

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Evidentiary Hearing

OCTOBER 28, 2008
Jefferson City, Missouri
Volume 2

In the Matter of The)
Petition of Charter)
Fiberlink-Missouri, LLC,)
For Arbitration of An)
Interconnection Agreement)Case No. TO-2009-0037
Between CenturyTel of)
Missouri, LLC, and Charter)
Fiberlink-Missouri, LLC)

RONALD D. PRIDGIN, Presiding,
SENIOR REGULATORY LAW JUDGE.

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REPORTED BY:
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1 P R O C E E D I N G S

2 (EXHIBIT NOS. 1, 2 NP AND 2 P, 3 AND 3A,
3 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14A, 15, 15 P,
4 16, 17, 17 P, 18 P, 19, 19A, 20, 21, 22, 22A AND 23
5 WERE MARKED FOR IDENTIFICATION BY THE COURT REPORTER.)

6 JUDGE PRIDGIN: All right. Good morning.
7 We are on the record. This is the beginning of the
8 arbitration hearing in Case No. TO-2009-0037,
9 Petition of Charter Fiberlink-Missouri, LLC for
10 Arbitration of Interconnection Rates, Terms,
11 Conditions and Related Arrangements With CenturyTel
12 of Missouri, LLC pursuant to 47 USC Section 252(b).

13 I am Ron Pridgin. I am a regulatory law
14 judge with the Commission and I've been appointed
15 arbitrator in this case.

16 Let me introduce my advisory staff up on
17 the bench with me. To my far left is Myron Couch, to
18 my immediate left is Natelle Dietrich and to my
19 right, John Van Eschen.

20 I would like to get entries of
21 appearance from counsel, please, beginning with
22 Charter Fiberlink-Missouri, LLC.

23 MR. COMLEY: Good morning, Judge Pridgin
24 and advisory staff. Let the record reflect the entry
25 of appearance of Mark W. Comley, Newman, Comley &

1 Ruth, PC, 601 Monroe, Jefferson City, Missouri 65101
2 on behalf of Charter Fiberlink.

3 And also let me introduce to the
4 Commission Mr. K.C. Halm who is to my immediate left.
5 And to his left, Mr. John C. Dodge, both of Davis,
6 Wright, Tremaine, LLC, 1919 Pennsylvania Avenue
7 Northwest, Suite 200, Washington, D.C. 20006. They
8 have been admitted pro hac vice and will be appearing
9 for Charter Fiberlink throughout this proceeding.

10 Although he is not admitted pro hac
11 vice, let me introduce also from Charter's internal
12 counsel, Mr. Cliff Williams who will be with us
13 today.

14 JUDGE PRIDGIN: Any other counsel from
15 Charter?

16 MR. COMLEY: That's all.

17 JUDGE PRIDGIN: Entries of appearance,
18 please, for CenturyTel of Missouri, LLC.

19 MR. DORITY: Thank you, your Honor. For
20 CenturyTel of Missouri, LLC, please let the record
21 reflect the appearance of Larry W. Dority with
22 Fischer & Dority, PC, and Becky Owenson Kilpatrick
23 with CenturyTel. Our offices, of course, are located
24 here in Jefferson City.

25 And I would also like to introduce to

1 the bench from the Woods & Aitken law firm, Mr. Paul
2 Schudel to my right, Mr. James Overcash here. They
3 are both with the Lincoln, Nebraska office of Woods &
4 Aitken.

5 And from the Washington, DC office,
6 Woods & Aitken, Mr. Tom Moorman is here this morning
7 as well. And they have been admitted pro hac vice
8 pursuant to your order dated September 8th, and
9 written entries of appearance have been provided to
10 the court reporter.

11 JUDGE PRIDGIN: Mr. Dority, thank you
12 and welcome to counsel. I think I had mentioned
13 before we went on the record just for simplicity's
14 sake and so I don't start around and say, oh, my
15 goodness, I'm sorry, I've forgotten your name, I will
16 probably simply ask Mr. Comley or Mr. Dority to
17 speak.

18 But I'm not trying to exclude you at
19 all. If you should be speaking instead of them,
20 please butt in. I don't mean any disrespect. It's
21 just one less thing I have to remember, so -- and I
22 apologize for now, I'll probably get names wrong.

23 I'm trying to think of what else I can
24 bring to counsels' attention. Do I understand you
25 wanted to follow a list of witnesses? And I think,

1 Mr. Comley, you had sent me an e-mail of your order
2 of witnesses and CenturyTel's order of witnesses. Is
3 that counsels' plan to follow that order?

4 MR. DORITY: That's correct, your Honor.
5 And I think I had mentioned off the record, I had
6 just a few brief comments regarding some procedural
7 matters that I'd be happy to go over now. I've had
8 the opportunity to discuss with Charter counsel and I
9 believe they're willing for me to go ahead and just
10 give the bench a brief summation --

11 JUDGE PRIDGIN: Certainly.

12 MR. DORITY: -- of some procedural
13 issues that we've been able to address.

14 JUDGE PRIDGIN: Certainly.

15 MR. DORITY: The first two have already
16 been filed formally with the Commission, they would
17 be in your records. The first being the joint
18 correspondence of October 16th, 2008, regarding the
19 parties' joint agreement on briefing-only issues.
20 Certain issues set forth in the joint revised
21 statement of unresolved issues or the Joint DPL which
22 was filed on September 2nd were deemed primarily
23 legal in nature. And those Joint DPL issue numbers
24 were 5, 10, 12, 15 A, B and C, 26, 31, 35, 36, 37 and
25 38.

1 The second item already filed was the
2 October 23rd, 2008 joint stipulation regarding
3 admissibility of filed testimony confirming that
4 neither party would file a motion to strike testimony
5 that addressed legal concepts such as statutes, rules
6 or decisions or policy concepts interpreting same,
7 and further, neither party would assert legal opinion
8 or legal conclusion objections to testimony when
9 offered in this proceeding.

10 Subsequent to that filing, the parties
11 have also agreed that neither party would object to
12 the admissibility of any prefiled testimony except
13 that set forth specifically in the pending motions to
14 strike.

15 The parties have also agreed that the
16 typical preliminary identification and foundation
17 questions to witnesses would be waived and the
18 testimony would be offered with errata marked and
19 submitted for any corrections required. And it's my
20 understanding that some of the witnesses may actually
21 offer corrections on the stand as well.

22 MR. COMLEY: And let me just a moment
23 break in. We intended to have the errata sheets to
24 the extent possible, and we do have one, of course,
25 but there may be a few corrections that the witness

1 will have to make. But my understanding is that
2 we're not going to be required to go through those
3 several foundation questions that we normally do
4 before trying to admit the testimony.

5 JUDGE PRIDGIN: Is that your
6 understanding, Mr. Dority?

7 MR. DORITY: Thank you, Mr. Comley.

8 JUDGE PRIDGIN: All right.

9 MR. DORITY: So the witnesses will take
10 the stand, identify themselves to be sworn, their
11 testimony offered and then they would be subject to
12 cross-examination and questions from the bench.

13 As we pointed out earlier this morning,
14 the only exception to that would be the Charter
15 witness, Patricia Lewis, who will be adopting Amy
16 Hankins' testimony.

17 The Commission may take official notice,
18 of course, as requested of ICAs and tariff provisions
19 in its own records. An e-mail of Wednesday,
20 October 22nd, 2008, which your Honor referenced
21 previously, setting forth CenturyTel's proposals or
22 procedural issues, which I will briefly summarize in
23 a moment, have been agreed to by the parties as
24 confirmed by the e-mail from counsel dated
25 October 24th, with the exception of the time frame

1 for opening statements which counsel will address
2 here shortly.

3 Then the previously filed pleadings of
4 both parties, the petition, response, respective
5 proposed ICAs, DPLs and Joint DPL would be received
6 into the record.

7 In the previously referenced e-mail,
8 CenturyTel noted that procedural motions would be
9 resolved as the first matter of business this
10 morning, and responses to those motions would be
11 heard along with counter-arguments by the moving
12 party.

13 As you indicated, your Honor, Charter
14 would offer into evidence its prefiled direct and
15 rebuttal of each witness and then tender that witness
16 for cross-examination. No presentation of summaries
17 of the prefiled testimonies would be required or
18 allowed. CenturyTel would follow essentially with
19 its list of witnesses. No presentation of
20 surrebuttal evidence would be permitted.

21 To the extent that we get into
22 confidential or proprietary information, counsel
23 would alert the bench that they would be intending to
24 delve into those matters so that you would have the
25 appropriate opportunity to clear the room of those

1 that have not signed nondisclosure agreements and go
2 in-camera as required.

3 We also indicated that there may be some
4 instances where a witness may be cross-examined by
5 multiple counsel just due to the assignment of issues
6 by each of the parties.

7 We will also have no closing arguments
8 at the end of the proceeding, and briefing and
9 proposed orders would be discussed at the close of
10 the hearing.

11 As we previously indicated, we have
12 submitted our proposed order of witnesses, and those
13 witnesses, exhibits and testimonies have been
14 previously marked. I believe that's all I have in
15 terms of procedural issues that we wanted to address.

16 MR. COMLEY: One more thing, and I -- I
17 failed to mention this earlier. My understanding is
18 that CenturyTel has no cross-examination for Robert
19 Gyori.

20 MR. DORITY: That's correct.

21 MR. COMLEY: And -- and given that
22 situation, we would propose that we have a slight
23 divergence from the order we submitted to you, and
24 have Mr. Gyori submit cross-examination to the bench,
25 and then in that case, he could be then excused. And

1 that would be the only departure from the order that
2 we would propose.

3 JUDGE PRIDGIN: Is that reasonable,
4 Mr. Dority?

5 MR. DORITY: That certainly is, and I --
6 I apologize, Mr. Comley. You did mention that and I
7 failed to incorporate that.

8 JUDGE PRIDGIN: So what I'm -- what I'm
9 hearing is we would move Mr. Gyori up to the front of
10 the line. Since CenturyTel has no cross, we will
11 simply have bench questions of him. And then any
12 potential -- and -- and the normal course of business
13 of the Commission is, after bench questions, give an
14 opportunity for recross and then redirect. Is that
15 counsels' understanding of how you'd want to proceed?

16 MR. COMLEY: Yes.

17 MR. DORITY: Yes, sir.

18 JUDGE PRIDGIN: Okay. And so in that
19 case, when -- if there's -- if there aren't any bench
20 questions, I guess Mr. Gyori would be excused, but if
21 there are, I would give the opportunity for recross
22 or redirect and then Mr. Gyori would be excused. Is
23 that counsels' understanding? Okay. All right.
24 Anything further from counsel?

25 MR. DORITY: Not at this point, your

1 Honor.

2 JUDGE PRIDGIN: Did you wish to have
3 opening statements?

4 MR. COMLEY: That is an issue that we
5 still have between us.

6 JUDGE PRIDGIN: Okay.

7 MR. COMLEY: And I -- we have visited
8 about this. Charter's position is that 20 minutes
9 seems to be too lengthy for the opening of this case,
10 and the preference would be that it would be limited
11 to ten minutes.

12 JUDGE PRIDGIN: Okay. Charter's asking
13 for ten minutes, Mr. Dority.

14 MR. DORITY: I will let Mr. Schudel
15 address this, your Honor.

16 MR. SCHUDEL: If I may. Understanding
17 the stated preference of the Charter counsel,
18 Mr. Moorman and I, who will share the opening, have
19 endeavored to shorten it to the ten-minute period.
20 We may be 12 minutes, but I can assure you that we
21 won't take the full 20.

22 I can't guarantee you that it will be
23 within ten minutes. We didn't stopwatch it, but
24 we've -- we've limited it.

25 JUDGE PRIDGIN: All right. We'll --

1 we'll -- it's kind of like we have 8:30 as an opening
2 bid for starting. Let's have the ten minutes be kind
3 of an opening bid. And if -- and if Charter thinks
4 CenturyTel is overstepping its ten minutes, it can
5 speak up.

