples
8 of this in the agreement, if there are these different
9 positions, I would have expected zero to have been shown
10 under that rate or no rate applicable. There is simply a
11 total and complete absence from this record of any
12 indication of a dispute over the UNE pricing for the NID.

13 JUDGE PRIDGIN: Well, I'm going to -- I'm
14 going to overrule. It sounds like Charter at least claims
15 a dispute on -- on the price and, therefore, the cost that
16 CenturyTel may or may not incur when Charter engages in
17 certain activities, and so I'll let them proceed with
18 this. But if you can do what you can, Mr. Dodge, to try
19 to speed through this, and if you could, the best you
20 could, Mr. Miller, I understand you may disagree with his
21 premise, but if you could do your best to simply answer
22 the leading questions briefly and we can perhaps get past
23 this and move on to the next point.

24 THE WITNESS: I understand, Judge.

25 MR. DODGE: Thank you, your Honor.

1 BY MR. DODGE:

2 Q. I think there's one more activity we have
3 to discuss and that was your second option of doing I
4 think what Charter calls a scotch lock inside --

5 A. Yes.

6 Q. -- the NID? Does that scotch locking cause
7 any cost to CenturyTel?

8 A. I think at that point, I would have to say
9 that yes, there is a cost --

10 Q. And what is that cost?

11 A. -- as I would have asked for the other one,
12 if that's your question.

13 Q. Is that the prospective cost?

14 A. No, sir. It's the other cost I was about
15 to discuss.

16 Q. Please do.

17 A. And that is, at that point, I am not an
18 attorney, but I think the official term is unjust
19 enrichment that Charter has cooped CenturyTel's property
20 for unjust enrichment purposes, which translates to an
21 immediate cost to CenturyTel as Charter's competitor.

22 Q. And you believe -- your understanding as a
23 non-attorney -- we've got enough attorneys here, believe
24 me -- that unjust enrichment is the same as cost?

25 A. I'll let my counsel argue that in the brief

1 if need be.

2 Q. Let's turn to your rebuttal testimony,
3 please, page 9. I'm looking specifically at lines 25
4 to 27. Let me know when you're there.

5 A. I'm there.

6 Q. I'm correct, aren't I, Mr. Miller, that you
7 cite the FCC Rule 51.509H?

8 A. Yes. That's what I reference.

9 Q. And that rule which you quote mandates that
10 an ILEC such as CenturyTel must establish price for the
11 NID when that UNE or unbundled network element is
12 purchased on a standalone basis; is that correct?

13 A. That is correct.

14 Q. Does that rule apply to all ILECs or just
15 former Bell operating companies?

16 A. Counsel, I believe that rule applies to any
17 incumbent telephone company that is according this
18 obligation under Section 251 as codified in Part 51 to a
19 requesting CLEC.

20 Q. Thank you. We may have touched on this
21 before, but I want to be absolutely clear. Do you
22 understand in this proceeding that Charter is asking to
23 use the entire NID as a UNE?

24 A. Counselor, it doesn't -- it doesn't really
25 matter what I understand or what Charter asserts. It only

1 matters what the FCC asserts. And I can only refer to my
2 testimony where the FCC has determined that any use
3 whatsoever of the NID or the NID functionality for any
4 purpose, including NID to NID connection, constitutes a
5 use of a NID.

6 Q. Thank you. That's a good clarification.
7 By citing to this FCC rule, you just mentioned Section 251
8 in your prior answer, do you mean to convey that
9 CenturyTel used a forward-looking cost methodology to
10 derive its price for NID access?

11 A. Counsel, I'm not aware that I've testified
12 on cost or prices.

13 Q. I just asked you about your citation to the
14 FCC rule and your invocations of Section 251 of the
15 Telecommunications Act. Do you remember that part of my
16 question?

17 A. I remember that, counselor.

18 Q. The second part of my question is, do you
19 mean to convey by citing to that FCC rule and Section 251
20 that CenturyTel used a forward-looking cost methodology to
21 derive its price for its NID UNE?

22 MR. SCHUDEL: And, your Honor, I'm sorry,
23 I've got to object on relevancy. There is no issue here,
24 and we're only protracting this proceeding. And I
25 understand you've reserved your ruling, but now we're to

1 the point of we're asking whether there as a TELRIC study.
2 We have answered two independent data requests that are in
3 the record that said nope, didn't do a cost study because
4 it wasn't an issue. No exception taken. As far as I
5 know, no request to compel us to answer differently and so
6 on and so forth. So again, I'm sorry, but I need to renew
7 my objection.

8 JUDGE PRIDGIN: I understand and it's
9 noted. Mr. Dodge, do you have a response?

10 MR. DODGE: I do. Mr. Schudel just said
11 that my question was irrelevant and then cited to
12 testimony in the record. I don't think those two concepts
13 go together.

14 MR. SCHUDEL: I didn't cite testimony. The
15 data request is what I made reference to.

16 MR. DODGE: The evidence is in the record.
17 A good clarification. I think these are perfectly
18 legitimate and relevant questions. I'm trying to speed
19 through it as much as I can.

20 JUDGE PRIDGIN: I'll again -- I'll again
21 overrule, and again, if we can keep these questions
22 pointed and keep yours answers -- and I understand you may
23 not like the questions, but --

24 THE WITNESS: No. I'm fine with the
25 questions. I just --

1 JUDGE PRIDGIN: All right. If you will
2 continue with --

3 THE WITNESS: I have no problem.

4 BY MR. DODGE:

5 Q. Thank you. Am I correct that the proposed
6 price CenturyTel has offered for NID use in this
7 proceeding is \$1.91 per month?

8 A. I believe that is the price. I have not
9 testified to that.

10 Q. Subject to check?

11 A. Subject to checking.

12 Q. What does the CLEC get for \$1.91 per month?

13 A. CLEC gets the right to use CenturyTel's
14 property as if it were a NID that the CLEC had installed
15 on the house for the purpose of accessing customer inside
16 wiring, protection of the wiring and protection of the
17 connection.

18 Q. Does the CLEC get to access the network
19 side of the NID?

20 A. For the purpose of unhooking CenturyTel's
21 network, which I believe is allowed pursuant to the
22 agreement terms.

23 Q. After that disconnection is made, for \$1.91
24 a month, does the CLEC get to access the network side of
25 the NID?

1 A. If the CLEC is using the network side of
2 the NID to make its connection, yes.

3 Q. Thank you.

4 MR. DODGE: Just a moment, your Honor.

5 JUDGE PRIDGIN: Certainly.

6 MR. DODGE: For this next series of
7 questions, it probably would be helpful if Mr. Miller had
8 in front of him Mr. Gates' rebuttal testimony and
9 schedules.

10 MR. SCHUDEL: I'm sorry.

11 MR. DODGE: Gates' rebuttal testimony and
12 schedules.

13 BY MR. DODGE:

14 Q. If you could turn please to Schedule 4 of
15 that rebuttal testimony, page 1. I don't believe the page
16 is numbered, but it should be the first page.

17 A. I believe I'm there.

18 Q. And this looks to be, would you agree,
19 Charter's request No. 10 and CenturyTel's response
20 thereto?

21 A. That's what it says.

22 Q. Have you seen this document before?

23 A. Yes, I have.

24 Q. You feel comfortable in answering a
25 question or two about it?

1 A. Based on the fact that I was not the person
2 responsible for the response, I can only respond to what I
3 see here.

4 Q. Let me ask a couple questions. If you're
5 not comfortable, just say you don't know. Ask me to move
6 on and we'll see what we can do. Does this response mean
7 that at present 100 percent of CenturyTel's NID costs are
8 recovered from some combination of local rates and other
9 intrastate service rates such as intrastate toll?

10 A. I'm sorry. Could you repeat that?

11 Q. Sure. Do you need me to rephrase or just
12 repeat again exactly?

13 A. No. Just repeat exactly.

14 Q. Does this response mean that at present
15 100 percent of CenturyTel's NID costs are recovered from a
16 combination of local rates and other intrastate service
17 rates such as intrastate toll?

18 MR. SCHUDEL: And again, Mr. Miller, as
19 Mr. Dodge cautioned, if you know.

20 THE WITNESS: I don't know, and I'm not
21 sure I can respond yes or no based on what I'm reading.

22 BY MR. DODGE:

23 Q. Let's turn back to your rebuttal, please,
24 at page 9. Actually, I'll strike that.

25 I believe you testified earlier that

1 CenturyTel leaves the NID on a former customer's premise
2 after you lose that customer; is that correct?

3 A. After a customer ports to a competitive
4 provider, yes.

5 Q. And am I correct in my recollection that
6 CenturyTel does that because you hope and intend to win
7 that customer back?

8 A. That is one possibility. The other
9 possibility is that that customer will sell the house,
10 move away, be transferred otherwise, and a new premise
11 owner will desire telephone service from CenturyTel.

12 Q. So the premise will go back to CenturyTel
13 for service?

14 A. Yes.

15 Q. So it's obvious, then, that CenturyTel
16 perceives a value in leaving the NID at the former
17 customer's premise; is that correct?

18 A. To the extent that it will be used again
19 for CenturyTel service, yes.

20 Q. Can you quantify for us what that value is?

21 A. No, I cannot.

22 Q. Who owns the wiring coming out of that
23 premise house?

24 A. The end user owns the wiring within the
25 premise.

1 Q. Does your answer imply that you think that
2 the end user does not own the wire that is connected to
3 your NID?

4 A. If we are getting into the difference
5 between ownership and the demarcation point, that's two
6 different legal questions, I believe.

7 Q. I want to stick with the former, just
8 ownership, not control, not demarc, not NPOE, all of the
9 other acronyms we can toss out. If you know, who owns or
10 holds title to the copper wire coming out of the premise
11 that is connected to the CenturyTel NID?

12 A. I am aware that the customer owns the
13 wiring within the premises. I'm not sure it's established
14 in law who owns it once it comes outside the wall.

15 Q. Fair enough. Who owns the home to which
16 CenturyTel leaves its NID attached?

17 A. Whoever holds the title to that home.

18 Q. The premise owner, can we agree on that
19 term?

20 A. The premise owner.

21 Q. So CenturyTel is using the premise owner's
22 property; is that correct?

23 A. That's a legal -- that's a legal
24 distinction I don't think I can make one way or the other.
25 I don't feel qualified to answer.

1 Q. Peppered throughout your direct and
2 rebuttal testimony, you've used the word use fairly
3 liberally; is that correct?

4 A. I have used the word use when I understood
5 the context, yes, sir.

6 Q. Do you understand my use of the word use in
7 the context of leaving a NID attached to a premise owner's
8 house?

9 A. I do believe I understand the context of
10 your word use in this context. However, I don't feel I
11 can answer because I think it goes to the rights of --
12 rights of way of utility companies, and I am not an expert
13 in that area.

14 Q. Do you think CenturyTel has a right of way
15 to attach a NID to a residential unit, standalone three
16 bedroom brick colonial house?

17 A. To the extent that a premise owner has
18 requested CenturyTel service, certainly. Beyond that, I
19 cannot speak.

20 Q. Well, let's go beyond that. Let's say that
21 that premise formerly was served by CenturyTel but now is
22 served by, oh, I don't know, Charter. Are you with me so
23 far?

24 A. Yes.

25 Q. Who owns the building?

1 A. The premise owner.

2 Q. And you've left your NID attached to that
3 building; is that correct?

4 A. That is your assertion for this line of
5 questioning, yes.

6 Q. For the purpose of this question, that's
7 right.

8 A. Yes.

9 Q. Do you have trouble accepting that
10 assertion?

11 A. No.

12 Q. In that circumstance, CenturyTel is using
13 the premise owner's property; isn't that correct?

14 MR. SCHUDEL: I'm going to object, your
15 Honor. Apparently we're getting to a legal conclusion and
16 the witness is trying to answer, and now we're going at it
17 a couple different ways, and I think it's probably enough
18 on this.

19 JUDGE PRIDGIN: I'll let him answer if he
20 knows. If not, if we're just going to go in circles on a
21 legal conclusion, I think it's going to be asked and
22 answered and maybe we need to move on.

23 BY MR. DODGE:

24 Q. If you know?

25 A. And again, I believe I've already answered

1 that I think it is a legal conclusion and I'm not prepared
2 to answer.

3 Q. What compensation does CenturyTel pay to
4 its former customer for attaching the NID to his building?

5 A. I am not aware of any.

6 Q. But I presume given your posture in this
7 case, Mr. Miller, that CenturyTel would be in favor of
8 paying its former customer to attach the NID to the
9 property; is that correct?

10 A. I think that calls for speculation that
11 there's a lot of different issues here.

12 Q. So CenturyTel doesn't have a position on
13 that?

14 A. I would assume, for example, if a property
15 owner called us up and said, hey, I got service from
16 Charter, I no longer need your NID here, please come
17 remove it, we would come do so.

18 Q. And if you didn't get that call, you'd
19 leave that NID there until the building fell down; is that
20 correct?

21 A. No, sir, I'm not sure I would say that.

22 Q. Let's move back to your direct testimony,
23 please, page 21, particularly line 7, which has the
24 Footnote No. 12 referenced there. Do you see that?

25 A. Yes.

1 Q. And am I correct that that was a complaint
2 before this Commission where CenturyTel had alleged that
3 Charter had argued rather that it did not have to pay
4 unidentified tariff charges?

5 A. I don't know that the tariff charges were
6 unidentified. It is a complaint that has to do with
7 charges assessed to Charter.

8 Q. What was the disposition of that case,
9 Mr. Miller?

10 A. We're talking about the case that had an
11 auto release last week?

12 Q. I think it was eight days ago, perhaps.

13 A. The disposition, as I recall from going
14 through the summation, is that Charter had filed a
15 complaint regarding several classes of charges that were
16 assessed to Charter, and that the Commission, reviewing
17 the case solely on the basis of contract interpretation
18 and not policy, made a determination that Charter made the
19 correct contract interpretation for one class of service;
20 however, CenturyTel made the correct contract
21 interpretation for the other classes of service.

22 Q. Thank you. That's a very good summary.
23 Thank you. Mr. Halm may have some more questions under
24 his issues for you on that.

25 Let's move ahead to page 22, lines 1

1 through 4. And specifically on lines 2 and 3, you
2 reference the concept called the filed rate doctrine; is
3 that correct?

4 A. Yes.

5 Q. What is the filed rate doctrine, please?

6 A. I believe the filed rate doctrine is
7 something that again is a legal basis that's probably left
8 better to briefs.

9 Q. I'm sorry?

10 A. It says what it says in my testimony. The
11 filed rate --

12 Q. There was some motion over here. Could you
13 repeat your question, I'm sorry, or have the court
14 reporter read back? You kind of dropped your voice at the
15 same time this noise was over here. Would you mind --

16 A. I said I believe the filed rate doctrine is
17 a legal basis that may be best left to briefs, but to the
18 extent that I understand it, it's what I stated here in my
19 testimony, that it's a legal basis that prohibits
20 CenturyTel from providing a tariff service under a
21 different set of terms, conditions and rates.

22 Q. In the Supreme Court case that you cite,
23 Mr. Miller, did the Supreme Court speak to the use of
24 tariff terms in interconnection agreements?

25 A. I don't have that case in front of me,

1 Mr. Dodge.

2 Q. You cited it, though, right?

3 A. I cited it. I do not have it in front of
4 me.

5 Q. And you relied on it; is that correct?

6 A. I do not have it in front of me to refresh.

7 Q. But you do rely on that case; is that
8 correct?

9 A. Yes.

10 MR. DODGE: Just a moment, your Honor.

11 JUDGE PRIDGIN: Certainly.

12 BY MR. DODGE:

13 Q. Last set of questions from me, Mr. Miller.

14 Thank you for your patience. You attached to your
15 rebuttal testimony, did you not, Schedule GEM-1?

16 A. All right.

17 Q. Just a couple of quick questions. Did you
18 personally see any Charter personnel engage in any
19 activity leading to the damage you claim is evident in
20 those photos?

21 A. Did I personally?

22 Q. Yes, sir.

23 A. No, sir, I did not personally.

24 Q. Were these photographs taken to
25 specifically support your rebuttal testimony?

1 A. No. They were taken at my direction for
2 other purposes, and they were used to support my rebuttal
3 testimony because they lent themselves to such.

4 Q. What date were those taken?

5 A. I believe it says that these were taken on
6 October 7th.

7 Q. When did you file your direct testimony in
8 this case?

9 A. September 29th.

10 Q. When did you file your rebuttal testimony
11 in this case?

12 A. October 21st.

13 Q. Last question, and only if you know it.
14 When CenturyTel ports a number or ports a customer to
15 Charter, how many local exchange carriers are involved in
16 that process?

17 A. Under normal circumstances, I would say
18 two.

19 MR. DODGE: That's all I have. Thank you.
20 Mr. Halm may have some questions.

21 JUDGE PRIDGIN: Mr. Dodge, thank you.
22 Mr. Halm, any cross?

23 MR. HALM: Thank you.

24 CROSS-EXAMINATION BY MR. HALM:

25 Q. Good afternoon, Mr. Miller. How are you?

1 A. I'm good. Yourself, Mr. Halm?

2 Q. Fine, thank you. I'd like go to tariff

3 incorporation questions, which is Issues 3 and 41. On

4 page 22 of your direct testimony, line 18.

5 A. All right.

6 Q. I'm sorry. Page 21.

7 A. I'm sorry?

8 Q. Page 21.

9 A. Thank you.

10 Q. Page 21, lines 10 through 19. As I

11 understand it here you're talking about the specific terms

12 that would be incorporated under the tariff incorporation

13 provision of the contract; is that right?

14 A. Lines 10 through 19?

15 Q. Yes.

16 A. Discuss that we have had negotiations on

17 this point of how to accommodate this incorporation.

18 Q. And negotiations for the interconnection

19 agreements we're talking about today?

20 A. Yes, that's correct.

21 Q. And you say that in some cases only the

22 rates from a tariff are intended to be incorporated. Can

23 you give us a couple examples?

24 A. I have no specific examples to give you. I

25 can just speak hypothetically.

1 Q. Okay. Can you give us a hypothetical?

2 A. Sure. I mean, there are times that in the
3 course of negotiations for obligations under Section 251,
4 a rate is called for between parties, and the parties
5 agree in negotiations to use a rate out of the tariff as
6 the appropriate rate for that obligation. So that would
7 be one example of where only a rate would be incorporated
8 as opposed to the actual service with all of its terms and
9 conditions that are in the tariff.

10 Q. Okay. So that would be the situation. Can
11 you -- can you hypothetically tell us a particular 251
12 arrangement that would fall within that -- or 251 service
13 that would fall within that arrangement?

14 A. Well, I can use the example that has
15 happened in other interconnection agreements in other
16 states with other CenturyTel operating companies. For
17 example, local number portability. To the extent that
18 there is a service order that is required to initiate that
19 service, that 251 service, which the FCC said it is a
20 service, that the parties have agreed that the tariffed
21 service order rate would be the rate used for the
22 administrative processing of an LSR.

23 Q. And it was only that rate that was used,
24 all of the other -- it was only that rate that was
25 incorporated into the interconnection agreement?

1 A. In that one hypothetical very limited
2 instance.

3 Q. Then on lines 14 and 15, you say there are
4 other cases such as the definition of a local calling
5 area. So that's a second example of the types of terms
6 that might be incorporated into the contract?

7 A. Yes.

8 Q. And then the third example I believe you
9 offer on line 16 is where a service is intended to be
10 ordered and provided by the tariff?

11 A. Yes. That is correct.

12 Q. Can you give us an example of a service?

13 A. Yes. Sometimes CLECs use dedicated access
14 as their interconnection vehicle, and that dedicated
15 access is ordered out of the appropriate tariff at the
16 appropriate tariff rates.

17 Q. And when you say interconnection vehicle,
18 you mean the facility that links the two networks?

19 A. Yes. Typically in an interconnection
20 agreement, as I believe this one as well, there are
21 multiple ways that the parties may interconnect to
22 exchange traffic, and one of those ways could be a
23 dedicated facility, and to the extent that that facility
24 is purchased from CenturyTel it would be purchased
25 pursuant to the appropriate tariff with all the

1 appropriate terms and conditions thereof.

2 Q. And we've referred to that facility on
3 other questions as an entrance facility. Is that the same
4 thing you're referring to?

5 A. I'd have to refresh my definition of
6 entrance facility, but we can --

7 Q. We can agree that it's a facility that
8 links the two networks for the purposes of exchanging
9 traffic, if we call that an entrance facility for the
10 purposes of these questions?

11 A. Again, I'd like to refresh my memory on
12 what an entrance facility is defined as.

13 Q. Okay.

14 A. We typically just say direct dedicated, you
15 know, dedicated facility, dedicated access. We don't use
16 that term.

17 Q. It sounds like we're talking about the same
18 thing, though we may be using different terms?

19 A. I believe that's your assumption. I'm not
20 prepared to say that without studying the definition.
21 There could be nuances that -- that have a bearing here.

22 Q. Okay. So in that instance, when a
23 dedicated facility, dedicated access facility is
24 incorporated into the tariff, the entire service terms of
25 the tariff could apply to the CLEC?