6 I do have counsel's motion to strike. I
7 do simply want to take those with the case in the
8 interest of time. And so when those -- if there is
9 testimony offered and you have a pending motion to
10 strike, certainly feel free to renew that motion and
11 I would likely simply admit the testimony subject to
12 your objection still pending and I would rule on that
13 in the final order. So I'm not -- I'm not asking
14 anybody to waive any objections, I'm not ruling on
15 any objections.

16 MR. DORITY: Your Honor, would we be --
17 would we be able to offer written responses in the
18 context of the brief or how would you like to have
19 that handled?

20 JUDGE PRIDGIN: That's -- that's
21 certainly fine. I mean, I just -- I just -- just in
22 the interest of time, since we have such a crush of
23 information, I simply would want to leave those
24 motions pending until I just had a chance to look at
25 them because I haven't had a chance to look at them

1 this morning and I don't feel adequately prepared to
2 rule on them. So I'd just rather leave those motions
3 pending.

4 MR. DORITY: Okay.

5 JUDGE PRIDGIN: And I'm not -- I'm not
6 asking anybody to waive any objections. You may if
7 you want to, but I'm not -- this isn't an attempt to
8 overrule those -- those motions yet.

9 MR. HALM: Your Honor?

10 JUDGE PRIDGIN: Yes.

11 MR. HALM: One point of clarification.
12 Charter's witnesses will go on the stand today.
13 Presumably CenturyTel's counsel will renew their
14 motions at that time. We obviously won't have the
15 chance to write down our opposition arguments, so to
16 the extent that we don't have the opportunity to do
17 so, I'm not sure it's fair to allow CenturyTel to
18 have that opportunity tomorrow.

19 MR. DORITY: I wasn't suggesting
20 tomorrow. I think I'd mentioned that --

21 MR. HALM: In the briefs.

22 MR. DORITY: -- the first opportunity --

23 MR. HALM: No, in the briefs.

24 MR. DORITY: -- was in the briefs.

25 MR. HALM: I'm sorry.

1 MR. COMLEY: Okay. That was my
2 understanding.

3 MR. HALM: I'm sorry.

4 MR. COMLEY: As long as we have an
5 opportunity here to argue the merits.

6 JUDGE PRIDGIN: Sure, sure.

7 MR. SCHUDEL: So, your Honor, just to
8 understand, then, if -- if, for example, when
9 Mr. Gates' testimony comes in to which we -- we had --
10 some of our motions to strike went to that, do you
11 wish for us to just restate our motion at that time
12 and not argue it? Is that -- is that your
13 preference?

14 JUDGE PRIDGIN: That's fine. I don't
15 think you have to restate. I'm just saying I
16 understand if you do it to save time, wait a minute,
17 this is one of those issues where we have a pending
18 motion and we're not waiving -- we're not waiving our
19 objection.

20 MR. SCHUDEL: Just wanted to be sure I
21 understood.

22 JUDGE PRIDGIN: And I would likely
23 simply admit the evidence subject to your motion
24 which will not be ruled upon yet.

25 MR. SCHUDEL: All right.

1 JUDGE PRIDGIN: Is that -- is that
2 clear? I'm trying to make this easier, not harder.
3 Okay. Anything else before opening argument?

4 MR. DORITY: Can we go off the record
5 for a moment? We are going to do a little switch
6 here. Mr. Schudel and Mr. Moorman will be providing
7 opening statements.

8 JUDGE PRIDGIN: That's -- that's fine.
9 Do we need to go off the record for that or what?

10 MR. DORITY: If you'll just bear with us
11 for a moment.

12 JUDGE PRIDGIN: Certainly, absolutely.
13 And just for counsels' information, my rough plan is
14 to break roughly every 90 minutes to two hours
15 depending on the perceived health of my court
16 reporter. So, you know, roughly -- anywhere in the
17 10:00 to 10:30 range we might take a break.

18 We will probably -- since we have so
19 many counsel and especially from out of town, we'll
20 probably take an extended lunch period to give you
21 more time to have a meal. Probably more like in the
22 75- to 90-minute lunch period.

23 So if counsel wants something different,
24 please let me know, but that's my plan. And then
25 we'll kind of go from there.

1 MR. DODGE: Your Honor, perhaps speaking
2 for other middle-aged men in the room, I have a bit
3 of a back issue. Is it okay to stand up?

4 JUDGE PRIDGIN: Absolutely. Please do
5 everything you can to make yourself comfortable.

6 MR. DODGE: I won't lie down on the
7 table.

8 JUDGE PRIDGIN: But yes, refreshments
9 are allowed. If you need to sit, stand, move around,
10 please feel free. Okay. Anything else? And will
11 Charter or CenturyTel be giving an opening first?

12 MR. COMLEY: Charter goes first, I
13 think.

14 JUDGE PRIDGIN: Anything else before
15 Charter gives an opening?

16 (NO RESPONSE.)

17 JUDGE PRIDGIN: All right, Mr. Comley,
18 or whoever is speaking for Charter.

19 MR. COMLEY: Mr. Halm will speak for
20 Charter.

21 MR. HALM: K.C. Halm. And I think I'll
22 present my opening statement from my seat.

23 Thank you, again, Judge Pridgin and
24 Staff, for the time you're spending today and the
25 time you will spend thinking about the disputed

1 issues in this case.

2 Let me take a very quick moment to
3 remind you of who the petitioner is in this case.
4 Charter Fiberlink-Missouri. Charter Fiberlink, which
5 I'll refer to as Charter, is a subsidiary of Charter
6 Communications, the cable broadband service provider
7 headquartered in St. Louis.

8 Charter Fiberlink is a facilities-based
9 competitive telephone provider. They offer services
10 over their own network facilities, their own
11 switches, their own loops, their own transformers.
12 They and their parent company have invested millions
13 of dollars to deploy and upgrade the networks that
14 they now rely on for these services. And they have
15 employed thousands of persons across the state of
16 Missouri to offer the services that are clearly
17 enhancing competition here in Missouri.

18 With their own facilities-based network,
19 you might ask why are we here. We're not really
20 arguing about UNEs, we're not really arguing about
21 resale terms. Isn't that what arbitration
22 proceedings are all about? Why we are here is
23 because Charter simply seeks fair, equitable and
24 reciprocal terms for network interconnection and
25 traffic exchange.

1 It's relatively simple: We need the
2 opportunity and the ability to interconnect our
3 networks at the most efficient points and to exchange
4 our traffic with CenturyTel in the most efficient
5 manner and most equitable manner.

6 Now, we have spent significant time
7 working on the terms of the draft agreement you have
8 before you. We didn't just come to this Commission
9 idly. In fact, Charter spent up to or nearly nine
10 months trying to negotiate the terms of this
11 agreement with CenturyTel. And only when it was
12 absolutely clear that there were disputes on these
13 issues you have before you did we decide to petition
14 the Commission and ask you to arbitrate these
15 questions.

16 So what exactly is Charter asking the
17 Commission to do here? We are asking for terms that
18 reflect three basic principles. First, Charter is
19 looking for business terms, terms in the general
20 terms and conditions portion of the contract that, as
21 I said, will be fair, will be equitable and will be
22 reciprocal. For example, one example of many:
23 Charter asks for the same interest rate that would be
24 applied to underpayments that will be applied to
25 overpayments.

1 Let me explain. CenturyTel has demanded
2 that we pay a certain interest rate when we underpay
3 a certain bill and then we are then later required to
4 pay the full amount. We, in return, have asked for
5 that same interest rate, but for reasons beyond us,
6 CenturyTel objects.

7 Second, Charter needs the ability to
8 compete on a level playing field. We're not asking
9 for more rights than CenturyTel, we're simply asking
10 for the same rights. We're not asking for special
11 treatment, we're simply asking for an opportunity to
12 exchange our traffic so that we can enter these
13 markets and compete with them fairly on a level
14 playing field.

15 To do so, we need terms that allow the
16 parties to interconnect their networks at the most
17 efficient points in the most efficient manner. If
18 Charter is required to deploy multiple network
19 facilities that are duplicative or costly, that
20 incurs greater cost for Charter and limits our ability
21 to provide competitive services here in Missouri.

22 Third, Charter is asking for terms that
23 will allow it to win subscribers, win subscribers,
24 subscribers from CenturyTel without having to pay
25 charges associated with that transaction. Charter

1 should not be required to pay what is effectively a
2 tax on competition every time their competitive
3 services entice a customer to move from CenturyTel to
4 Charter.

5 There's a couple examples of these types
6 of taxes. Every time that Charter asks for a number
7 to be ported from CenturyTel's network to Charter's
8 network, CenturyTel says, "You must pay us money."
9 Every time Charter attempts to connect its network to
10 the subscriber's home, CenturyTel says, "You must pay
11 us for that." It's a tax on competition. If we've
12 got to pay these taxes, we won't be able to serve
13 subscribers in Missouri as well as we could.

14 The terms that Charter seeks in this
15 proceeding are in stark contrast to the terms that
16 CenturyTel is asking for. When you read their
17 papers, it will be evident that CenturyTel is asking
18 you to approve terms that allow CenturyTel to impose
19 unilateral obligations upon Charter, terms that grant
20 rights to CenturyTel without giving the same rights
21 to Charter. That's not equitable, it's not
22 reciprocal, it's not fair. There are many examples
23 of these types of terms.

24 The deposit terms, CenturyTel wants the
25 right to determine when, where, how and why Charter

1 provides a deposit. And by the way, CenturyTel wants
2 the right to modify that deposit at its discretion.
3 CenturyTel wants the right to sell its operating
4 areas without giving Charter the necessary rights to
5 ensure that its service could continue in those
6 operating areas.

7 And finally, and I think most troubling,
8 as I've just explained, a key premise of CenturyTel's
9 proposal constitutes charges upon charges for
10 competing with CenturyTel for number porting for
11 connections to the subscribers' premises. These
12 charges impose costs upon Charter that inhibits its
13 ability to compete.

14 I would submit that that type of tax on
15 competition is contrary to the 1996 Telecom Act and
16 to Section 251 principles that this Commission must
17 rely upon and, in fact, impose in its decision in
18 this case.

19 Moreover, with respect to the specific
20 standards of Section 251, CenturyTel also attempted
21 to deny Charter's rights under that statute. They do
22 so in several ways. CenturyTel wants to deny Charter
23 the right to interconnect at a single location even
24 though it has the right to do so under
25 Section 251(c). CenturyTel wants to limit Charter's

1 ability to exchange traffic indirectly with
2 CenturyTel even though it has the statutory right to
3 do so under Section 251(a).

4 CenturyTel also wants to limit the
5 opportunities to use transit traffic arrangements
6 even though this Commission has repeatedly affirmed
7 that those arrangements are lawful and required by
8 Section 251(c). In this way, it's clear to me that
9 CenturyTel's proposals violate the very standard by
10 which this Commission must adjudge these disputed
11 issues.

12 When you go back and you read
13 Section 252 of the Act, you'll see that the statute
14 requires that this Commission ensure that the
15 disputed issues in this case are resolved in a manner
16 that is consistent with Section 251 and the FCC
17 regulations implemented in Section 251. CenturyTel's
18 proposals don't meet that standard.

19 Eight minutes. Thank you. Let me
20 conclude with a word of caution. Your Honor and this
21 Commission must be wary of the claims made by
22 CenturyTel. To support its case, CenturyTel's
23 witnesses will attempt to paint a very bleak picture
24 of Charter. We know they will unveil a virtual
25 parade of horrors. They seemingly have very good

1 imaginations because they've thought of any number of
2 things that could go wrong if Charter's proposals are
3 adopted.

4 If you take the word of CenturyTel's
5 witnesses alone, you might believe that Charter's
6 proposals are offered solely to gain unfair advantage
7 or impose some type of cost on CenturyTel. That's
8 not the case.