1 A. That's typically what our interconnection
2 agreement terms would say, yes.

3 Q. And what are those service terms?

4 A. I don't have a copy of the tariff in front
5 of me.

6 Q. You don't know generally what those terms
7 are?

8 A. I, like everything, would look it up and
9 refresh my memory. I don't have a copy of the tariff in
10 front of me.

11 Q. When you wrote this testimony, did you know
12 what the terms of the tariff were?

13 A. Terms of which tariff --

14 Q. The terms of --

15 A. -- Mr. Halm?

16 Q. The terms of a dedicate -- a special access
17 tariff that could be incorporated in this?

18 A. I don't know that I used that term in this
19 paragraph.

20 Q. Okay. Can we talk about the specific
21 language in this issue? Do you have a copy of the Joint
22 DPL?

23 A. I'm not aware that I do.

24 MR. HALM: Here's an extra copy, Paul. You
25 can provide that to the witness.

1 BY MR. HALM:

2 Q. Well, thinking of those three categories,
3 first being a rate, second being definition, third being
4 service, I wanted to look at the language with you and see
5 if you could tell us the specific terms that are
6 identified, which are the three categories they fall into?
7 I think if you turn to page 125 of that document -- or
8 122, I'm sorry, that's the beginning of Issue 41. If you
9 look in the Charter language column you'll see that there
10 are a series of contract provisions which we have included
11 in our column.

12 MR. SCHUDEL: I'm sorry. Is it page 122?

13 MR. HALM: Page 122.

14 MR. SCHUDEL: I apologize. Thank you.

15 BY MR. HALM:

16 Q. So, Mr. Miller, that first provision that's
17 identified, Section 2.79?

18 A. Yes.

19 Q. Is that, you understand, the purpose of
20 incorporating that provision would be simply to define a
21 concept?

22 A. That provision again stipulating the
23 difference between the two sets of language does appear to
24 use the tariff to define a location outside of the
25 CenturyTel local calling area as it is defined in a

1 specific tariff.

2 Q. What I'm trying to do is help quantify the
3 scope of the dispute here, because if what we're talking
4 about is a series of terms that really only define a
5 concept or define a term, maybe that's not as problematic
6 between the two parties. So I just wanted to sort of run
7 through these quickly and see which of these three
8 categories they fall in.

9 From my reading, 2.79 falls in the first
10 category that you offer, it's used -- or was it the second
11 category? Second category. We include this provision so
12 that we can define the concept of a local calling area?

13 A. Yes, that's what it says.

14 Q. And I think the same is true of 2.86. Do
15 you agree?

16 A. Again, I agree that 2.86 is the definition
17 of a local calling area that's within the tariff.

18 Q. And then 2.89 for the purpose of defining
19 local traffic; is that right?

20 A. Or mandatory extended area service.

21 Q. 2.97 looks like it's defining meet point
22 billing arrangements; would you agree?

23 A. Yes.

24 Q. 2.113(a) is defining percentage local use;
25 would you agree?

1 A. That's the title of that section, yes. The
2 reference again is to local calling areas or mandatory EAS
3 areas.

4 Q. Okay. That's right. Now, with respect to
5 these five or six different provisions, is it CenturyTel's
6 position that all of the terms of the tariff that are
7 identified here should be incorporated into this contract
8 or only Sections 3 or 4 for purposes of defining these
9 terms?

10 A. I think Section 3 and 4 is your language.
11 Ours doesn't mention 3 and 4, but again, Mr. Halm, the
12 examples that you've identified here are examples where
13 the parties have come to stipulating slight differences in
14 language agreement that a specific section of a tariff or
15 specific language within a tariff will be used for this
16 limited specific purpose only, which is completely
17 appropriate.

18 Q. And you think if we identified Sections 3
19 and 4 in this proposed language, the problems that you've
20 described in your testimony will arise?

21 A. Counselor, I don't have the tariff in front
22 of me to know what 3 and 4 are as related to whatever else
23 is in those terms.

24 Q. Is it safe to say you have the same
25 concerns about incorporating specific provisions simply

1 for the purpose of defining a term?

2 A. Well, let me see if I can answer it this
3 way: This particular section of the tariff is used to
4 define -- as we've gone through here many, many times,
5 this particular section of the tariff is used to define a
6 CenturyTel local calling area or mandatory EAS area.
7 That's what it says.

8 Q. Right.

9 A. From CenturyTel's position, that entire
10 section defines that. It's not one piece of the section
11 that we're using as a surrogate. For example, I
12 referenced a moment ago that we may agree mutually to use
13 a rate as a surrogate for something or a rate to define
14 specifically what you would pay for an obligation or what
15 we would pay for an obligation.

16 In this case, we're not using a surrogate.
17 We're saying that the local calling scope and mandatory
18 extended area service scopes as defined in the tariff in
19 its total are what we're going to use as the definition
20 for these terms.

21 Charter has proposed to narrow that to some
22 limited subsections only thereof. Now, the impact of that
23 in this particular case, again, I don't have the tariff in
24 front of me, and I wouldn't be able to speak to that.

25 Q. So you think these terms are defined in the

1 tariffs in toto?

2 A. Within this one section.

3 Q. That simply referring to one or two
4 sections would lead to more ambiguity?

5 A. Yes, I think that's certainly possible.
6 Ambiguity because if those other subsections, if I can
7 call them that -- you referenced subsections 3 and 4, so
8 I'll use the term subsections. 1 and 2 must apply to
9 something. If there's a 5 and a 6, it means something
10 within the context of this section. To take those out
11 presumably adds some kind of ambiguity or otherwise
12 changes the meaning or the impact of the section.

13 Q. But you haven't looked at any tariffs?

14 A. I haven't looked at this tariff in front of
15 me today, no.

16 Q. All right.

17 A. I don't --

18 Q. So you're speculating?

19 A. I'm answering the question I think you
20 asked me, counsel.

21 Q. So I'm confused because I thought -- let me
22 ask this, then. So it's CenturyTel's position that no
23 matter what the purpose is of incorporation, whether it's
24 a defining a term, whether it's specifically incorporating
25 a rate or whether it's incorporating a service, it is

1 always inappropriate to identify specific sections of that
2 tariff?

3 A. I don't believe I said that.

4 Q. Okay. That's not your position?

5 A. I believe that I said just a moment ago
6 that there was an example of pulling just the rate out for
7 a specific purpose, which would be appropriate, but again,
8 it depends on the individual circumstances of what the
9 particulars of this section of the interconnection
10 agreement pertain to as to whether it's appropriate or
11 not.

12 Typically if you're going to pull out only
13 a specific element of the tariff, it's because you're
14 using it as a surrogate for something else or you're using
15 that language for a specific purpose, as opposed to using
16 it as the entire service, as the entire definition.
17 Again, counselor, it just depends on exactly what part of
18 the agreement we're taking about as to what the answer's
19 going to be.

20 Q. Okay. Thank you. You also make reference
21 to ordering additional directory listings.

22 MR. SCHUDEL: Can you please give the
23 reference in page and line number?

24 MR. HALM: Page 22.

25 THE WITNESS: Of my direct or rebuttal?

1 MR. HALM: Direct, page 22, line 7 through
2 11.

3 THE WITNESS: Okay.

4 BY MR. HALM:

5 Q. And there I think you have testified that
6 if additional directory listings are ordered, then all the
7 terms of that tariff should apply?

8 A. Yes. That's correct.

9 Q. And additional directory listings as used
10 by you in this section, are those provided for under
11 CenturyTel's local exchange tariff?

12 A. Again, not having the tariff in front of
13 me, I believe that that would be the case, yes.

14 Q. Well, you capitalize the term tariff, which
15 suggests that you're thinking of a specific tariff. Were
16 you just thinking of any and all tariffs or were you
17 thinking of a particular tariff?

18 A. I believe that the actual quote here,
19 Mr. Halm, says CenturyTel's applicable directory listing
20 tariff.

21 Q. So then you have a tariff simply for
22 directory listings?

23 A. I don't -- I don't know if we're trying to
24 pars words here or not, and I would even ask the
25 Commission's help sometimes in our stand on this, but it

1 seems to me that we refer to tariffs -- that the word
2 tariff can mean two different things, that sometimes you
3 refer to a tariff as the entire document, which is 400
4 pages or whatever it is --

5 Q. Let me interrupt for a second. When you
6 say we, who are you talking about?

7 A. We the industry generically. I have worked
8 for many companies, and I find this consistently. We use
9 the word tariff to mean an entire document, such as the
10 general exchange tariff, and yet we also seem to use the
11 tariff to mean a subsection thereof that deals with a
12 particular topic. I have heard that referred to as the
13 911 tariff, which is incorporated in the general exchange
14 services tariff.

15 Q. But my question goes to what did you mean
16 when you wrote the word tariff on lines 10 at page 22?

17 A. I meant the section in the general exchange
18 tariff that addressed directory service -- I mean
19 directory listings.

20 Q. So that's the local tariff, right, when you
21 say general exchange tariff?

22 A. General exchange tariff. Another way of
23 calling it's the local tariff.

24 Q. Right.

25 A. Local exchange tariff.

1 Q. So that's the tariff where end users can
2 obtain different types of service from CenturyTel? They
3 can obtain residential phone service and they can also
4 obtain directory listing services?

5 A. That is the tariff which customers can
6 purchase the listed services, including potentially
7 Charter as a customer who might want the service that is
8 in that tariff.

9 Q. Okay. And do you know whether or not the
10 CenturyTel Missouri general exchange tariff has deposit
11 requirements for customers?

12 A. Counselor, subject to having the tariff in
13 front of me and actually looking to confirm memory, I
14 believe it does, but it's based on that stipulation.

15 Q. And recognizing that you don't have it in
16 front of you, would you expect the terms of those deposit
17 requirements would be the same as what CenturyTel's
18 proposing for this agreement?

19 A. I would have no reason to believe they
20 would be the same or that they would need to be the same.

21 Q. It's likely that they're different?

22 A. It's possible. But again, I don't have the
23 language in front of me.

24 Q. And understanding you don't have the
25 language in front of you, do you know whether that tariff

1 has termination or suspension of service provisions?

2 A. I had no reason to research that for my
3 testimony.

4 Q. If you don't know, it's okay.

5 A. I researched your tariff, your client's
6 tariff, and I know that they do.

7 Q. It's okay to say I don't know if you don't
8 know.

9 A. I don't know.

10 Q. Okay. Can we assume for a moment that the
11 tariff does have terms dealing with deposits?

12 A. We can assume, yes.

13 Q. And if those deposit terms are different
14 from what CenturyTel's proposing here, and the entire
15 tariff is incorporated when Charter acquires additional
16 directory listings, how would the parties reconcile the
17 differences between the deposit terms in the tariff and
18 the deposit terms in the contract?

19 A. I think that's done very easily, Mr. Halm.

20 Q. Tell us.

21 A. As I recall, there's specific language in
22 the agreement to the extent that the agreement says what
23 the agreement says, and again, I'm paraphrasing here, but
24 that the agreement says what it says, and to the extent
25 that there's any conflict between the terms of the

1 agreement and the terms of the tariff, the agreement would
2 triumph.

3 The tariff is not used for the purpose to
4 override any of the negotiated and agreed-upon terms
5 within the interconnection agreement.

6 Q. In your rebuttal testimony at page 17.

7 A. Okay.

8 Q. It's there on lines 4 and 5, and then
9 moving on to page 18, the response to that question.

10 A. Yes.

11 Q. It would not be a valid concern for Charter
12 if they believe CenturyTel might attempt an end run around
13 CenturyTel's contractual obligations by incorporating the
14 tariff?

15 A. I do not believe it's a valid concern, no.

16 Q. Has your company ever attempted to impose
17 charges from this tariff on Charter?

18 A. I'm not sure I would use the word impose.

19 Q. Let me reframe the question. Has your
20 company ever assessed charges against Charter based upon
21 rates that were in the tariff?

22 A. When the interconnection agreement said we
23 could, yes.

24 Q. And did you do that here in Missouri under
25 the current tariff?

1 A. Yes, based upon the pricing attachment of
2 the agreement which said the very first place that the
3 parties will look for rates is the tariff. That's what
4 the terms of that particular agreement said.

5 Q. And you did read the Order that came out a
6 week and a day ago?

7 A. I did read it.

8 Q. Do you think the Commission got that wrong?

9 A. It's not for me to speculate one way or the
10 other. They obviously accepted your interpretation. I
11 can only report what the agreement said. The first place
12 the parties will look for a rate pursuant to the terms of
13 this agreement is the tariff. The second place is the
14 agreement. That was not an agreement that CenturyTel
15 negotiated, by the way.

16 Q. What was the finding with respect to the
17 applicability of the tariff to Charter?

18 MR. SCHUDEL: Your Honor, I'm not sure,
19 perhaps you find this productive, but it seems to me that
20 Order says what it says and the Commission meant what it
21 meant, and probably this witness' interpretation isn't
22 highly relevant. I'll object on relevance.

23 MR. HALM: Your Honor?

24 JUDGE PRIDGIN: Yes, Mr. Halm.

25 MR. HALM: Mr. Miller offers quite a bit of

1 testimony concerning past billing disputes between the
2 parties, and we think that the resolution of the Missouri
3 complaint case illustrates, in fact, that Mr. Miller's
4 testimony is not always accurate.

5 JUDGE PRIDGIN: Well, I understand your
6 point, but again, the Order does say what it says and the
7 Commission said what it said in that Order. I'll take
8 administrative notice. I don't mind you pursuing that
9 line, that theory of questioning about bill disputes, but
10 again, I think the Order says what it says, and if you can
11 proceed on a line of questioning without that Order, I'd
12 appreciate it.

13 BY MR. HALM:

14 Q. All right. If CenturyTel's language for
15 Issues 3 and 41 were adopted today, could it take the same
16 actions that it has taken under the current
17 interconnection agreement with respect to the application
18 of tariff charges?

19 A. I'm not sure I understand the question,
20 Mr. Halm.

21 Q. Do you know what the scope of Issues 3 and
22 41 are?

23 A. May I read them to refresh my memory?

24 Q. Please do.

25 A. Can you direct me to a page?

1 Q. In your testimony?

2 A. In my testimony or the DPL or just
3 something.

4 Q. Well, looks like in your rebuttal
5 testimony, you discuss these at pages 13 through --

6 A. Okay.

7 Q. -- 19.

8 A. Issues 3 and 41?

9 Q. Right.

10 A. Okay. I found them.

11 Q. So my question is, if CenturyTel prevails
12 on these issues and its language is adopted, could it take
13 the same actions that it has taken under the current
14 agreement with respect to incorporating charges from the
15 tariff?

16 A. I'm not sure that that question can be
17 answered, Mr. Halm. If your implication is could we
18 assess a charge to you in the same manner that Charter was
19 assessed the service order charge, that specific instance,
20 the answer would be no, because the agreement that was at
21 question in the previous case again had specific language
22 in the pricing attachment that said the parties shall go
23 to the tariff for the first place to look for prices.

24 That is not the case in the interconnection
25 agreement that is under discussion here. To the extent

1 that a price is in the interconnection agreement here,
2 that's what we will use. So it's apples and oranges, and
3 that's why I'm not sure I can give you a definitive
4 answer.

5 And I'm not sure that the Commission's
6 decision was based upon rejecting that premise in the
7 pricing attachment. I think it had to do with
8 interpretation of the agreement as a whole, by the way.

9 Q. I think one of your concerns is that --
10 this might be -- yes. On page 19 of your rebuttal
11 testimony, at lines 15 and 16, you're responding to a
12 concern raised by Mr. Webber in his testimony?

13 A. Yes.

14 Q. And on lines 23 and 24 you say that some
15 requests negotiating and filing amendments makes no sense?

16 A. That's correct.

17 Q. What type of request does an amendment not
18 make sense?

19 A. May I answer that question by saying what
20 type may make sense and then contrasting it?

21 Q. Okay.

22 A. Again, speaking off the cuff here, it would
23 make sense to have the parties sit down and negotiate
24 terms if Charter was asking for a new unbundled network
25 element that is not included in the agreement and which

1 Charter wished to purchase on an ongoing basis.

2 Absolutely we should sit down, we should negotiate the
3 terms of that and prepare an amendment and incorporate
4 that into the agreement by filing it with the Commission.

5 Q. Okay.

6 A. To the extent that Charter is asking for a
7 one off individual case basis type of service or work
8 activity from CenturyTel that it does not intend to pursue
9 but that one time, and that particular activity is similar
10 to the types of ICB activities that CenturyTel may do for
11 an end user customer or any other customer, it doesn't
12 make sense to do an amendment.

13 It's more appropriate that the parties sit
14 down, Charter conveys to us exactly what they're looking
15 for in this instance. We go back, we develop that
16 service, the cost, the pricing, share it with Charter. We
17 discuss it. We reach agreement on it, memorialize it, do
18 it. It doesn't really affect the agreement on an ongoing
19 basis.

20 Q. Reach an agreement, memorialize it, write
21 it down, have somebody sign it; is that right?

22 A. Agree to it in writing.

23 Q. A contract?

24 A. A contract is one way of doing it.

25 Q. It's a contract within the scope of the

1 parties' interconnection agreement?

2 A. No, not necessarily. It would be outside
3 the scope of the interconnection agreements at that point.
4 If it's within the scope of the agreement, then it must be
5 filed with the Commission. I'm talking about something
6 that is not necessarily a 251 obligation.

7 Q. What if Charter came to CenturyTel and
8 asked CenturyTel to provide directory assistance services
9 and we work out some rates and terms and wrote it down on
10 a piece of paper. Would that be an amendment to the
11 contract?

12 A. If the contract did not include those
13 terms, it would be either an amendment to the contract or
14 a standalone agreement that would be filed with the
15 Commission.

16 Q. Subject to 251?

17 A. It would pertain to 251 obligations, yes.

18 Q. How about costs associated with porting
19 numbers, if we reached some separate terms concerning
20 rates and terms with respect to compensating you for those
21 costs and we wrote it down, would that be an amendment to
22 the contract?

23 A. Again, local number portability is an
24 obligation under 251(b) as I recall.

25 Q. Okay.

1 A. So to the extent that we did not include
2 terms in the agreement and Charter wished them, the
3 parties should reach agreement on terms, should sign them
4 and incorporate them as amendment to the agreement. I do
5 believe that Charter has done that with a CenturyTel
6 affiliate in Texas.

7 Q. I understand when we would have amendments
8 to this contract because you've given us three concrete
9 examples, but you've given us no examples of when an
10 amendment wouldn't be necessary. Can you give us one
11 example?

12 A. Sure. Be happy to. Say, for example, that
13 Charter wants to provide service to a customer, not
14 necessarily through porting but on its own -- and I've
15 seen this happen, by the way, which is why I'm bringing it
16 up -- to a trailer out in the middle of the field
17 somewhere that doesn't have any existing telephone
18 service, and there needs to be construction of facilities
19 to get there, and for whatever reason Charter asks the
20 telephone company to provide those facilities, to
21 construct facilities out there.

22 That's a one-time build. Has nothing to do
23 with our obligations. It's not involved in porting. It's
24 not involved necessarily in resale or anything else. It's
25 just you're asking us to be a vendor to you for a

1 particular type of activity, and we mutually agree that we
2 will do that for you and we reach a price and perform the
3 service. Again, I know we have specifically done that in
4 another state.

5 Q. Who's we?

6 A. We, the CenturyTel family of companies.

7 Q. Okay. So that's an arrangement that could
8 occur completely outside of the interconnection agreement?

9 A. Yes.

10 Q. Why then would we need to address that
11 specific situation in our interconnection agreement?
12 Because let's assume Charter wants to serve this trailer
13 park and it's not in a CenturyTel service area, they don't
14 have an interconnection agreement. Could they come to you
15 and get the same terms that you just described?

16 A. May I use the example I just gave with the
17 other CenturyTel company?

18 Q. Yes.

19 A. In that case, the -- or there was a case
20 just like that that the company actually making the
21 request was a reseller, so they would be providing service
22 to that customer, resold CenturyTel service, but the
23 customer did not currently have service and needed
24 construction of facilities. Again, it was a one time
25 deal. It was not something that either party anticipated

1 they would ever do again. There was no obligation to do
2 so under the Telecom Act. So we negotiated an ICB price
3 and performed the work, and the CLEC provided the service
4 to the customer.

5 So again, it was done pursuant to the
6 ultimate objective of the customer, CLEC customer
7 providing resale service pursuant to the agreement, but
8 some work needed to be done that was typically outside of
9 the scope of interconnection agreements.

10 Q. Okay. Thank you for that response. With
11 respect to the question of termination of the
12 interconnection agreement under Issue 4, can we talk
13 briefly about that?

14 I think you testify at your direct
15 testimony, page 31, lines 15 through 19, you say that
16 CenturyTel has no incentive to claim that Charter is in
17 default and then stop processing orders simply to force
18 Charter to pay its invoices. Isn't that precisely what
19 CenturyTel did here in Missouri last year?

20 A. No, not at all.

21 Q. Did you read the stand still order that the
22 Missouri Commission issued in LC-2008-0049?

23 A. Mr. Halm, but what you're doing is imposing
24 a subsequent conclusion or a subsequent determination by
25 the Commission on an action that took place before, and I

1 don't believe that's appropriate. At the time that
2 CenturyTel claimed that Charter was in default of
3 nonpayment, it's not default where none exists. There had
4 been no determination made at that point. CenturyTel had
5 a point of view based upon a reasonable interpretation of
6 the contract terms that Charter was in default of
7 nonpayment and took action appropriately.

8 The fact that the Missouri Commission made
9 a subsequent determination that was different didn't mean
10 that no default existed at the time that the action was
11 taken. It's like finding somebody guilty of murder before
12 they committed the murder. It doesn't work that way.