9 And CenturyTel's witnesses have
10 testified that Charter is a bad act, intent on
11 avoiding its financial obligations, but we know that
12 is not true and we know this Commission has found
13 otherwise. And we know that just one week ago today,
14 this Commission found that CenturyTel does -- I'm
15 sorry -- that Charter does comply with its billing
16 and dispute obligations. And we know that this
17 Commission concluded that it was CenturyTel, not
18 Charter who had engaged in these bad acts.

19 What bad acts did the Commission
20 identify? In Docket LC-2008-0049, the Commission's
21 Report and Order released a week ago found that
22 CenturyTel had knowingly and intentionally assessed
23 improper charges for three years upon Charter. The
24 Commission found that CenturyTel had improperly
25 attempted to import rates and terms from its tariff

1 that didn't apply to Charter in order to force
2 Charter to pay charges that were not supported by the
3 contract.

4 And in the original standstill order in
5 that case, which the Commission issued early on, the
6 Commission found that any termination or suspension
7 of service by CenturyTel would not be in the public's
8 interest, and they ordered CenturyTel to continue
9 providing service, in fact, porting numbers from
10 CenturyTel to the Charter network, pending the
11 resolution of a bill dispute.

12 Despite these findings, CenturyTel is
13 back again today. And what are they asking you to
14 do? Well, they're asking you to give them the right
15 to unilaterally suspend service. They're asking you
16 to give them the right to import terms from their
17 tariff.

18 They're asking you to give them the
19 right to assess charges for actions whenever Charter
20 wins a subscriber. Does that sound familiar? Is it
21 just me or is CenturyTel asking this Commission to
22 affirm the very same bad acts the Commission just
23 found to be improper?

24 I would submit that your Honor and this
25 Commission should not give CenturyTel a second

1 chance. Be wary of the claims you hear today. Thank
2 you very much.

3 JUDGE PRIDGIN: Counsel, thank you.
4 Opening on behalf of CenturyTel, please.

5 MR. MOORMAN: Good morning, your Honor.
6 Thomas J. Moorman for CenturyTel of Missouri, LLC.

7 Foremost, CenturyTel likewise
8 appreciates the time and effort that you and your
9 advisors have taken with this case. CenturyTel also
10 appreciates the opportunity to present its positions
11 regarding the outstanding issues in this proceeding.

12 Now that issue 25 has been resolved,
13 CenturyTel and Charter are presenting to you and the
14 Commission 40 issues for resolution in this
15 proceeding. Of those 40 issues, the parties have
16 agreed that ten of them will be addressed in briefing
17 only. Nevertheless, there can be no question that
18 resolution of the number of issues before you creates
19 a daunting task.

20 As you have likely already noted, the
21 unresolved issues can be generally classified into
22 two groups: Commercial terms and conditions and
23 interconnection-related matters. The time allocated
24 for opening statements does not permit an
25 issue-by-issue review, and in any event, CenturyTel

1 does not believe that such a detailed review would be
2 a worthwhile use of your time.

3 Accordingly, we thought it best to
4 provide our opening statement in three distinct
5 sections: First, CenturyTel will highlight and wants
6 to highlight the important principles grounded in
7 common sense that we request -- that we request you
8 keep in mind as you undertake your decision-making.
9 These questions are generally applicable to the
10 issues that are before you.

11 Second, and with respect to the
12 interconnection issues, I will review with you the
13 critical facts that establish the context for the
14 proper application of the Federal Telecommunications
15 Act, the FCC's rules and the relevant administrative
16 and judicial precedents.

17 Finally, Mr. Schudel, my co-counsel,
18 will summarize certain matters related to the issues
19 associated with commercial terms and conditions.

20 Let me address the common sense
21 questions that CenturyTel respectfully requests you
22 consider as you review the record and the issues and
23 the parties' positions regarding them.

24 First, as the Commission is aware,
25 CenturyTel and Charter have an existing

1 interconnection agreement that has been in place for
2 over six years, and Charter has been competing with
3 CenturyTel for about that time. Accordingly, this is
4 not the situation of initiating a relationship
5 between two competitors. I mention this because it
6 underscores the importance of the first question that
7 CenturyTel suggests you consider in connection with
8 determining the resolutions of the issues before you.

9 Is it reasonable to improve upon the
10 contract language in an effort to avoid the
11 disagreements that Charter and CenturyTel have had
12 with respect to the proper interpretation of the
13 existing contract between them? CenturyTel believes
14 the answer is yes.

15 That answer not only makes logical
16 sense, but it will serve the goal of minimizing
17 future disputes between the parties arising under the
18 agreement, and those disputes will ultimately require
19 Commission involvement and resolution.

20 There is no doubt that the business
21 markets are changing and that within our
22 telecommunications service markets, that change will
23 continue because of technology, service improvements,
24 new service offerings and other factors that no one
25 can predict. Contract terms in -- contract terms

1 that address these facts, for example, and the
2 definition of the treatment of all forms of
3 IP-enabled traffic and the terms for establishing and
4 modifying deposits should be approved in order, once
5 again, to avoid the parties coming back before this
6 Commission with other disputes that they need to
7 be -- or need to have resolved because things have
8 changed.

9 Second, CenturyTel also requests that
10 you keep in mind the following question: If a party
11 owns a facility, would another party's use of that
12 facility require payment of compensation, or for that
13 matter, obtaining permission to use the item in the
14 first place? I thought that was the rule, don't you?

15 Finally, and along the lines of the
16 second question, CenturyTel requests that you ask the
17 following: If one party requests that the other
18 party perform a task and the -- and the other party
19 fulfills that request, isn't compensation properly
20 payable to the party that acted in response to that
21 request? Again, the answer is yes.

22 There's no basis for eliminating within
23 the agreement the generally accepted rule of cost
24 causation. The party causing the cost should pay for
25 the cost that it requires the other parties to

1 incur -- or the other party to incur, a concept that
2 FCC decisions confirm.

3 These questions are common to many
4 aspects of the issues before you. CenturyTel
5 respectfully submits that they'd also provide a
6 framework within which those issues can rationally be
7 resolved. With the foregoing considerations in mind,
8 I will turn briefly to a discussion of the
9 interconnection-related matters, issues 18 through
10 22.

11 As I mentioned above, these issues call
12 into play the applicable federal requirements
13 regarding the obligations of each party under
14 Section 251 of the Telecommunications Act of 1996.
15 For the sake of brevity, I would like to highlight
16 five facts. First, the proper application of the
17 FCC's interconnection rules and policies that will be
18 addressed in this proceeding can be daunting at
19 times. The fundamental concept underlying these
20 rules, however, are not daunting. Those concepts are
21 grounded in Section 251(c)(2) of the Federal Act, and
22 that section has three interrelated concepts included
23 within it.

24 That all must be addressed in the
25 establishment of any lawful interconnection

1 arrangement. At its foundation, Section 251(c)(2)
2 requires an interconnection point, or, as the
3 witnesses state, a point of interconnection or a POI.
4 The POI creates the demarcation point not only for
5 the networks of the parties, but further, it is the
6 responsibility of each party under the Federal Act to
7 bring its facilities to its side of the POI.

8 With respect to Section 251(c)(2), then,
9 the three interrelated concepts that I mentioned are,
10 one, the POI must be technically feasible; two, the
11 POI must be within the ILEC's network; and three, the
12 resulting interconnection provided to the requesting
13 CLEC must not be more than equal to that which ILEC
14 provides to itself, its affiliates or other carriers.

15 CenturyTel will present to you and the
16 Commission the specific requirements of the rules,
17 the language of the parties' agreement that is
18 consistent with such requirements and an
19 interconnection arrangement that is proper and
20 required under the Federal Act.

21 Second, Section 251(c)(2) requires that
22 CenturyTel provide to Charter interconnection that is
23 equal in quality to that which it provides to itself,
24 affiliates and other carriers. That is a fact. To
25 the extent that Charter requests more, that is a

1 request for superior interconnection which cannot,
2 and I stress cannot, be imposed upon CenturyTel.

3 Third, CenturyTel is not a Bell
4 operating company, or a BOC, and decisions applicable
5 to a BOC cannot logically or rationally be applied to
6 CenturyTel. For example, in Charter's prefiled
7 testimony, it is suggested that what applies to a
8 BOC, like AT&T here in Missouri, should be imposed
9 upon CenturyTel regardless of the obvious differences
10 and the network that is owned and operated by AT&T
11 versus that owned and operated here in Missouri by
12 CenturyTel. That result is contrary to common sense.
13 You know it, I know it and so do others.

14 Fourth, as I indicated above, the
15 parties have interconnection -- have an
16 interconnection arrangement in place and it works.
17 Why, then, would there be an effort or even a -- an
18 effort to dismantle that arrangement or even a
19 suggestion that dismantling that arrangement is
20 appropriate?

21 Fifth, Charter sought interconnection
22 with CenturyTel and its ILEC network and not vice
23 versa. As such, it is only with respect to the
24 CenturyTel's ILEC network that any interconnection
25 obligations and duties to Charter can or should be

1 evaluated.

2 Thank you again for the opportunity to
3 be here today.

4 JUDGE PRIDGIN: Mr. Schudel?

5 MR. SCHUDEL: Good morning, your Honor,
6 and I am Paul Schudel. I'm also appearing on behalf
7 of CenturyTel. I would also like to thank you for
8 this opportunity to appear before you today. The 35
9 remaining issues that are not related to
10 interconnection concern commercial terms and
11 conditions of the parties' interconnection agreement
12 addressing various subjects.

13 Of these issues, as Mr. Moorman stated,
14 the parties have agreed that ten issues concern
15 purely legal matters that will be subject only to
16 briefing and therefore have not been addressed in the
17 prefiled testimonies.

18 Seven issues relate in one way or
19 another to 911 service. Two issues relate to
20 incorporation of CenturyTel tariffs and its service
21 guide into the interconnection agreement. Two issues
22 relate to the appropriateness of charges concerning
23 local number porting activities. Two issues relate
24 to network interface devices, or NIDs, and Charter's
25 use of the CenturyTel NIDs. Contrary to Charter's

1 counsel's assertion, CenturyTel seeks compensation
2 only if Charter uses those NIDs.

3 The remainder of the issues address
4 various issues for which the parties have not reached
5 negotiated resolutions. Apart from the
6 interconnection issues, the case involves primarily
7 issues of contract interpretation. Charter's
8 counsel's inflammatory comments with regard to bad
9 acts are neither applicable nor appropriate to that
10 process.

11 CenturyTel's positions relative to each
12 of the disputed issues are supported by applicable
13 law and policy considerations, logic and common sense
14 and they are in the public interest. As such,
15 CenturyTel respectfully requests your Honor and
16 indeed the Commission's approval of the wording of
17 the interconnection agreement positions as advocated
18 by CenturyTel. And where in dispute, CenturyTel
19 further requests approval of the rates at issue that
20 are proposed by CenturyTel. And I think we're within
21 ten minutes. Thank you.

22 JUDGE PRIDGIN: Counsel, thank you.
23 Anything further before the first witness which I
24 believe will be Mr. Gyori?

25 (NO RESPONSE.)

1 JUDGE PRIDGIN: Okay. If there's
2 nothing further from Counsel, Mr. Gyori, if you'd
3 come forward to be sworn, please.

4 (The witness was sworn.)

5 JUDGE PRIDGIN: If you'll bear with me
6 just a moment. I do thank you very much, sir. This
7 may seem like an odd request, but could I trouble
8 you to move to the right just a little bit? It's for
9 webcast purposes, and the cameras seem to -- I'm
10 sorry. Your other direction. I'm sorry. I have 47
11 different camera angles, none of which cover the
12 witness stand so the cameras can see you. All right.

13 Anything before he is tendered for
14 cross?

15 (NO RESPONSE.)

16 JUDGE PRIDGIN: Nothing before he's
17 tendered for cross?

18 MR. DODGE: Shall we go through the --

19 JUDGE PRIDGIN: I understood you wanted
20 to waive founda -- foundational questions, but I'm
21 assuming you at least wanted to offer his -- his
22 prefiled. So that would be Exhibits 5 and 6, if I'm
23 not mistaken.

24 MR. DODGE: That is correct.

25 JUDGE PRIDGIN: Any objections to

1 Exhibits 5 and 6?

2 MR. SCHUDEL: Those have been waived,
3 your Honor.

4 JUDGE PRIDGIN: 5 and 6 are admitted
5 without objection.

6 (EXHIBIT NOS. 5 AND 6 WERE RECEIVED INTO
7 EVIDENCE AND MADE A PART OF THE RECORD.)

8 JUDGE PRIDGIN: And I understood we have
9 no -- no cross-examination for this witness; is that
10 correct?

11 MR. SCHUDEL: That is correct, your
12 Honor.

13 JUDGE PRIDGIN: All right. Are there
14 any bench questions? And let me go over to
15 Mr. Couch. Do you have any questions for this
16 witness?

17 MR. COUCH: Yes, let me just ask.

18 QUESTIONS BY MR. COUCH:

19 Q. I'm very interested in the VoIP aspect
20 that you talked about. And you say that -- that your
21 traffic ceases to be VoIP, becomes the TDM when it's
22 sent to CenturyTel. Can you explain that?

23 A. Sure. We go through a process that
24 converts the voiceover IP or packet size voice
25 technology to a standard space TDM format for

1 transport to a LEC -- ILEC. And it's a piece of
2 hardware that actually converts the IP voice into a
3 TDM frame format.

4 Q. So I understand that VoIP -- you
5 basically have VoIP in your own network, but you --
6 when you send it, CenturyTel is not VoIP anymore, it
7 becomes TDM instead?

8 A. That is absolutely correct.

9 Q. Is there any time that VoIP would be
10 transmitted over CenturyTel's network?

11 A. No, not today. We're simply not set up
12 to do that.

13 JUDGE PRIDGIN: Ms. Dietrich?

14 QUESTIONS BY MS. DIETRICH:

15 Q. Following up on that line of
16 questioning, on page 2 of your rebuttal testimony,
17 you talk about Charter converting photographic IP to
18 TDM standards, and so you say that it's not necessary
19 to have a definition as broad as what CenturyTel is
20 proposing. Is that kind of a correct summary of your
21 position?

22 A. Could you direct me to that page of the
23 rebuttal, please?

24 Q. Uh-huh. It's page 2 beginning at line
25 22. I'm kind of summarizing your general testimony.

1 A. Yes, I believe that is correct.

2 Q. Okay. So if Charter is voluntarily
3 changing the traffic from IP traffic to TDM traffic,
4 what if Charter decides to no longer voluntarily make
5 that change?

6 A. Well, that type of traffic simply would
7 not work with CenturyTel's network without a mutual
8 agreement and hardware in place and things like that
9 to carry that traffic. If we tried to send them pure
10 IP traffic, the traffic would simply fail.

11 Q. And why is that?

12 A. Because it's not compatible directly
13 with TDM unless you convert it to a TDM format.

14 MS. DIETRICH: Okay. Thank you.

15 JUDGE PRIDGIN: Mr. Van Eschen,
16 questions?

17 QUESTIONS BY MR. VAN ESCHEN:

18 Q. In regards to issue No. 1, you're
19 planning to use the same definition for
20 interconnected VoIP services as in Missouri statutes,
21 is that --

22 A. Are you referring to 47 CFR, I believe?

23 Q. That's what you cite. I don't know if
24 it's that particular definition by the FCC. Is that
25 the same definition that's currently in Missouri's

1 statutes?

2 A. I don't know that I could confidently
3 answer that question as to what's in the Missouri
4 statute. I believe that would be addressed later by
5 one -- one of our policy analysts.

6 Q. Okay. But -- but you consider Charter's
7 service to be a VoIP service; is that correct?

8 A. We believe our service to be a
9 interconnected VoIP service per the FCC definition.

10 Q. Okay. Does -- has Charter registered to
11 be a VoIP provider in Missouri?

12 A. I don't know if we have or not. I know
13 we have registered to be a CLEC in Missouri.

14 Q. Do you know if Charter has any plans to
15 be registered as a VoIP provider in Missouri?

16 A. I don't know of any plans to be
17 registered as a VoIP provider.

18 Q. Okay. If I understand CenturyTel's
19 position on issue No. 1, they -- they basically want
20 to use the definition of IP-enabled services; is that
21 correct?

22 A. I believe that's the definition they're
23 seeking to use.

24 Q. And from your point of view, you want to
25 use just the definition for VoIP; is that right?

1 A. Well, I believe we choose to use the
2 definition of VoIP, VoIP as codified by the FCC,
3 which is the definition in 47 CFR.

4 Q. Okay. Would you agree that the
5 definition of VoIP is the subset of -- it falls under
6 the umbrella of the term IP-enabled services?

7 A. I don't know if I could confidently
8 answer that question because I don't know if I'm
9 familiar with the definitions well enough to be able
10 to discern between those two particular key points.

11 Q. But if -- if I understand the
12 distinction between Charter's position and
13 CenturyTel's position, CenturyTel really wants to use
14 a more -- a broader definition; is that a fair
15 characterization?

16 A. That's the way I understand it.

17 Q. Okay.

18 A. They're seeking a broader definition,
19 and our definition that we've chosen to follow we
20 believe more accurately depicts the way we actually
21 provision and deliver service to them.

22 Q. Okay. What -- what -- what harm is
23 there, though, in using the term IP-enabled services,
24 the -- the broader term?

25 A. I'm not sure about any level of harm,

1 but I do think it detracts from what we actually
2 deliver today. And it's my understanding that what
3 we're trying to codify and -- or further codify and
4 live up to are standards that actually match what we
5 do today, not something that we may do tomorrow or
6 five years from now or something like that.

7 Q. Okay. I guess the other issue that you
8 testified on is issue No. 9; is that correct?

9 A. That is correct.

10 Q. Do you agree that CenturyTel will incur
11 costs that may not be fully reimbursed if Charter
12 underuses facilities ordered from CenturyTel?

13 A. I don't know if I could agree to that.
14 I wouldn't know their cost schedule and structure on
15 that side enough to know if they would actually incur
16 costs that wouldn't be reimbursed.

17 Q. So you -- you don't know; is that --

18 A. I don't know.

19 Q. Okay. Assuming that CenturyTel does
20 incur costs, do you think it's appropriate policy to
21 allow them to recover those costs?

22 A. I think that the Commission should
23 recognize that Charter also incurs probably like and
24 similar costs any time we interconnect with anyone,
25 including CenturyTel.

1 Q. But if CenturyTel does incur costs,
2 would it be appropriate policy to allow CenturyTel to
3 recover those costs?

4 A. I believe that's a policy question that
5 will be answered later by one of our policy
6 witnesses. I'm not trying to be argumentative there,
7 I just want to make sure you get the right
8 information.

9 Q. Just so I understand you -- Charter's
10 position better on issue No. 9, under Charter's
11 proposal, what incentive does Charter have to
12 accurately determine its facility needs?

13 A. I think it's cost on our side of the
14 fence. I mean, we -- to incur a direct cost every
15 time we have to do a build, and we don't wish to
16 spend money unnecessarily any more than any other
17 business would.

18 MR. VAN ESCHEN: I think that's all I
19 have.

20 JUDGE PRIDGIN: Mr. Van Eschen, thank
21 you. Any further questions from the bench? Any
22 cross based on bench questions?

23 (NO RESPONSE.)

24 JUDGE PRIDGIN: No cross?

25 MR. MOORMAN: No, your Honor.

1 JUDGE PRIDGIN: All right. Thank you.

2 Do we have any redirect?

3 MR. DODGE: Two quick points on
4 redirect, your Honor.

5 JUDGE PRIDGIN: Thank you.

6 MR. DODGE: John Dodge from Davis
7 Wright.

8 JUDGE PRIDGIN: Thank you, Mr. Dodge.

9 REDIRECT EXAMINATION BY MR. DODGE:

10 Q. Moments ago, I hope you remember,
11 Mr. Gyori, a bench question regarding whether Charter
12 has registered as a VoIP or V-O-I-P provider here in
13 Missouri. Do you recall that question from the
14 bench?

15 A. Yes, I do.

16 Q. Is it your understanding that Charter is
17 authorized as a competitive local exchange carrier by
18 this Commission?

19 A. Yes.

20 Q. Is it your understanding that Charter,
21 as an authorized or certificated CLEC has submitted
22 its local service as a full jurisdiction of this
23 Commission?

24 A. Yes.

25 MR. DODGE: That's all I have, your

1 Honor.

2 JUDGE PRIDGIN: All right. Thank you.
3 Anything further from this witness?

4 (NO RESPONSE.)

5 JUDGE PRIDGIN: All right. Mr. Gyori,
6 thank you very much. If there's no objection from
7 counsel, you can be released.

8 MR. SCHUDEL: No objection.

9 JUDGE PRIDGIN: All right. Thank you
10 very much, sir. Thank you for your testimony.

11 (The witness was sworn.)

12 JUDGE PRIDGIN: Thank you very much,
13 sir. Please have a seat.

14 And do I understand that the parties
15 have agreed to waive the normal foundational
16 questions and we would simply just get to the point
17 where the parties are simply offering their prefiled
18 and then we would move on to cross?

19 MR. HALM: With one exception, your
20 Honor. I think Mr. Gates may have a couple of fixes
21 to his testimony --

22 JUDGE PRIDGIN: Okay. Very good.

23 MR. HALM: -- and ascribe those now.

24 JUDGE PRIDGIN: I'm sorry. Did you have
25 some errata?

1 THE WITNESS: Yes, I do. I have a few
2 corrections on both my direct and rebuttal.
3 Beginning at page 1 of my direct at lines 3 and 4,
4 please strike the address that appears after "QSI
5 Consulting," comma. In other words, strike "819
6 Huntington Drive, Highlands Ranch, Colorado 80126."
7 Please replace that with 10451 Gooseberry Court,
8 Trinity, Florida 34655.

9 The next page is at page 14, line 2.
10 Strike the word "to" between "carriers" and "not" and
11 replace it with the word "do." So that sentence
12 would read, "On the other hand, carriers do not want
13 to place too much equipment if it will sit and be
14 unused."

15 Next change is on page 26, line 18.
16 Strike the word "the" that appears in that line just
17 before "CenturyTel's."

18 Page 37, line 23, strike the word "is"
19 and replace it with "are," a-r-e.

20 And the final change on the direct is at
21 page 52, line 17. The reference to the case number
22 should be to 00299, so please insert a "9" between
23 the second occurrence of 2 and 9.

24 And then on my rebuttal, please turn to
25 page 8, line 15. The reference to "TJG-2" is

1 incorrect. That should be "TJG-4."

2 And then the final change is at page 48
3 of the rebuttal, line 21. After the word
4 "architecture," insert the word "unpersuasive." And
5 that concludes my changes.

6 JUDGE PRIDGIN: If there are no further
7 changes, I understand he's then ready for cross; is
8 that correct, Counsel?

9 MR. HALM: Yes, your Honor.

10 JUDGE PRIDGIN: And would you want to
11 offer his prefiled at this time?

12 MR. HALM: Yes, we'd like to move.

13 JUDGE PRIDGIN: So I have my list.
14 You'd be offering his direct which is Exhibit 1, his
15 rebuttal which is both 2 and 2 P for proprietary; is
16 that correct?

17 MR. COMLEY: 2 NP and, yes, 2 P.

18 JUDGE PRIDGIN: Yes, I'm sorry. 2 NP
19 and 2 P, thank you. Any objection to those exhibits?

20 MR. SCHUDEL: Your Honor, it may be that
21 Mr. Moorman will also have a comment here, but this
22 is probably the first opportunity that we need to, as
23 I understand our procedure, preserve the points in
24 our motion to strike that relate to this witness's
25 testimony. Subsections 2 A and 2 C of our motion to

1 strike addresses portions of his direct and rebuttal.
2 It's my understanding that we are to present our
3 arguments apparently in briefing, but we would ask
4 that our objections be preserved in that regard.