13 Again, we had a reasonable, reasonable
14 position based upon the stated words of the agreement.
15 The fact that the Missouri Commission subsequently
16 determined that, okay, the agreement should be interpreted
17 differently than CenturyTel did, does not convey anything
18 backwards about CenturyTel's actions.

19 Q. On page 35 of your rebuttal testimony,
20 page 35, line 12, you say CenturyTel does not purposefully
21 bill Charter incorrectly. You read that Order. The
22 Commission found specifically CenturyTel did bill
23 incorrectly knowingly and intentionally for three straight
24 years. Would you like to comment upon your statement
25 here?

1 A. Again, CenturyTel did not purposefully bill
2 Charter incorrectly. We billed --

3 Q. Well, not according to the members of this
4 Commission.

5 A. Again, I think we're trying to take a legal
6 finding by the Commission and impute it backwards. Again,
7 CenturyTel -- and I don't know that that's appropriate.
8 We billed you what the people who did the billing at the
9 time believed was the appropriate rate for the service
10 that you ordered pursuant to the terms of the agreement.
11 If that was subsequently shown to be wrong, well, isn't
12 that what dispute resolution processes are all about? It
13 doesn't -- it doesn't mean that we knowingly did something
14 in error. It simply does not.

15 Q. On page 23 of your rebuttal testimony,
16 you've asserted that Charter's proposal creates
17 essentially no incentives to comply with contract
18 obligations unless CenturyTel has the right to terminate
19 the contract. I'm looking at lines 11 through 13.

20 A. I'm sorry. On page 23?

21 Q. Page 23, lines 11 through 13.

22 A. Okay.

23 Q. Little to no incentive for a party to live
24 up to its contract obligations. So without CenturyTel's
25 language in the new agreement, Charter will have no

1 incentive to live up to the terms of -- live up to the
2 obligations it has under the new agreement; is that right?

3 A. That is a potential outcome, yes, and has
4 happened.

5 Q. You've been in the industry for a long
6 time?

7 A. Yes.

8 Q. You've been involved in many bill disputes
9 between CenturyTel and other companies?

10 A. I have had knowledge of them, yes, and been
11 personally involved in the negotiations of some.

12 Q. Do you understand those disputes to often
13 be costly and time consuming?

14 A. I do.

15 Q. Does CenturyTel seek to avoid those types
16 of disputes whenever it can?

17 A. Yes.

18 Q. Any reason to believe that Charter doesn't
19 have the same incentives?

20 A. I can give you an example of where a CLEC
21 would not have an incentive. That has happened.

22 Q. You think that Charter does have incentives
23 to engage in costly and time-consuming bill dispute
24 processes?

25 A. No. If you'd let me answer the question, I

1 can give you an example.

2 Q. Well, I asked you about Charter and you
3 said other CLECs. I'd like for you to answer my question.

4 A. Could you rephrase it for me, please?

5 Q. Do you have any reason to believe that
6 Charter does not have the same incentives that CenturyTel
7 has?

8 A. I believe under certain conditions, certain
9 circumstances, you may not have the incentive.

10 Q. What about potential liability for a breach
11 of contract, is that another incentive that Charter might
12 have to comply with the terms of the contract?

13 A. Can you rephrase? I'm not sure I
14 understand where you're going.

15 Q. If the only incentives -- if you believe
16 the only incentives that Charter has to comply with the
17 terms of the contract are the inclusion of CenturyTel's
18 language, I'm wondering about other potentialities that
19 may also be incentives for Charter to comply with the
20 terms of the contract.

21 For instance, if it did not comply with the
22 terms of the contract and was found to be in breach, would
23 that be an incentive to comply with the terms of the
24 contract to avoid that result?

25 A. Possibly. Again, could be circumstances

1 that are different.

2 Q. With respect to the question of
3 incorporation of the service, on page 28 of your rebuttal
4 testimony at lines 15 through 18, you quoted language from
5 the Texas Public Utility Commission regarding SBC's,
6 quote, operational policies and procedures?

7 A. Uh-huh.

8 Q. Did you read the decision that you cite
9 there in Footnote 48?

10 A. I read the relevant portions thereof.

11 Q. Did the Texas Commission rule that SBC's,
12 quote, operational policies would be contractually binding
13 on the CLECs in that case?

14 A. I don't have the exact words in front of me
15 other than what I've cited in the testimony to refresh my
16 memory.

17 Q. Did you generally understand that the Texas
18 Commission intended for these policies to be contractually
19 binding on those CLECs?

20 A. Gets into the definition of contractually
21 binding. I'm not sure I can answer the question.

22 Q. I'd like to talk a little bit about
23 Issue 13, which is the bill disputes issue. On page 35 of
24 your rebuttal testimony, I understand your testimony on
25 lines 14 through 20 generally, that the burden falls upon

1 Charter to escalate a claim if a bill dispute resolution
2 process does not reach conclusion; is that right?

3 A. I think the outcome of a particular dispute
4 resolution -- either party obviously can escalate, and
5 that's typically what the agreement terms say. To the
6 extent that the outcome of the informal resolution or the
7 resolution between the parties pursuant to the agreement
8 terms result in Charter being the unsatisfied party, then
9 yes, I would think that Charter would then want to
10 escalate if it remained unsatisfied.

11 Q. And is it your testimony that that is the
12 common approach in the industry?

13 A. Yes.

14 Q. And under the parties' current
15 interconnection agreement, is that required?

16 A. I don't have the current agreement in front
17 of me, but that's a generic concept common in the
18 industry.

19 Q. I have a copy if you'd like to look at it.

20 MR. HALM: May I approach, your Honor?

21 JUDGE PRIDGIN: You may. And Mr. Halm, if
22 you know, can I inquire about how much more cross you
23 have? I'm really doubtful we're going to get this done by
24 five today.

25 MR. HALM: I think I can complete mine in

1 about ten minutes.

2 JUDGE PRIDGIN: That's fine. And I'm going
3 to consider strongly about taking a break at that time
4 because I know my court reporter's been going for quite a
5 while, and I'm sure we're going to have bench questions,
6 cross and redirect. I'm not sure we're going to get done
7 by five anyway. If you want to go ahead and finish your
8 cross, then I won't interrupt.

9 MR. HALM: I will move through these as
10 quickly as possible.

11 JUDGE PRIDGIN: I understand.

12 BY MR. HALM:

13 Q. Section 14 is the dispute resolution. Is
14 there any language in Section 14 that requires the billed
15 party to escalate the dispute?

16 A. Again, as I specified earlier, it says
17 either party may pursue its remedies.

18 Q. Does it address the point that you just
19 made about resolution of informal disputes?

20 A. It specifically says if the parties have
21 been unable to resolve the dispute within 45 days of the
22 date of the initiating party's written notice, either
23 party may pursue any remedies available to it under this
24 agreement, et cetera.

25 Q. Okay. So that's a different question.

1 That's whether or not either party can escalate a claim.
2 My question is, does it say that the billed party must
3 escalate a claim?

4 A. Again, I'm -- please help me, Mr. Halm,
5 with the relevance of this agreement, which CenturyTel did
6 not negotiate with what we're talking about here today.

7 Q. Are you posing a formal legal objection
8 here?

9 JUDGE PRIDGIN: Your counsel didn't object.
10 Just answer the question, please.

11 THE WITNESS: Okay. I'm sorry. Can you
12 restate?

13 MR. HALM: Could you read back the
14 question?

15 THE REPORTER: "Question: Okay. So that's
16 a different question. That's whether or not either party
17 can escalate a claim. My question is, does it say that
18 the billed party must escalate a claim?"

19 MR. SCHUDEL: My understanding, Guy, simply
20 is he's asking you if you see or if you know whether that
21 is part of this agreement.

22 THE WITNESS: It does not appear to be part
23 of this agreement, no.

24 MR. HALM: I'll conclude there, your Honor.
25 Thank you very much.

1 THE WITNESS: You're welcome, Mr. Halm.

2 JUDGE PRIDGIN: Any further cross?

3 Mr. Couch?

4 MR. COUCH: Yes.

5 QUESTIONS BY MR. COUCH:

6 Q. Mr. Miller.

7 A. Mr. Couch.

8 Q. I just had a few questions about the --
9 about the NID, and I understand that it is CenturyTel's
10 position that the use of the NID in any shape, form or
11 manner would require Charter to pay a tariffed rate,
12 \$1.91, is that --

13 A. It's not a tariff rate.

14 Q. It's not a tariff rate?

15 A. No, sir.

16 Q. Just an interconnection?

17 A. It's an interconnection agreement rate.

18 Q. If -- I suppose if in the arbitration it's
19 decided that this should be right, if Charter wants to,
20 could they provide their own box next to the NID --

21 A. Absolutely.

22 Q. -- and move the customer wire to their box?

23 A. Absolutely, and I've testified to that
24 effect.

25 Q. Would that cause any problems as far as the

1 I wire is concerned should you get that customer back?

2 A. It's hard to speculate, Mr. Couch. It
3 depends upon the individual circumstances of that house.
4 I mean, I can give you an example using this NID, if I
5 may.

6 Q. Yes. Sure.

7 A. Okay. You heard testimony previously from
8 Charter about CenturyTel's consistently obstructing the
9 inside wiring coming out. You may note that in this NID,
10 this is the customer access side, which I've opened. This
11 is the teleco access side.

12 At the bottom of the box we see two
13 openings, two round openings. The first opening here on
14 the teleco access side, the box is typically placed at eye
15 height upon the wall. The teleco -- teleco drop in the
16 ground typically come up along the wall. They are
17 contained within a plastic or PVC pipe that fits in that
18 for weatherproofing and come into here, which you notice
19 there's the same thing on the customer side.

20 It is my experience on homes which I have
21 personally owned, and I've owned several in my lifetime,
22 as well as homes that I have visited, that often the
23 wiring does not come out behind this box, but typically
24 the inside wiring comes out of the premise somewhere about
25 the level of a typical electrical outlet, and indeed then

1 goes up the side of the house in a conduit into this box.

2 Therefore, it can be taken out, pulled out,
3 and you have sufficient length of wire to go to another
4 box or to splice within that conduit to go to another box.
5 So in that -- in that instance, no, there would be no
6 issue.

7 Q. May I see the box?

8 A. Absolutely (indicating).

9 Q. But also in the back there's also a grommet
10 here --

11 A. Yes.

12 Q. -- so that if the installer wanted to, he
13 could install it and run the wire through this grommet as
14 well. In that case, it would obscure the use of that
15 inside wire?

16 A. If the electrician who installed it in the
17 house for some reason pulled it at eye level, which is
18 typically where this is installed, then yes, this could be
19 placed over it. That is a possibility.

20 Q. If the wire after -- let's say that Charter
21 moved the wire to their box, and after it was moved it was
22 too short to be reused, bought back to the NID when you
23 got the customer back. Would you just try to splice it or
24 would you perhaps use the box that Charter had and then
25 connect that back to the NID?

1 A. I can only answer that -- you're asking me
2 to speculate.

3 Q. Yes.

4 A. I'm not an installer. I can tell you what
5 I would do, having done some wiring around the house. If
6 I could splice that wire and have it housed within a
7 weatherproof conduit on the outside, I may do that.

8 Alternatively, I may do what I've done
9 before in some circumstances, which is go to the inside of
10 the house, especially here up north where we have
11 basements, access the wire there, splice it inside the
12 house and run a new wire from there to the outside that
13 does reach.

14 Q. So you would make whatever effort was
15 necessary not to use Charter's box?

16 A. To the extent that I had my own NID still
17 there, I'd prefer to use mine. I mean, this is our
18 standard equipment. It's what we're used to using. It's
19 what we've paid for and used. There would be no reason
20 not to use it.

21 Q. Do you think that would be policy for
22 CenturyTel's installers?

23 A. I am sure that there are policies for
24 installers on how to do that, yes. I'm not privy to
25 those.

1 Q. So far that issue has never been raised and
2 it's never happened, but --

3 A. I'm not aware if it's happened or not.
4 Again, I don't personally do the installations.

5 MR. COUCH: Thank you. That's all I have.

6 JUDGE PRIDGIN: Mr. Couch, thank you.

7 Ms. Dietrich?

8 QUESTIONS BY MS. DIETRICH:

9 Q. Mr. Miller, can you look at page 10 of your
10 direct testimony, please?

11 A. Certainly.

12 Q. At lines 10 through 12, you say, in my
13 opinion, Charter does not -- does this in an attempt to
14 obtain free use of CenturyTel's NIDs when this narrow
15 definition is used in combination with Charter's position
16 on inside wiring and point of demarcation definitions.

17 A. Yes.

18 Q. Can you explain what you mean by that
19 statement?

20 A. Well, again, it goes to the heart, I
21 believe, of Charter's stated position, which is they
22 believe that they are permitted or should be permitted to
23 go into the customer access side of the NID and to house
24 their connections within here in some manner and without
25 paying for CenturyTel for the use of the NID UNE.

1 In order to affect that outcome, it appears
2 that Charter has attempted to structure the language of
3 this agreement to define inside wiring, point of
4 demarcation and the definition of the NID to convey some
5 kind of control or ownership to the customer that does not
6 exist in reality regarding the access to this side of the
7 NID. And that's what I mean by this statement.

8 Q. Okay. And then kind of continuing on those
9 lines, if you go back to page 8, at lines 20 and 21, you
10 say the parties have agreed upon the definitions of inside
11 wiring and point of demarcation. Do you see that?

12 A. Yes.

13 Q. Okay. Then if we go back to page 10.

14 A. Right.

15 Q. Starting at the Q and A at line 13, for the
16 rest of that page you use the word definition several
17 times. Can you tell me which definition you're talking
18 about in that exchange?

19 A. Just a moment, please. I'm sorry. Page 8?

20 Q. Page 8, you say the parties agree on the
21 definition of inside wiring and point of demarcation.

22 A. Yes.

23 Q. And so then on page 10 you're talking about
24 some sort of definition that has -- that Charter has
25 excluded, and one of your references there is demarcation

1 point. I was trying to figure out what you were saying.

2 A. I'm sorry. Yes. I understand. It's the
3 definition of the NID. Remember, it's the conjunction of
4 all of those definitions together that matter. Without
5 going to the actual language here, which of course I can
6 do, but the Charter definition stops at one point, where
7 CenturyTel has additional language which references these
8 actual FCC regulations and orders that provide further
9 clarity.

10 For example, the one I reference here on
11 page 10 talks about the demarcation point, the wiring, the
12 premise and so forth. All of that helps define what the
13 NID is and is not.

14 Q. Okay. And then my next question, you may
15 need your box to show this. In CenturyTel's position,
16 where does the customer's wiring start?

17 A. Again, if you look at federal law, which
18 I've cited in here, it says that the customer's -- well,
19 I'm sorry. Are we talking about wiring or are we talking
20 about demarcation point? Because as I referenced before,
21 it is two different concepts.

22 Q. Your statement on page 11 says, the only
23 thing that the customer owns or controls is the customer's
24 wiring. And so I was trying to figure out --

25 A. Right.

1 Q. -- in your opinion where the customer's
2 wiring starts.

3 A. Again, as I related, I think it was to
4 Mr. Dodge, the customer is responsible for installing the
5 wiring in his or her home, his or her premise. There is
6 no doubt that within the law the customer owns and
7 controls the wiring actually within the premise. Now, and
8 bear with me for a moment. Federal law says that the
9 demarcation point between the ILEC or the teleco's drop
10 and the customer wiring is at a point somewhere up to 12
11 inches past the protector. And if you continue on looking
12 at all those definitions, it actually at one point refers
13 to within the wall of the premise or as close to thereof
14 as practical, presumably within that 12 inches or 30
15 centimeters.

16 So again, federal law and regulation and
17 FCC orders leave it kind of ambiguous as to who really
18 owns that piece of wire once it comes out of the house and
19 is within that range. So I'm not sure I can give you a
20 definitive answer because it's really not definitive at
21 all. All I can tell you that is the demarcation point
22 between the teleco facilities and the customer inside
23 wiring is not here. It's here somewhere (indicating).
24 And that's not me. That's what I read the FCC to have
25 said.

1 Q. Okay. This is more for clarification. On
2 page 11 --

3 A. I'm sorry. Of the direct or rebuttal?

4 Q. Still direct.

5 A. Direct. Thank you.

6 Q. You have a Q and A that begins at line 9,
7 and in your answer you have an A, C and D. Is there a B
8 or is that just a typo in the lettering?

9 A. No. I left B out because it wasn't
10 relevant.

11 Q. Okay.

12 A. I mean, it wasn't relevant to the
13 clarification.

14 Q. Okay. And then on page 12, at lines 10 and
15 11, you say, in some cases the NID does not mark the end
16 of the incumbent's control of the loop facility.

17 A. Yes.

18 Q. In that case, who owns the NID?

19 A. The telephone company always owns the NID.

20 Q. If that was -- if it was CenturyTel, it
21 would be CenturyTel then?

22 A. Yes. Again, this refers to what we were
23 just discussing a moment ago, Ms. Dietrich, which is the
24 NID is not necessarily the end of our control of the loop,
25 that it -- in certain circumstances it does extend past

1 the NID.

2 Q. And that's my next question. Where does
3 the incumbent's control of the loop facility end according
4 to this statement?

5 A. This particular reference was to the UNE
6 Remand Order.

7 Q. Right.

8 A. And I think that in order to technically
9 answer that question we should have the Order to see the
10 specifics of what they were referring to here. Again, it
11 goes to how do we define control, and I think that that
12 definition can vary based upon whether you're looking at
13 certain specifics about single premise as it's defined
14 within regulation and orders, multi premise as it's
15 defined within orders and the UNE Remand Order.

16 Q. So if I go to your reference at the UNE
17 Remand Order, I'll have further direction?

18 A. Yes, ma'am, I would believe you would.

19 Q. Okay. I'd like to switch a little bit
20 here. On page 28 of your direct --

21 A. Okay.

22 Q. -- at lines 9 through 11, you're talking
23 about default and termination. How does the dispute
24 resolution process fit in?

25 A. Obviously if an action is taken by a party

1 to the agreement where they have not -- and again,
2 depending upon the actual terms of the agreement.
3 Typically it says failed to materially perform under the
4 agreement or nonpayment. Those are typical terms. I have
5 to refresh my memory on this particular one.

6 If a party is in default and is notified
7 that they are in default, the first occurrence is
8 typically terms allow for a 30-day period to cure the
9 default. If they have not cured the default at that
10 point, then the party to whom the default has, how do I
11 phrase it, the non-defaulting party is allowed to take
12 whatever action is specified according to the agreement.

13 The terms of dispute arise if the
14 defaulting party believes that they are not in default and
15 at some time in that 30-day period or subsequent to that
16 30-day period if the non-defaulting party has not taken
17 any action, the party presumably in default can file for
18 dispute resolution.

19 Q. So --

20 A. And then the parties will proceed down that
21 track.

22 Q. So if Charter would receive a notification
23 of default or termination, it could invoke the dispute
24 resolution process to avoid termination?

25 A. Yes, it could.

1 Q. Is there an escrow provision in the
2 interconnection agreement to recover amounts in dispute
3 that are unpaid?

4 A. I, again, don't have the agreement in front
5 of me. I don't recall that, but that's subject to me
6 actually looking at the final terms. Again, these were
7 negotiated terms, and I wasn't involved in every single
8 aspect of the negotiation.

9 Q. Okay. At page 33, lines 7 through 9,
10 you're still talking about terminating the agreement, and
11 you say, the Commission has the authority necessary to
12 protect the interests of end users and to ensure service
13 continuity in the event of any transfer of CenturyTel
14 assets.

15 A. Yes.

16 Q. CenturyTel recently opted into a waiver of
17 Section 392.300 of the Missouri statutes as part of what
18 was allowed under House Bill 1779, and that particular
19 section of the statutes addresses the Commission's
20 authorization over transfer of property, merger type
21 transactions, those types of things.

22 So if CenturyTel has opted into and the
23 Commission has acknowledged those waivers, how can the
24 Commission protect the interest of end users and ensure
25 service continuity in the event of a transfer of

1 CenturyTel's assets?

2 A. Again, not being an attorney myself and not
3 having studied all Missouri law, I will make in my
4 opinion. Despite CenturyTel's optioning into that, it is
5 my understanding that the Commission still has control
6 over CenturyTel or any other local exchange carrier who's
7 certificated to perform in this state. That further the
8 Commission has the duty to look out for the interest, the
9 public interest of end users and, therefore, would
10 undertake appropriate actions within the scope of its
11 authority to ensure that the public interest was served
12 and the rights of end users were preserved.

13 And I know that CenturyTel would be willing
14 certainly to cooperate with the Public Service Commission
15 within that realm.

16 Q. But not being an attorney, you can't give
17 me any specifics?

18 A. No, ma'am. I'm sure we can address that
19 further in brief if that's necessary, but we'd have to
20 look at that specifics.

21 Q. Okay. On page 39, lines 12 through 15, can
22 you explain what CenturyTel is looking for from Charter in
23 your language here, what warranty they're looking for?

24 A. It's basically warranting that Charter
25 continues to comply with Missouri law and maintain its

1 status as a CLEC. Remember that Section 251 determines
2 obligations between an incumbent telephone company and its
3 local exchange competitors. So the presumption there, if
4 I -- actually may not be a presumption, may be just a
5 fact, is that the obligations of the incumbent telephone
6 company are only to those competitors who are, in fact,
7 competitive local exchange companies pursuant to federal
8 law. For example, the requirement to be providing local
9 exchange service to the general public or to a class of
10 the general public, there's specific words in there, that
11 meet the standards established for such by the state
12 commission.