5 JUDGE PRIDGIN: All right. Thank you.
6 And those motions are still pending and not ruled
7 upon. Are there other objections other than what are
8 listed in the motion to strike?

9 MR. SCHUDEL: Subject to co-counsel's
10 comments, if you would.

11 JUDGE PRIDGIN: I understand.
12 Certainly.

13 MR. MOORMAN: Your Honor, just a
14 procedural timing issue associated with the DRs that
15 have been otherwise agreed to. I think we can agree
16 to do it on certain of them.

17 MR. OVERCASH: Your Honor, James
18 Overcash, Woods & Aitken. Why don't we just do it
19 this way, probably be easiest: Exhibit 23 is the
20 Charter data requests, responses to CenturyTel
21 requests. We'd offer Exhibit 23 in its entirety.

22 MR. DODGE: No objection, your Honor.

23 JUDGE PRIDGIN: 23 is offered and
24 admitted without objection.

25 (EXHIBIT NO. 23 WAS RECEIVED INTO

1 EVIDENCE AND MADE A PART OF THE RECORD.)

2 MR. OVERCASH: Thank you.

3 JUDGE PRIDGIN: You're welcome.

4 MR. HALM: Are there copies?

5 MR. SCHUDEL: Yes, we have copies.

6 Could you provide copies?

7 MR. HALM: Specifically for Mr. Gates,

8 please. This is not just 23?

9 MR. DODGE: The batch is marked as

10 Exhibit 23.

11 MR. HALM: There will not be any cross

12 questions on this?

13 MR. SCHUDEL: To my knowledge.

14 MR. MOORMAN: Correct. We do note,

15 though, that just for the record, your Honor, it

16 appears as if, and that is true, that some of the

17 information is included as proprietary?

18 MR. OVERCASH: They are in Exhibit 23,

19 that's correct. We need to mark it as proprietary?

20 JUDGE PRIDGIN: Do we need to have 23

21 marked as a proprietary exhibit?

22 MR. MOORMAN: Correct, certain aspects

23 of it. It appears that they're on yellow paper.

24 JUDGE PRIDGIN: All right. That is a

25 CenturyTel exhibit, if I'm not mistaken.

1 MR. MOORMAN: Correct.

2 JUDGE PRIDGIN: So CenturyTel, would you
3 have it like a 23 NP and a 23 P?

4 MR. OVERCASH: Let's do that and I'll --
5 I'll bring back after lunch a 23 N that's
6 nonproprietary. I don't have a copy of that now, but
7 I'll make one and bring it to you --

8 JUDGE PRIDGIN: Thank you.

9 MR. OVERCASH: -- for the record. And
10 then also just for you, Mr. Halm, that copy I gave
11 you is exact except there's an additional e-mail
12 exchange between Mr. Dodge and I, and Mr. Dodge is
13 aware of that on the -- that's part of 23. I can
14 bring a copy of it for you later. So that's not
15 included in that stack.

16 MR. HALM: So the e-mail is or is not --

17 MR. OVERCASH: It's not included in that
18 stack. I can bring it to you later.

19 MR. HALM: Okay.

20 JUDGE PRIDGIN: And will counsel have
21 copies of that for the bench?

22 MR. OVERCASH: Yes, sir.

23 JUDGE PRIDGIN: All right.

24 MR. HALM: And your Honor, may I
25 approach and provide the witness a copy of this?

1 JUDGE PRIDGIN: You may. And to the
2 extent that this witness or any witness is going to
3 be asked questions that are proprietary, I'll need
4 you to alert me before you get to that so we can go
5 in-camera and so counsel can check to make sure
6 there's nobody in the room who's not supposed to be
7 here.

8 MR. HALM: Thank you, your Honor.

9 JUDGE PRIDGIN: Is there anything else
10 before we get back to Mr. Gates, the offer of
11 Exhibits 1, 2 NP and 2 P?

12 (NO RESPONSE.)

13 JUDGE PRIDGIN: Okay. Are there any
14 other objections other than what are stated in the
15 pending motion to strike those exhibits?

16 MR. SCHUDEL: Your Honor, we -- as we
17 said in opening remarks, we waive those.

18 JUDGE PRIDGIN: Okay. So Exhibits 1,
19 2 NP and 2 P are admitted without objection to the
20 extent that CenturyTel does not have a motion to
21 strike.

22 (EXHIBIT NOS. 1, 2 NP AND 2 P WERE
23 RECEIVED INTO EVIDENCE AND MADE A PART OF THE
24 RECORD.)

25 JUDGE PRIDGIN: Those motions to strike

1 are still pending and not ruled upon. Is that clear?

2 All right. Anything further before he stands

3 cross-examination?

4 (NO RESPONSE.)

5 JUDGE PRIDGIN: All right. Any cross?

6 MR. MOORMAN: No, your Honor.

7 JUDGE PRIDGIN: No cross. Any questions
8 from the bench? And if the bench needs a moment.

9 QUESTIONS BY MR. COUCH:

10 Q. I was interested in the issue of the
11 network interface device. Charter has the opinion
12 that if they were to use the NID as a place to make
13 their connections, that they would not incur any
14 costs to CenturyTel; is that...

15 A. I -- I think I might quibble a little
16 bit with your statement.

17 Q. Okay.

18 A. But, yes, there are no costs to
19 CenturyTel. And the NID actually obstructs Charter's
20 access to the inside wiring to the customer, so all
21 Charter is asking to do is just connect one little
22 wire to one little post, and CenturyTel has said that
23 it doesn't remove the NID.

24 So by necessity, Charter has to go and
25 connect to that customer site of the NID in order to

1 provide service. But there are no costs associated
2 with it.

3 Q. If -- you know, if arbitration is
4 decided that -- you know, that you can't use
5 something that -- in this case the NID actually does
6 belong to CenturyTel; am I correct?

7 A. Yes. CenturyTel put that piece of
8 equipment on the house.

9 Q. If it's determined that you can't use,
10 you know, that NID, you know, to make that
11 connection, do you have another plan?

12 A. We've had this discussion, as you can
13 imagine, you know, what are the alternatives? If you
14 can't do the most efficient interconnection there at
15 the NID, then what do you do?

16 Well, as I mentioned in my testimony,
17 some of the options include having to put a separate
18 or another NID onto the outside of the house. That's
19 still inconvenient because it's CenturyTel's NID that
20 literally is obstructing and covering the place where
21 the customer's inside wire connects to the CenturyTel
22 network. So all that wiring -- so it's gonna be
23 difficult to put another NID -- figure out a way to
24 get that NID to connect with that inside wiring of
25 the house because the CenturyTel NID covers it.

1 So I suggested, well, what about asking
2 CenturyTel to remove their NID so that Charter could,
3 I suppose, put a NID there? CenturyTel responded in
4 discovery that they don't do that, it's not
5 cost-effective for them to remove their NID. So it
6 remains a barrier to Charter to use that customer
7 side of the NID.

8 So all of the options which might be
9 technically feasible from an engineering
10 perspective -- I mean, an engineer could go out there
11 and make it happen -- it just simply adds cost and
12 time to put in another piece of equipment when the
13 NID is there today. It would require only a few
14 seconds for the Charter technician to wrap that wire
15 around that little post. That's the most efficient
16 way to do it.

17 I mean, it kind -- almost reminds me of
18 the Carterphone decision with respect to CPE, if you
19 remember those years ago. I mean, here we're being
20 told you can't use -- you can't connect to our
21 network, you can't -- I mean, it's gonna cause all
22 this harm, and it's gonna cause all these costs.

23 And frankly, I -- I don't find it very
24 compelling. I mean, the most efficient way to do
25 this is simply unplug the cord, connect Charter and

1 we're in service. I mean, it would be different -- I
2 mean, everybody should get paid for what they do. If
3 you provide a service, you should get paid for it.
4 If you incur costs, they should be recovered somehow.

5 But there are no costs here. CenturyTel
6 is not providing a service. All Charter is doing --
7 and Charter's doing all the work -- is simply
8 wrapping a wire around that post. So there's no --
9 from my perspective, there's no good public-policy
10 reason to force a new entrant to go out there and
11 install additional equipment, spend more time, more
12 money, more investment when the most efficient
13 solution is simply to use the existing NID,
14 especially since it doesn't impose any costs or
15 operational issues on the incumbent.

16 Q. I guess I still come back to the -- to
17 the idea that this is a piece of equipment that
18 CenturyTel has installed and there was a cost to put
19 that equipment there. If you use that equipment, you
20 don't believe that you should pay something for the
21 use of that equipment?

22 A. No, and here's why: It's a fixed cost.
23 A piece of equipment was placed, it's a little
24 plastic box with some terminals in there. And in my
25 testimony we do a little research. It might cost

1 anywhere from \$20 to \$100 depending on whether you
2 want just a fancy NID or just a plain Jane sort of
3 NID. So the costs are expended. There's no ongoing,
4 recurring costs associated with that NID.

5 How long will it last? Conservatively,
6 15 years. Probably the life of that house unless
7 some kid gets it with a baseball bat. So it's there.
8 There's no recurring costs. The costs are already
9 sunk and fixed, and -- and the initial costs were
10 very minuscule.

11 If you look at the price that CenturyTel
12 is proposing of \$1.91 every month, that's a huge
13 price. I mean, I don't think there should be any
14 rate. But if there is going to be a rate, and even
15 if we accept CenturyTel's arguments, this is a NID.
16 Well, Charter's not buying a NID from CenturyTel,
17 Charter is not accessing the entire NID. All it
18 wants is just a connector to the customer's side of
19 the NID for that limited purpose to wrap that wire.

20 So Charter's not buying that new UNE.
21 The costs are minuscule, the rate is ridiculous,
22 nowhere close to what a TELRIC rate is. If you really
23 were -- if you really were purchasing a new UNE --

24 MR. SCHUDEL: Your Honor, I'm sorry to
25 interrupt, but this goes to the heart of the pending

1 motion to strike and whether or not the rate for the
2 NID is in controversy here. Now, I could comment
3 further. My sense is your Honor doesn't want to hear
4 about that.

5 Let me just state for the record a
6 motion to strike this testimony consistent with our
7 filed and pending motion to strike because those
8 rates are not disputed, and -- and that's
9 demonstrated by a review of the ICA that's attached
10 to -- to their petition.

11 JUDGE PRIDGIN: I understand, and if
12 you -- and certainly your objection has not been
13 waived, and if you want to speak up and renew your
14 objection, that's fine. I'm simply going to take all
15 of this with the case and rule on it in the order.

16 MR. SCHUDEL: I understand. It just
17 puts me in an uncomfortable position of interrupting,
18 perhaps from time to time, but --

19 JUDGE PRIDGIN: I understand.

20 MR. SCHUDEL: Okay. Thank you.

21 MR. HALM: Your Honor?

22 JUDGE PRIDGIN: Yes, sir.

23 MR. HALM: We -- we would, of course,
24 reserve the right to respond to that.

25 JUDGE PRIDGIN: Certainly. Certainly.

1 All right. I'm sorry. Mr. Couch, did you want to
2 restate your question, or Mr. Gates, did you want
3 to --

4 THE WITNESS: Well, I won't repeat my
5 testimony since it's subject to a motion to strike,
6 but let me just summarize and say that even if we
7 accept CenturyTel's position, which we don't, that
8 Charter is buying a new UNE and it should be subject
9 to TELRIC rate, this is clearly not TELRIC rate for
10 many, many reasons as I discussed in my testimony.

11 MR. SCHUDEL: And I would simply renew
12 my objection. Pardon me.

13 BY MR. COUCH:

14 Q. Okay. Given that -- that the rate would
15 be in dispute, I guess I'm thinking that the only
16 other alternative would be -- and you don't actually
17 need a NID because your service doesn't actually need
18 a NID at this place if you had a dry spot next to the
19 NID. Would that work for you?

20 A. A dry spot?

21 Q. Well, do you know what a dry spot is?

22 A. Well, I assume I do.

23 Q. Okay.

24 A. I think there needs to be some sort of a
25 cover, some sort of protection for -- for that piece

1 of equipment. I would defer to Mr. Blair on the
2 technicalities. I think we talked a little bit about
3 whether it could be done. Sure, it could, but then
4 I'm reminded of the 1890s, 1900s. Remember those
5 pictures of New York when everyone got into the
6 telephone business? You had hundreds of wires
7 because every company had its own wires and it was
8 very inefficient.

9 So we may end up in a situation if this
10 Commission were to say that CenturyTel has this
11 control over this NID that you're gonna have multiple
12 NIDs all over the side of the house, and each of
13 those companies improperly would have to expend
14 resources not only to buy the equipment but then to
15 figure out a way to connect to the inside wires which
16 is obscured by the CenturyTel NID.

17 It's almost by definition the fact that
18 they've got the NID covering the customer's inside
19 wires. It's blocking entry or it's a barrier to
20 entry literally and figuratively in this case.

21 Q. Let's say that Charter had put their
22 service in first and then CenturyTel came along later
23 on. How would that be handled? Century -- a
24 customer switched to CenturyTel, had not had
25 CenturyTel service before the inside wire was there.

1 What would you think was proper for CenturyTel to do?

2 A. It would be the same result. I mean,
3 whoever puts that first NID on the house and obscures
4 that inside wiring has the obligation to make that
5 available, at least on the customer side, not the
6 network side per se, but to allow efficient access to
7 the customer. Otherwise, it's a barrier to
8 attracting and keeping customers.

9 Q. Does your company ever install a NID
10 where there isn't a company -- an electric NID
11 there -- do you ever install a NID for your service
12 if there's not one already there?

13 A. I don't know. I'd have to defer that to
14 Mr. Blair.

15 MR. COUCH: Okay. Thank you.

16 THE WITNESS: Thank you.

17 JUDGE PRIDGIN: Ms. Dietrich?

18 QUESTIONS BY MS. DIETRICH:

19 Q. Mr. Gates, I'd like to refer you to your
20 direct testimony, for starters, page 11. At line 1
21 your question related to issue 9. You refer to the
22 charge as a penalty charge.

23 A. Yes.

24 Q. Does Charter pay a charge for the
25 lease -- and I'll use the word "lease" -- any plant

1 or facilities whether Charter uses that facility or
2 not? Is there already a charge Charter is paying?

3 A. For which facilities?

4 Q. Any facilities. The discussion here is
5 about projections and using the facility or not using
6 it within six months, and so you say by having to pay
7 for that, it would be a penalty. So my question is,
8 is Charter paying anything for that facility?

9 A. Charter does pay for its facilities to
10 match those of CenturyTel --

11 Q. But --

12 A. -- on both sides of the POI, and --
13 and --

14 Q. -- is Charter paying CenturyTel anything
15 for the facility that's been deployed in this
16 instance?

17 A. I need to make sure I understand exactly
18 what you're saying. I think I do.

19 Q. Okay.

20 A. So if we've got a POI and we've got
21 Charter over here and we've got CenturyTel over here,
22 and Charter says I'm gonna need a DS-3 level of
23 capacity to exchange traffic with you. CenturyTel
24 engineers meet with Charter engineers, they agree.
25 CenturyTel puts a DS-3 of facilities over here.

1 Charter puts a DS-3 of facilities over here.

2 FCC Rules 51 and 7035 -- 703(b), excuse
3 me, says that each carrier is responsible for the
4 costs of delivering its originated traffic to the
5 POI. So Charter's responsible for this DS-3, those
6 facilities over here and those runs, CenturyTel is
7 responsible on this side.

8 Now, of course, the whole capacity
9 issue -- I was thinking about this when Mr. Gyori was
10 up here -- there's always excess capacity in the
11 telephone network. There has to be.

12 Q. Well, I understand that --

13 A. Okay.

14 Q. -- but Charter is not paying anything
15 for the CenturyTel side of the POI at this point?

16 A. No.

17 Q. Okay. Then on page 25 --

18 A. Of the direct?

19 Q. Of your direct, yes. Your question that
20 starts at line 19 and then continues onto the next
21 page, the CenturyTel language implies that Charter
22 will pay for CenturyTel upgrades. Wouldn't the
23 suggestion that that language be reciprocal imply
24 that CenturyTel is responsible for paying for Charter
25 upgrades?

1 A. Yes, absolutely.

2 Q. And then on page 38, starting at the end
3 of line 12, you say, "and improperly shifting -- and
4 improperly shifting the costs of building out the
5 CenturyTel network to its competitors." Do you see
6 that language?

7 A. Yes.

8 Q. What costs are you referring to there?

9 A. Basically the cost of transport that
10 CenturyTel would incur in getting its originated
11 traffic to the point of interconnection. And we
12 know, based on discovery, that CenturyTel's serving
13 territories in Missouri are all connected with high
14 capacity facilities. So it's basically that -- that
15 cost of transport. There may be some switching as
16 well.

17 MR. HALM: Excuse me, your Honor. I
18 just want to remind Mr. Gates that some of those
19 issues are proprietary in nature.

20 JUDGE PRIDGIN: Have we gone into
21 anything proprietary?

22 MR. HALM: I don't think so.

23 JUDGE PRIDGIN: Okay. All right.

24 THE WITNESS: I specifically left out
25 the description of the facilities, hoping that would

1 be okay.

2 MR. HALM: Okay. Good.

3 BY MS. DIETRICH:

4 Q. Okay. And then on page 39 at line 12,
5 you say "not on CenturyTel's attempts to shift its
6 cost of interconnecting," so on and so forth?

7 A. Yes.

8 Q. Again, what costs are you talking about
9 there?

10 A. The costs of transport primarily for
11 CenturyTel getting its originated traffic to the POI
12 which is the 251(c) and FCC rule requirement. Both
13 carriers are responsible for the costs on their side
14 of the POI.

15 Q. Okay. And then on issue 19 which is the
16 indirect interconnection issue, do Charter and
17 CenturyTel already have indirect interconnection
18 agreements or arrangements?

19 A. I'm not sure.

20 Q. Do you know if Century -- or excuse
21 me -- Charter plans to change any current direct
22 interconnection arraignment -- arrangements to -- let
23 me try it again.

24 Does Charter plan to change any direct
25 interconnection arrangements to indirect if that

1 language was approved?

2 A. Not that I'm aware of. And we discussed
3 this. I mentioned in my testimony that it's
4 conceivable, it's possible that that might happen,
5 and Charter's rights shouldn't be changed if that
6 might happen. But I'm not aware, frankly, of any
7 carrier that's done that over the years. Once
8 they've established a direct interconnection,
9 generally that stays in the form of interconnection.

10 Q. Okay. Then again in your direct
11 testimony on page 51 at line 16 to 17, your -- you
12 have excerpts of CenturyTel's language there, and at
13 the end of line 16 you talk about triggers. Does
14 Charter agree with those triggers? Is that
15 agreed-upon language?

16 A. Yes, I think there's a little fuzziness
17 in the language, whether it's 200,000 minutes or
18 240,000 minutes, but I'm sure the parties will agree
19 we're talking about a DS-1 trigger.

20 Q. And speaking of the 200,000 minutes
21 versus the 240,000 minutes, on page 54 of your
22 testimony, on lines 2 through 5 where you're talking
23 about the 240,000 minutes, if I am reading Charter's
24 language correctly, the 240,000 minutes would include
25 all traffic between the parties no matter who

1 originates or terminates the traffic; is that
2 correct?

3 A. Well, generally, are we talking about
4 two-way trunks?

5 Q. Uh-huh.

6 A. Although we have a little dispute about
7 that. So generally, we're talking about a DS-1
8 between the two. How -- how that traffic would
9 balance out, I'm not sure.

10 Q. Okay. And then on page 59, your
11 discussion there, you seem to be saying that the
12 parties would take any unresolved disputes and
13 escalate those to the Commission. Do you know how
14 those would be escalated? Would it be -- would it be
15 a complaint case that somebody would file? Would it
16 be a costing case since we're talking about rates or
17 would it be another arbitration? Do you have any
18 idea?

19 A. I'd have to defer to counsel on that
20 given the Missouri-specific requirements, but it
21 could be a number of things. It could be a request
22 to the Commission for a summary judgment that say,
23 yes, the rates have to be TELRIC which would then
24 focus the parties' negotiations.

25 Or if negotiations should fall apart,

1 yes, the parties could come and seek another
2 interconnection arbitration, although that is
3 extremely timely and expensive. A cost case also
4 could last easily a year. That's why it's so
5 important that this Commission state specifically as
6 it has in the past that this is a 251(c)
7 responsibility which requires TELRIC rates. I think
8 that would go a long ways to resolving any potential
9 disputes in the near future.

10 Q. Okay. And then also on that page down
11 around line 17, you're talking about the RUF factor
12 of 50 percent. Can you explain that?

13 A. Yes. When carriers exchange traffic,
14 sometimes the costs are proportioned based on the
15 amount of originated traffic. For instance, if
16 Charter originated 50 percent of the traffic, it
17 would pay 50 percent of the cost of those facilities.
18 That's what it means by relative use factor.

19 And in this case, CenturyTel is
20 proposing just the tariffed rate which obviously is
21 not a TELRIC rate, subject to motion to strike, I
22 understand.

23 And Charter's proposing a rate that's 50
24 percent of the tariffed rate which approximates what
25 we believe would be somewhat close to a TELRIC rate

1 after all negotiations or after the litigation or
2 cost case that you mentioned.

3 The important difference, though, in the
4 two proposals is that Charter's is subject to
5 true-up. So whatever the result is, Charter's
6 willing to true up the amounts due or paid, and
7 CenturyTel is not.

8 Q. And how did Charter arrive at the
9 50 percent?

10 A. Just based on our knowledge and review
11 of rates in other states that were TELRIC-based, it
12 became pretty clear that the tariff rate that
13 CenturyTel was proposing was way, way, way too high
14 and 50 percent approximately what we thought a TELRIC
15 rate might approach.

16 Q. Okay. So it wasn't based on traffic
17 estimates?

18 A. No.

19 Q. Current traffic estimates?

20 A. No. And I see your confusion. In
21 referencing the RUF, you might assume that we've done
22 some traffic studies to arrive at that, but that was
23 not the case.

24 Q. Okay. Okay. On page 62 at the end of
25 line 10 and going on to line 11, you have some

1 language there that's Charter's language, and it's
2 talking about each party is responsible for
3 establishing any necessary interconnection
4 facilities. What type of interconnection facilities
5 might those be?

6 A. Trunking facilities.

7 Q. And who is responsible for the cost to
8 incur those, establishing those facilities?

9 A. Each party on each side of the POI would
10 be responsible for those trunking facilities.

11 Q. Okay. And on page 69 --

12 MR. MOORMAN: I'm sorry. I didn't hear
13 the page number. Excuse me.

14 MS. DIETRICH: Page 69.

15 MR. MOORMAN: Thank you.

16 BY MS. DIETRICH:

17 Q. You're discussing issue 23, and if I'm
18 reading the testimony correctly, Charter acknowledges
19 it has a duty to perform an N-1 query; is that
20 correct?

21 A. Yes.

22 Q. Is there language in the interconnection
23 agreement acknowledging that obligation?

24 A. I believe there is. If there isn't,
25 we've certainly said it enough times in testimony

1 that hopefully that would be enough to get the
2 drafters and negotiators to change it accordingly.
3 But I believe there is, and, in fact, Charter does
4 its own querying the vast, vast majority of the time,
5 so there is a very unique circumstance.

6 Q. So you couldn't point out to a specific
7 language?

8 A. I'm sorry. I couldn't. We could
9 perhaps look during a break.

10 Q. No, that's fine. I was just curious.
11 Since Charter acknowledges this obligation, then when
12 does the issue as cited in issue 23 come up? When is
13 there is an unqueried call?