13 So to the extent that this Commission has
14 determined that a local exchange carrier must be
15 certificated as a local exchange carrier, we CenturyTel
16 have an obligation under Section 251 to provide the
17 further obligations listed in the Telecom Act to those
18 competitors. We do not have any obligation to extend the
19 subsequent obligations of the Telecom Act to a general
20 business who is not a local exchange carrier.

21 Q. Let me stop you there. What specifically
22 are you looking for from Charter to provide that proof,
23 then?

24 A. It's written proof, whatever that form
25 constitutes, that it has maintained its competitive local

1 exchange status pursuant to Missouri law or Missouri
2 regulation.

3 Q. So periodically a statement from Charter?

4 A. If we have reason to believe that Charter
5 has lost or otherwise given up its status as a competitive
6 local exchange carrier, our obligations to Charter are
7 premised upon its status as a competitive local exchange
8 carrier. So if it gives those up, we no longer have
9 obligations under federal law anymore.

10 Q. Right. I understand that. I'm just trying
11 to figure out what you're looking for, because when I read
12 the language, it looks like it's some kind of ongoing
13 guarantee, if you will, that you're looking for from
14 Charter, and I'm not sure what that is because they get
15 certificated and then, you know, life goes on, and then
16 perhaps they get uncertificated or they ask for the
17 certificate to be canceled. So in that interim period,
18 what are you looking for?

19 A. Simply a warranty that they are continuing
20 to be certificated by the state, in other words, that that
21 has not been canceled. I mean, going to the Commission's
22 website and finding it would be -- that they still hold
23 the certificate would be adequate proof in my opinion.

24 Q. And is that, you know, a once a year
25 warranty?

1 A. No, ma'am. There's no -- there's no set.
2 I mean, this is invoked only if there's reason to believe
3 that that status has been lost. Now, some states, and I
4 don't believe Missouri's one of them, but I do get actual
5 formal notice in my mailbox from some state commissions
6 saying that particular carriers have been -- have their
7 status revoked. That's a triggering event. I don't
8 believe Missouri does that.

9 So here all we're saying is asking Charter
10 to acknowledge that our provision of obligations to them
11 pursuant to this agreement are pursuant to the Act and
12 pursuant to their status as a competitive local exchange
13 carrier in the state of Missouri, and that if they don't
14 have that status any further for whatever reason, that
15 changes our obligations.

16 Q. Okay. Now I'd like to switch to your
17 rebuttal testimony and go back to the NID because I didn't
18 organize mine by subject. I organized it by testimony.
19 On page 8 of your rebuttal testimony, at lines 8 and 9 you
20 talk about house its own facilities.

21 A. Yes.

22 Q. In the previous question, the answer that
23 starts at line 1 through 4 --

24 A. Yes.

25 Q. -- you're describing a certain type of

1 access that Charter might use. Is that an example of
2 housing its own facilities?

3 A. No. No. Lines 1 through 4 talk about the
4 permitted action where Charter can access the customer
5 access side of the NID for purpose of disconnecting the
6 customer wiring and either capping them off, because as
7 Charter itself has testified, they're going to access the
8 inside wiring from inside the house to the jack closest to
9 their modem, or Charter accesses this part of the NID to
10 disconnect the customer wiring and pull it out and connect
11 it to their own NID in the manner that was discussed
12 previously with your co-staff member up here.

13 Q. Okay. So when -- what would Charter be
14 doing that it would be housing its own facility?

15 A. Again, as we discussed, if Charter comes in
16 here and actually accesses CenturyTel's side, disconnects
17 CenturyTel's drop, takes its own connection and puts it
18 here right on top of the customer inside wiring connection
19 or puts it on this side for that matter, then Charter has
20 used the NID and is housing the connection.

21 Alternatively, as I believe I discussed
22 with Mr. Dodge, Charter could come in, it could actually
23 take the connection off of here where the customer inside
24 wiring is connected here at this point, it could take
25 those off and it could attach those wires to the wire that

1 Charter pulls into this NID and cap them off right there,
2 and then close this NID cover over it to house that
3 connection and keep it weatherproof. According to the
4 FCC, that is a use of the NID.

5 Q. Okay. In her direct testimony,
6 Ms. Giaminetti says that CenturyTel has committed billing
7 errors where it has credited Charter for CenturyTel end
8 user payments on 263 occasions and some of those have not
9 been corrected. Do you have any response to that?

10 A. Again, I -- Mrs. Giaminetti provided no
11 specifics as to what those are, so I had nothing to
12 research. I had no reason to understand what they are
13 without further detail from Charter.

14 Q. Okay. And then in your testimony, when
15 you're discussing termination of the agreement, Charter's
16 expressed a lot of concern about customers being
17 disconnected, their end user customers losing service.
18 And if I read your testimony, you're guaranteeing that no
19 matter what happens between the two companies, end user
20 customers will not lose service; is that correct?

21 A. Yeah. That just doesn't happen. Even when
22 CenturyTel has terminated an agreement for default, for
23 example, a CLEC has gone -- I'll use real world examples
24 here for you. I don't recollect if it's happened in this
25 state, but it has happened to other CenturyTel affiliates

1 in other states, where a CLEC or a reseller has --

2 Q. That's okay.

3 A. -- gone out of business.

4 Q. I'm trying to move along here.

5 A. No. That's okay.

6 Q. Is there language in the agreement that
7 assures that service to the customers will not be
8 disrupted?

9 A. I'd have to refresh myself on the
10 agreement.

11 MS. DIETRICH: Okay. That's all I have.
12 Thank you.

13 JUDGE PRIDGIN: Ms. Dietrich, thank you.
14 Mr. Van Eschen?

15 MR. VAN ESCHEN: Real quick.

16 QUESTIONS BY MR. VAN ESCHEN:

17 Q. On page 17 of your direct testimony, lines
18 6 through 10, that sentence there, I was curious about the
19 last part of that sentence where it says, akin to a CLEC's
20 use of a non-rural LEC's NIDs as a UNE. Can you explain
21 that part of the sentence? Do you see where I'm --

22 A. Yes.

23 Q. -- referencing?

24 A. Yes. Yes. Okay. What apparently has
25 happened here, and thank you for pointing it out to me,

1 this probably should have been an errata. As you're
2 probably aware by now, the same cast of characters pretty
3 much has a date in Texas next week, so we were preparing
4 simultaneous testimony.

5 There's a difference between a non-rural
6 obligation and a rural obligation. What I was referencing
7 here was, in the instance of a rural company, which
8 CenturyTel affiliate in Texas is, that --

9 Q. Okay. That's fine.

10 A. So that should have been stricken. I
11 apologize. We didn't catch it.

12 Q. I know you've talked a little bit with
13 Ms. Dietrich about the FCC's UNE Remand Order on Issue 24.

14 A. Yes.

15 Q. Can you just briefly summarize what point
16 you're trying to make in regards to what you think the
17 FCC's UNE Remand Order says on this issue?

18 A. Can you point me to my testimony just to
19 refresh me?

20 Q. Okay. It's page 16, lines 1 through 15.

21 A. Okay. Just a moment, please. Yes. Yes.
22 Okay. This goes to the statement that I previously made
23 here today as well as made in my testimony, which is the
24 FCC defines use of the NID as any use of the NID, all
25 features, functions and capabilities of the facilities

1 used.

2 So whether or not Charter actually uses the
3 NID in its entirety and wishes to connect on this side and
4 use the protector, the lightning, the whole bit, or
5 whether Charter connects on this side or whether Charter
6 simply disconnects the wire and clips theirs together and
7 only uses the weatherproof housing, they are using a
8 feature, function and capability.

9 Q. Okay.

10 A. And that, therefore, they are using it as a
11 UNE. So it's any means of interconnecting customer
12 premise wiring.

13 Q. And if I understood your answers when
14 Mr. Dodge was asking you questions on this issue, the rate
15 that CenturyTel wants to charge Charter for the use of a
16 NID, that's not based on any cost study; is that correct?

17 A. I can't answer that question because I'm
18 aware that we have done -- I can't call it a cost study
19 because I think that's a formal term. We have done
20 studies of the costs of a NID and so forth. Now, I -- the
21 rate here is not at dispute. So whether we've actually
22 used that effort to justify this rate, it wasn't a
23 requirement in this particular case because Charter did
24 not dispute the rate that's in the agreement.

25 Q. Okay. And I just want to make sure I

1 understood what you were saying earlier. CenturyTel will
2 never remove a NID from a customer's premise if they
3 switch to another provider?

4 A. No, I didn't say that. I said that
5 typically we don't remove the NID on the premise that we
6 will ultimately win that customer back or otherwise
7 provide service to a subsequent owner of the premise.
8 That doesn't mean we would never consider removing it for
9 some other reason.

10 Q. Okay. In regards to Issue No. 4, will
11 CenturyTel notify Charter if it intends to sell part of
12 its area to another provider?

13 A. You know, I'm not sure I know the answer to
14 that.

15 Q. Okay. In regards to Issue No. 7, and I
16 know Ms. Dietrich asked you quite a few questions on this,
17 the way the issue is teed up, it makes it sound like
18 there's a difference between the terms represent and
19 warrant versus provide proof of certification, but I
20 gather that there's really not any significant difference
21 between those terms. Is that --

22 A. Again, I'm not an attorney, so I know
23 there's a legal definition of warranty, which the
24 gentlemen at the head table will probably be talking about
25 in legal briefs. My lay understanding is Charter comes to

1 us, as admittedly they are today, a certificated CLEC in
2 the state of Missouri and say, I want this agreement with
3 you subject to 251/252 and we give it to them. They've
4 represented to us and actually have proven to us that they
5 have certification.

6 Now what happens down the road after that
7 initial, we give them the agreement on the basis that they
8 are a certificated CLEC. Now we expect them to continue
9 to be a certificated CLEC subject to laws, statutes,
10 regulations of the State of Missouri for us to continue to
11 have an obligation to perform under this agreement.

12 Q. Just so I'm clear, though, will CenturyTel
13 not enter into an interconnection agreement with a VOIP
14 provider?

15 A. A VOIP provider who has status as a CLEC
16 does have the right to invoke Section 251 obligations of
17 CenturyTel.

18 Q. What about if they're a VOIP provider that
19 partners with somebody else?

20 A. Then we enter into an agreement with the
21 partner.

22 Q. Okay.

23 A. I think the FCC's recent, fairly recent
24 order on VOIP portability makes a claim that -- makes
25 it -- I'm sorry -- makes it clear that a VOIP provider on

1 its own who is not a CLEC has no standing and they need to
2 partner with a CLEC in order to obtain the right to port
3 numbers from another carrier. CenturyTel does offer 251
4 agreements to that CLEC partner.