14 A. Very rarely. I'm not aware of any
15 situations where Charter would not do the query. But
16 I just don't know. I'm not aware of any
17 circumstances where that might be an issue. But
18 Charter is willing to pay the query charge in those
19 situations where a query is required and CenturyTel
20 performs that activity.

21 Q. So you wouldn't know what would cause
22 Charter not to perform the query?

23 A. No.

24 Q. Okay.

25 A. But perhaps some of the other Charter

1 employees might be aware of those circumstances.

2 Q. Okay. And then on page 79 starting at
3 line 10, you make reference to some federal rules and
4 you're talking about porting charges. Are you
5 suggesting by this language that the last bill from
6 CenturyTel to the customer should include a charge
7 for the port?

8 A. It doesn't have to, but it may. I
9 believe that's the way the rules are written. For
10 instance, I'm not aware of any port charge I've ever
11 received in changing carriers, but they may.

12 Q. On page 80 beginning at line 13, you
13 describe several porting steps. Is it correct
14 that the FCC rules allow recovery of local number
15 portability and porting implementation costs
16 through a five-year recovery mechanism on any user
17 bills?

18 A. Yes, and I believe we're past the five
19 years. But that's correct, yes.

20 Q. Is there any recovery mechanism for
21 recovering costs associated with your steps one
22 through five whether Charter charges it or not?

23 A. These are all the typical porting
24 activities that were contemplated when the FCC said
25 that these are the direct expenses that you can

1 charge to the end user, the actual process of porting
2 the number from one carrier to the other.

3 Q. So those would be included in the
4 five-year recovery?

5 A. Yes.

6 Q. Okay. Now I'd like to switch to your
7 rebuttal testimony. And on page 9, beginning at
8 line 8, you're talking about double recovery. If
9 CenturyTel recovers part of its investment associated
10 with the NID through its \$13.71 residential rate that
11 you're referring to in your testimony and Charter
12 wins that customer, wouldn't CenturyTel lose that
13 source of revenue?

14 MR. SCHUDEL: Again, with all due
15 respect, this would be within the motion to strike,
16 so I'm reserving that.

17 JUDGE PRIDGIN: Understood. It's noted.

18 THE WITNESS: If Charter won a customer
19 from CenturyTel --

20 BY MS. DIETRICH:

21 Q. Uh-huh.

22 A. -- would CenturyTel then lose the local
23 revenues? Yes.

24 Q. Okay. So how -- can you explain your
25 statement that this would be double recovery if

1 CenturyTel is losing its revenue?

2 A. Well, of course, recall my discussion
3 regarding the nature of the NID; one-time cost
4 installed and it's there for at least 15 years, so
5 it's a fixed cost. There aren't any monthly
6 recurring costs, so they're not losing anything. I
7 mean, there are no costs associated with the NID that
8 continue even if they lose the revenue associated
9 with the customer.

10 Q. Okay. And then on page 47 at line 17,
11 you use the term "appreciable -- appreciable
12 additional costs."

13 A. Yes.

14 Q. You say that CenturyTel should not incur
15 any appreciable additional costs but there will be
16 costs; is that correct?

17 A. I think I say should not present any
18 appreciable additional costs.

19 Q. Uh-huh.

20 A. The only costs would be those very low
21 incremental costs of transport, and if we assume, for
22 instance, that we're talking about fiber, the cost is
23 almost imperceptible and sometimes difficult to
24 measure. So those transport costs would be very,
25 very small.

1 But again, those are the costs that the
2 FCC has said that the originating carrier is to bear
3 pursuant to Rule 703(b).

4 Q. So can you give me a definition of what
5 would be appreciable, then, in your mind? If you're
6 saying their costs are not appreciable, what would it
7 be?

8 A. First of all, if I may, if -- regardless
9 of the costs, if they were small, medium or large,
10 they're CenturyTel's responsibility. Can I tell you
11 what is an appreciable cost for transport? I'm not
12 sure what it would be.

13 I do know, however, that fiber
14 technology, depending on the electronics on both
15 ends, results in very, very low, for instance, to the
16 fifth or sixth decimal point, cost for transport for
17 both parties.

18 Q. Okay. And will Charter pay any
19 construction costs for these facilities?

20 A. Not if they are on the CenturyTel
21 side -- side of the POI, just as CenturyTel would not
22 pay for any of Charter's construction activities.

23 MS. DIETRICH: Okay. That's all I have.
24 Thank you.

25 THE WITNESS: Thank you.

1 JUDGE PRIDGIN: Ms. Dietrich, thank you.

2 Mr. Van Eschen, questions?

3 QUESTIONS BY MR. VAN ESCHEN:

4 Q. Okay. You also testified on issue No. 9
5 along with Mr. Gyori; is that correct?

6 A. Yes.

7 Q. I wanted to ask you some of the same
8 questions I asked him. Do you agree CenturyTel will
9 incur costs that may not be fully reimbursed if
10 Charter underuses facilities ordered from CenturyTel?

11 A. No, I don't.

12 Q. Why is that?

13 A. Well, as I said earlier, when you
14 engineer a network, there needs to be excess capacity
15 so that when you reach peaking levels of traffic that
16 we don't have blockage, at least to that -- to that
17 level. I mean, there will be some blocking, some
18 minuscule, you know, 1 percent, half a percent
19 blocking at times. But generally, we have sufficient
20 capacity in the network to handle all of that
21 traffic.

22 So if Charter wants that DS-3 that we
23 talked about earlier, DS-3 on CenturyTel's side, DS-3
24 on Charter's side, instead of using 500 of those
25 trunks, they use 400, is there a cost? Perhaps. But

1 that's what we do when we engineer these telecom
2 networks. I mean, there's -- there's excess
3 capacity.

4 That is considered in when you do cost
5 studies. You use fill factors. And the fill factors
6 allow you to recover the total costs of those
7 facilities based on the average fill of those
8 facilities. So simply because there's excess
9 capacity does not mean that CenturyTel is not
10 recovering all of its costs. Quite the contrary.

11 Q. Under Charter's proposal, what incentive
12 does Charter have to accurately determine its
13 facility needs?

14 A. Charter is a for-profit company and it
15 invests a billion dollars a year in its network.
16 That's a lot of money and it still wants to make
17 money. So the incentives are strong and significant
18 to minimize expenses.

19 And recall that if there's a DS-3 over
20 here or another C-3, it's got to match on the Charter
21 side. So there's no way that Charter is going to
22 say, okay, CenturyTel, I want an OC-3 over here or,
23 you know, three DS-3s, for instance, and I'm only
24 going to put in a -- you know, a trunk over here or
25 one DS-3. You can't do that. They have to match.

1 So if Charter is asking CenturyTel to
2 put in a certain amount of capacity, Charter has to
3 match it. So the incentive is, obviously, for
4 Charter to minimize its network expenses to maximize
5 profits, and that incentive and those efficiencies
6 flow through to CenturyTel because CenturyTel is not
7 being asked to provide more than what Charter is
8 providing on its side of the POI. So the -- the
9 incentive is to minimize costs to maximize profits.

10 Q. Okay. On issue No. 2 regarding how the
11 agreement should define the term "network interface
12 device," I sense both Charter and CenturyTel want to
13 use the FCC's definition of a NID; is that correct?

14 A. Yes.

15 Q. And when I read CenturyTel's testimony,
16 they seem to -- well, they described a relationship
17 between the NID and the demarcation point and the
18 customer's inside wire. Do you agree the FCC defines
19 NIDs in this way where it recognizes that
20 relationship?

21 A. There is a discussion of a demarcation
22 point. There's the discussion of the customer side
23 and the network side of the NID. I think we're --
24 we're parsing words between the parties here. For
25 instance, Charter's not saying that CenturyTel

1 doesn't own the NID. Of course CenturyTel owns the
2 NID.

3 What we're arguing about is access to
4 the NID and what is the most efficient engineering
5 for interconnection at the customer premises. So I
6 know we've -- we've had some discussions about what
7 the FCC's rules mean. We both agree on what is the
8 definition and we're -- and we're talking about
9 distinctions between, you know, rights and
10 responsibilities with respect to who owns it or who
11 has the access to the NID.

12 And -- and I think the bottom line is,
13 we need to do what's most efficient to minimize
14 costs, and that is to allow Charter to connect its
15 wire to that NID. Otherwise, the Commission might
16 consider requiring CenturyTel to remove its NID
17 whenever it loses a customer, and CenturyTel has said
18 that it doesn't do that.

19 And that's an expensive process for them
20 to run out there, I guess, and take the NID off the
21 side of the house. But what alternative do we have
22 since that NID blocks access to the customer wiring?

23 Q. I guess I'd like to ask you a few
24 questions about issue No. 11 regarding the service
25 guide. You seem to think that the service guide has

1 benefits; is that correct?

2 A. Has benefits?

3 Q. Yeah.

4 A. Yes. And most ILECs have a document
5 similar to the service guide. It's a reference
6 document that CLECs can go see to better understand
7 the operational procedures and processes that the
8 ILECs have.

9 Q. Is CenturyTel's service guide different
10 than the service guide of other ILECs?

11 A. Oh, sure. By necessity its different.
12 But it's similar in that it does address processes,
13 procedures, requirements, forms, you know, all those
14 logistical issues that the two carriers have to know.

15 So yes, it's a beneficial document, I'm
16 sure Charter will use it, the engineers will benefit
17 from it, but that document should not be referenced
18 in a contract since that document can be unilaterally
19 changed by CenturyTel and that might affect the costs
20 and operational efficiencies of Charter without any
21 opportunity to comment on that effect.

22 Q. So when you talk about using the service
23 guide, I know in your testimony you said the service
24 guide should not be contractually binding. What do
25 you -- what do you mean by that?

1 A. Could you tell me what page we are in my
2 testimony? I don't mean to make this more difficult.
3 I'd like to have free-flowing discussions, but I
4 would also like to see where -- where that might be.
5 I see my direct starts at page 16, and there is
6 contractually binding language at lines 18 and 19.

7 Q. And maybe this is my question, why I'm
8 asking it, because in several references in your
9 testimony in describing what you anticipate will be
10 CenturyTel's position, you talk about -- for example,
11 on page 16 of your direct, lines 13 and 14, you talk
12 about "CenturyTel proposes to reference the service
13 guide as a controlling document in numerous places
14 within the interconnection agreement."

15 And farther down on lines 23 through 25,
16 you talk about, "Further, CenturyTel insists that
17 these service guide terms must be contractually
18 binding upon Charter." And maybe that's a
19 misinterpretation of your testimony, but I gathered
20 from that that you do not feel the service guide
21 should be contractually binding. And if I'm
22 misunderstanding your testimony, please clarify that
23 for me.

24 A. No, I think you've done a very good job
25 of summarizing my whole piece of testimony on this

1 one issue. It should not be contractually binding.
2 It's a good document but shouldn't be contractually
3 binding.

4 Q. Then help me understand how the service
5 guide should be used, then, you know, in your
6 relationship with CenturyTel.

7 A. Sure. I think in my rebuttal somewhere,
8 I talk about how the interconnection agreement
9 currently includes language that was taken directly
10 from the service guide. So the parties reviewed that
11 language, said, yeah, this is -- this is appropriate,
12 let's include it in the ICA in the proposed language.
13 So there is some in there.

14 The problem is, we don't want to
15 generically reference the service guide because
16 CenturyTel has the ability -- even though there are
17 some opportunities to comment provided by CenturyTel,
18 it does have the ability to change the terms and
19 conditions, the processes, all of those things in the
20 service guide unilaterally.

21 So CenturyTel -- and -- and as
22 Ms. Giaminetti talks about in her testimony, Charter
23 needs certainty for its business plan. When it
24 enters into this interconnection agreement, it needs
25 to know what its rights and responsibilities are with

1 respect to the interconnection, with the costs on
2 both sides of the POI, with respect to service
3 orders, with respect to facilities, it needs
4 certainty.