5 Q. Okay. I want to shift gears on you so we
6 can get through this real quick. What influence, if any,
7 do CLECs have in determining what's in CenturyTel's
8 service guide?

9 A. What influence do I see CLECs like Charter
10 having?

11 Q. Yes.

12 A. Any time that a CLEC brings something to
13 our attention about the guide, whether it's a perceived
14 deficiency, whether it's something that's omitted that
15 they feel that it should be there or whether it's
16 something they believe is inappropriate, they bring it to
17 us, we discuss it, and we will take whatever action we
18 believe to be appropriate.

19 I think we've already put in testimony, for
20 example, that -- or at least in the -- I'm sorry. It
21 would be in the data request responses which I believe
22 were admitted as part of Charter's admissions here in this
23 proceeding, that in 2006, for example, there were a lot of
24 suggestions that came from a CLEC here in Missouri
25 pursuant to pre-arbitration negotiations that caused

1 CenturyTel to substantially modify its service guide, and
2 we took those to heart. We made the modifications. Some
3 of that was, I believe, negotiated with that CLEC. Some
4 was they said this was needed, we offered something, they
5 agreed, we made changes.

6 Q. Okay. Is CenturyTel agreeable to the
7 proposal by Charter regarding notice of changes to the
8 service guide?

9 A. I believe we do that already.

10 Q. Which basically as I understood what
11 Charter was asking CenturyTel to do is provide a redlined
12 version of what's being changed in the service guide?

13 A. Quite honestly, I think that goes above and
14 beyond the call of duty. I mean, we post the service
15 guide on our website so it can be accessed 24/7 by Charter
16 and the CLEC. We provide --

17 Q. So that would be no?

18 A. We provide notice of a change and
19 specifically state what that change is, and they can see
20 it right there. I mean, we -- we don't have the staff to
21 ship out redline copies necessarily.

22 Q. All right. I wanted to ask, how often does
23 it happen that a CLEC submits an unauthorized request to
24 port an end user's telephone number?

25 A. I don't know that I can give you a hard and

1 fast number, but it's probably more often than you would
2 believe. Typically in the case that you yourself raised a
3 moment ago about non-CLEC VOIP providers who have a CLEC
4 partner, there's frequently some miscommunication that
5 goes back and forth, and a customer ends up getting
6 slammed. And I have tracked those in specific dispute
7 instances, but not -- I don't believe I've done it here in
8 the state of Missouri.

9 Q. In response to that situation, what sort of
10 charge does CenturyTel want to apply?

11 A. I don't have the specifics in front of me
12 here. I'm sorry.

13 Q. In regards to Issue No. 28, what will
14 CenturyTel's audit entail if they want to monitor and
15 audit Charter's use of the OSS system?

16 A. Mr. Van Eschen, I can only say that that's
17 kind of an individual case basis question. I mean,
18 generically an audit would be -- let's step back for a
19 moment. Charter's access of our OSS would be, for
20 example, for the purpose of pulling records of the
21 customers pursuant to our allowing them to do that.

22 We may want to audit what they've done to
23 see what records they've accessed, what information they
24 have pulled, to ensure that there's no violation of
25 Section 222. And I'm not saying that's necessarily on

1 Charter's part. It could be that something inadvertently
2 happened to our system to allow them access to information
3 that they shouldn't have and we need to fix that.

4 I mean, anywhere you have humans touching
5 something, they can make a mistake, take away a protection
6 that might be there. We want to ensure that that never
7 happens. But we also want to audit and make sure they are
8 using it for the purposes they are authorized to use it
9 for and not for any misuse or any purposes that are not
10 authorized by law.

11 MR. VAN ESCHEN: Okay. Thank you. That's
12 all the questions I have.

13 JUDGE PRIDGIN: Mr. Van Eschen, thank you.
14 Further bench questions? Recross?

15 MR. DODGE: I'm tempted to ask Mr. Miller
16 if he's available for home wiring projects, but I'll
17 refrain.

18 THE WITNESS: For the right price.

19 MR. DODGE: Not TELRIC, I bet.

20 THE WITNESS: I have kids in college. My
21 incremental costs are pretty high.

22 MR. DODGE: Apparently a lot of people at
23 CenturyTel do.

24 RECROSS-EXAMINATION BY MR. HALM:

25 Q. Just a couple of quick questions. On the

1 issue that Ms. Dietrich and Mr. Van Eschen raised with you
2 about the rep and warranty provision --

3 A. Yes.

4 Q. -- regarding the certification held by
5 Charter. I think you told us that you know that Charter
6 is certified today?

7 A. Yes. It's my understanding that you are,
8 yes.

9 Q. Your concern is at some point in the future
10 they may not be certified?

11 A. That would be a concern to me, yes.

12 Q. There's no way for you to know if and when
13 that actually happens; is that right?

14 A. Absent the Commission giving us
15 notification, it would be something that we would discover
16 through other means, and that has happened with other
17 cable VOIP providers in the past, that we have discovered
18 through other means.

19 Q. If Charter provided you proof whenever you
20 wanted it, whenever you asked for it, would that address
21 your concern?

22 A. Proof that you continue to hold a CLEC
23 certification? I believe that's something we can discuss
24 if that's sufficient.

25 Q. Well, if you have some concerns -- I'm

1 saying, look, this arbitration ends today. Six months
2 from now you're wondering, is Charter still a CLEC in
3 Missouri? I'm going to call up Mr. Halm and see if I can
4 get some proof. And if I said, yes, Mr. Miller, I'll have
5 somebody from the company send you proof tomorrow, would
6 that be sufficient?

7 A. And what I'm saying, Mr. Halm, is I think
8 that if Charter has language it wishes to propose to that
9 effect, that we'd certainly entertain that.

10 Q. Okay. I want to actually point you to
11 language that the parties have already agreed upon. Do
12 you still have the Joint DPL up there?

13 A. Yes.

14 Q. On page 19, and I think we all know now,
15 language that is in normal typeface represents agreed-upon
16 language. You understand that, Mr. Miller?

17 A. Yes, I do.

18 Q. So on page 19, in the Charter language
19 column, the second sentence that begins asterisk,
20 asterisk, CLEC will provide, can you just read that out
21 loud for us?

22 A. CLEC will provide a copy of a certificate
23 of operating authority or other evidence of its status to
24 CenturyTel upon request.

25 MR. HALM: Okay. Thanks very much. No

1 further questions.

2 JUDGE PRIDGIN: Thank you. Redirect?

3 MR. SCHUDEL: Just in one area.

4 REDIRECT EXAMINATION BY MR. SCHUDEL:

5 Q. Mr. Miller, in part of Mr. Dodge's
6 examination, he was asking you about continuing
7 compensation to the residential property owner after the
8 customer had been won to, for example, Charter and your
9 NID remained in place. Do you generally remember that
10 line of questioning?

11 A. Yes, I do.

12 Q. And you made a reference to right of way.
13 I'd like to just ask you either as a property owner, which
14 you've said you are, or more likely based upon your
15 telephone experience, are you aware that telephone
16 companies routinely obtain easements for their facilities
17 to be placed on residential properties and for their drop
18 wires and apparatus to be placed on those properties?

19 A. Yes.

20 MR. DODGE: Objection, your Honor. Goes
21 beyond the scope of direct. We were talking about rights
22 of way, not easements, which are legally distinct.

23 JUDGE PRIDGIN: I'll overrule. I
24 understand they're legally distinct, and it's been a long
25 time since I've had property law, but I think it's closely

1 related.

2 MR. SCHUDEL: The good news, John, is I
3 didn't ask him about Shelly's law.

4 BY MR. SCHUDEL:

5 Q. Back to our subject, on that basis, is it
6 your experience that a telephone company, in this case
7 CenturyTel, obtains a perpetual easement for the placement
8 of its facilities on the residential property owner's
9 property?

10 A. Yes. And with a nod to Mr. Dodge, I am not
11 a property attorney much less any kind of attorney, and
12 easements, rights of way mean the same thing to me as a
13 layperson.

14 Q. Is it your understanding, based upon
15 experience, if you know, that the arrangement to obtain
16 easement rights is a one-time matter that CenturyTel
17 obtains from the property owners it serves?

18 A. I believe that is correct.

19 MR. SCHUDEL: That's all I have. Thank
20 you.

21 JUDGE PRIDGIN: All right. Thank you.
22 Thank you very much, sir. You are excused.

23 It looks like after Mr. Miller, we have no
24 further witnesses. Is there anything else counsel needs
25 to bring to my attention before we adjourn?

1 MR. DORITY: Your Honor, if I might, the
2 Chapter 36 rules contemplate an expedited transcript, and
3 looking at our briefing schedule, which is aggressive to
4 say the least, I thought it might help just to get some
5 clarification as to what our expectations might be in that
6 regard.

7 JUDGE PRIDGIN: And I had talked to the
8 court reporter yesterday, who's different than the one we
9 have today, and pressed upon her the need to get this done
10 as soon as possible. Is that something we can discuss
11 with the court reporting service off the record?

12 MR. DORITY: Sure.

13 MR. SCHUDEL: I do just have one other
14 subject, and I presume we should close the record. It has
15 to do with briefing details. I'm perfectly happy to
16 continue on the record if you wish.

17 JUDGE PRIDGIN: It makes no difference to
18 me if you're simply asking procedurally what --

19 MR. SCHUDEL: Exactly right.

20 JUDGE PRIDGIN: It's been my experience
21 that the lawyers write the briefs as they see fit. It's
22 not like an appellate brief where you're supposed to do a
23 points relied on and you have a certain format that's laid
24 out in the Rules of Civil Procedure. I would certainly
25 expect you to address issue by issue, but other than that,

1 I have no -- I'm not aware of any rule or I don't
2 necessarily have any preference.

3 MR. SCHUDEL: Again, would you like the
4 reporter to continue?

5 JUDGE PRIDGIN: I'm perfectly happy taking
6 this up off the record unless counsel wants to remain on
7 the record for this.

8 MR. DORITY: Thank you, Judge. We can go
9 off.

10 JUDGE PRIDGIN: All right.

11 WHEREUPON, the hearing of this case was
12 concluded.

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I N D E X

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3 COUNTY OF COLE) ss.

4 I, Kellene K. Feddersen, Certified
5 Shorthand Reporter with the firm of Midwest Litigation
6 Services, and Notary Public within and for the State of
7 Missouri, do hereby certify that I was personally present
8 at the proceedings had in the above-entitled cause at the
9 time and place set forth in the caption sheet thereof;
10 that I then and there took down in Stenotype the
11 proceedings had; and that the foregoing is a full, true
12 and correct transcript of such Stenotype notes so made at
13 such time and place.

14 Given at my office in the City of
15 Jefferson, County of Cole, State of Missouri.

16

17 Kellene K. Feddersen, RPR, CSR, CCR
18 Notary Public (County of Cole)
My commission expires March 28, 2009.

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