5 If you reference a document that can
6 change daily and you know from discovery that it does
7 change regularly, you take away all of that
8 certainty. And so a contract, which is what the ICA
9 is, is of no use or value if one party can
10 unilaterally change it at any time.

11 Q. Do you as a CLEC have the ability to
12 influence or affect whatever's in the service guide
13 or is that something that's solely left up to
14 CenturyTel?

15 A. CenturyTel will tell you and the
16 witnesses will sit here and tell you that there's a
17 process whereby Charter would be notified of any
18 upcoming changes, have the opportunity to comment and
19 negotiate. But let me also tell you my experience
20 with, for instance, Qwest. I mean, there are some
21 issues that have been in the change management
22 process guide of Qwest for nine years and still not
23 resolved.

24 So you've got to think about, you know,
25 what are the incentives of CenturyTel to change this

1 document which it -- it holds up to the Commission
2 saying this is a great document because it provides,
3 you know, consistency so we can treat all these CLECs
4 the same. Well, that's not what interconnection
5 arbitrations are about. We're talking about the
6 particular specific needs of the interconnecting CLEC
7 which may not be this generic document approach that
8 CenturyTel has.

9 So I don't want to be redundant, but I
10 think the basic problem is, yes, it should not be
11 contractually binding, but we can include language
12 from that guide in the ICA if both parties agree to
13 it.

14 Q. Are there ever any conflicts between
15 what's in the service guide and what's in the
16 interconnection agreement?

17 A. Absolutely. And in my rebuttal, I think
18 I cite to three cases. I think the cases were all
19 settled this year or last in Minnesota, Oregon and
20 Arizona regarding Qwest and its CMP, change
21 management process guide.

22 The commissions there found that that
23 guide gave too much power to the ILEC, that they
24 could unilaterally change the terms of the
25 interconnection agreement, and disallowed that. And

1 that's not to say that the CenturyTel service guide
2 or the Qwest change management process is bad, it's
3 just the nature of the beast that it can change
4 daily, and that's not what contracts are all about.

5 Q. Issue No. 11's divided into part A and
6 part B, and I couldn't tell by your testimony if you
7 specifically addressed part B where my understanding
8 of that issue should the CenturyTel service guide be
9 incorporated for -- that list various processes. Is
10 your answer to all those yes?

11 A. That it should not be referenced?

12 Q. That it -- that the service guide should
13 be incorporated for these sort of things, and -- you
14 know, just establishing bill dispute processes.

15 A. Not unless the parties specifically
16 agree to that language, and then that language would
17 not be allowed to change if the service guide were to
18 change the next day, for instance.

19 Q. So from your point of view, the
20 interconnection agreement would have to identify
21 what, that specific part of the service guide? Or
22 help me understand that better.

23 A. Yes, that's correct. And I think I gave
24 an example earlier where the parties have agreed to
25 certain language from the existing service guide,

1 taking that language, physically putting it into the
2 interconnection agreement. That language will remain
3 there unfixed during the term of the interconnection
4 agreement.

5 But in the service guide, that same
6 language might change day to day, month to month,
7 year to year, which causes problems for -- for
8 carriers trying to run a business.

9 MR. VAN ESCHEN: All right. Do you want
10 to break or keep going? I've got more than ten
11 minutes.

12 JUDGE PRIDGIN: All right. I wouldn't
13 normally like to break in the middle of a witness,
14 and I was going to wait until the end of
15 Mr. Van Eschen's questioning, but it sounds like he
16 has quite a bit more questioning. But we've been
17 going for the better part of two hours. This looks
18 to be a pretty good breaking point.

19 Let's resume -- I've got the clock here
20 in the room at about 10:40. Since we've got such a
21 big crowd to allow time for a bit of a break, let's
22 resume at roughly 11 o'clock. That will give you
23 about 20 minutes.

24 And I will go to intermission and I will
25 attempt to mute this so that we shouldn't be

1 broadcasting, but in case either I make a mistake or
2 technology breaks down, I wouldn't safely assume that
3 what you say here is not being broadcast.

4 So if there's something you don't want
5 the world to hear, I would step outside during the
6 break to talk about it, okay? Anything further
7 before we go off the record?

8 (NO RESPONSE.)

9 JUDGE PRIDGIN: All right. We'll go off
10 the record. We'll resume with Mr. Van Eschen's
11 questioning of Mr. Gates. Thank you.

12 (A RECESS WAS TAKEN.)

13 JUDGE PRIDGIN: All right. We're back
14 on the record. We are still on bench questions with
15 Mr. Gates and Mr. Van Eschen. I'll let you continue
16 here in a second, then we would have recross,
17 redirect.

18 And then I understand -- I've lost my
19 list of witnesses here. Ah, thank you. Mr. --
20 Mr. Webber would then be the next witness? All
21 right.

22 It would be my preference to not break
23 in the middle of witnesses but we'll -- we'll just
24 kind of have to wait and see. And my -- my
25 preference would be to stop somewhere around 12:30

1 for a lunch break if that will work for the parties.

2 All right. Mr. Van Eschen, when you're
3 ready, sir.

4 BY MR. VAN ESCHEN:

5 Q. All right. Issue No. 16, I just wanted
6 to be clear in my own mind what sort of situations
7 we're talking about in response to issue No. 16, and
8 I was wondering if you can clarify that for me?

9 A. Yes. I'm surprised we have issue 16
10 before us. I was hoping this would be settled.
11 The -- the basic fundamental issue is symmetry.
12 There shouldn't be an obligation of one carrier to
13 modify its network to match the changes made on the
14 other side of the POI by another carrier.

15 And so the bottom line is, Mr. Van Eschen,
16 is that, that both carriers, each carrier is
17 responsible for modifying its network on its side of
18 the POI. But Charter should not control what
19 CenturyTel does, CenturyTel should not control what
20 Charter does. There is no -- there should be no
21 opportunity for one carrier to force expenses, costs,
22 upgrades, et cetera on the other carrier.

23 Now, that being said, there is an
24 obvious need and requirement for the two parties to
25 get together and plan the interconnection facilities

1 such that you can exchange traffic, and that's
2 expected.

3 Q. What happens, though, if, say, for
4 example, Charter changes its network and in doing so,
5 somehow needs CenturyTel to make some changes to its
6 network, but what if -- what if CenturyTel doesn't
7 make the changes? Are calls still going to go
8 through, or maybe not?

9 A. Well, the good news is, the engineers
10 are doing this and not the lawyers and the
11 consultants. And they -- they have a vested
12 interest -- interest and pride in what they do to
13 make sure that those calls go on uninterrupted.

14 So I think this is really more semantics
15 than anything else. Charter wants this to be
16 symmetrical so that CenturyTel can't unilaterally
17 impose -- you'll hear that word a lot today,
18 unilateral and symmetry -- we don't want one carrier
19 to unilaterally impose costs and upgrades on the
20 other.

21 So I don't think there would be
22 situations in which a call would be interrupted
23 because changes in technology occur. When Charter,
24 for instance, changes the facilities on its side, it
25 discusses those proposed changes with CenturyTel

1 before they occur so that the facilities on both
2 sides of the POI will continue to match and traffic
3 will continue to pass uninterrupted.

4 Q. Okay. I'm gonna move to issue No. 18.
5 I guess when I look at issue No. 18, you're saying
6 that Charter ought to be able to interconnect
7 anywhere on the ILEC's network; is that correct?

8 A. Anywhere that is technically feasible.

9 Q. Technically feasible. I guess that
10 phrase -- word "technically feasible" is the key
11 component?

12 A. Absolutely.

13 Q. Okay. Well, what do -- what do you
14 exactly mean by "technically feasible"?

15 A. Well, for instance, if -- if Charter
16 were to suggest that, you know, we know you've got a
17 span of fiber out in the middle of the county and we
18 want to interconnect five miles from mile post 26 in
19 the ditch. Now, I mean, why would you do that? You
20 really wouldn't. You'd tend to interconnect at a
21 tandem or at a local end office switch where there
22 are facilities and room available for
23 interconnection.

24 But let me put it this way: The burden
25 is on CenturyTel to prove that a proposed

1 interconnection is technically infeasible. That's
2 what the FCC has said consistently since the passage
3 of the Act. I'm not aware, frankly, of any
4 interconnection proposal since the passage of the Act
5 that an ILEC has said this is technically infeasible.

6 Sometimes they say, well, I don't want
7 to do it because I don't want to do a single POI in
8 the LATA. You know, ILECs have said that
9 historically over the years and the FCC has rejected
10 that argument. There have been arguments that maybe
11 we don't want to do a mid span meet because that's
12 not the way we normally do interconnection, but those
13 arguments don't hold water because it's technically
14 feasible.

15 So the burden, again, is on CenturyTel
16 to prove that some proposed method of interconnection
17 is technically infeasible. And what Charter has
18 proposed and what they use all over the country is
19 very common interconnection, cross-connects in
20 central offices or tandems. So there's nothing
21 unique, superior or expensive about the way Charter
22 proposes to interconnect with CenturyTel.

23 Q. When I read Watkins' testimony for
24 CenturyTel, I noticed that testimony talks about, you
25 know, there's a lot of different factors that go into

1 determining where the parties could interconnect. I
2 think it's mentioned, you know, facility capacity,
3 traffic volumes, cost of different networking
4 options, projections of future capacity needs.

5 Do you agree that those sort of things
6 or factors ought to be considered in what's
7 technically feasible?

8 A. No. Those don't go to technical
9 feasibility, those go to engineering efficiency and
10 economics, those things that you identified. I don't
11 disagree with those. I think Mr. Watkins is correct
12 that those are the things that the engineers look at
13 in deciding where to interconnect, but that's not a
14 feasibility issue.

15 Q. Let me ask you about issue -- about
16 issue No. 19. When I look at this particular issue,
17 it appears Charter simply wants a threshold of
18 240,000 minutes and CenturyTel wants 200,000 minutes.
19 Is that an accurate characterization of issue No. 19?

20 A. I don't think so. I think that's just a
21 side note.

22 Q. All right.

23 A. I mean, I think we can agree -- if we
24 took one minute we could agree -- Charter would agree
25 to 240 or CenturyTel would agree to 200. I don't

1 think that's a huge dispute here. I think we agree
2 that it's a DS-1, the parties will decide whether
3 it's 240,000 or 200.

4 The real dispute is, you know, how do
5 you measure it? Do you do it at a point in time? Do
6 you do it over a three-month period, as Charter
7 suggests, to make sure it's not an aberration but
8 a -- but a pattern that's not established by actual
9 traffic or do you use a projection which is what
10 CenturyTel proposes which is, of course, subject to
11 all kinds of forecasting errors and supposition.

12 So I think that's really the dispute.
13 It's not the -- not the trigger level, but how the
14 traffic for the trigger is measured and over what
15 time period.

16 Q. Okay. So it's the issue as to whether
17 actual usage ought to be used to determine that
18 criteria or actual along with projected usage?

19 A. Actual. So Charter suggests that you
20 measure that traffic between, say, two switching
21 centers. And once you get a DS-1 level of traffic
22 for three consecutive months, then that is reason to
23 engineer a direct end office termination to that
24 central office.

25 Q. When I read Watkins' testimony on issue

1 No. 19, I get the impression that he thinks that this
2 issue basically is asking the question when should
3 the parties migrate from a third-party transit
4 arrangement to a dedicated trunking arrangement. Do
5 you agree with that?

6 A. Generally, I agree.

7 Q. Okay.

8 A. That's that trigger we were talking
9 about a minute ago.

10 Q. Okay.

11 A. I disagree with his comments about the
12 effect of indirect interconnection on the -- on the
13 industry and on the network. I think he's just wrong
14 there, but I do agree we're talking about the
15 trigger.

16 Q. Now, I believe he talks about allowing a
17 CLEC like Charter to continue to use a transit
18 carrier's facilities, and -- and you acknowledge
19 that, correct?

20 A. I think that's part of the dispute. He
21 wants to limit it to when Charter comes into new
22 markets. He wants to limit it to a small amount of
23 traffic over a certain period of time. So he's
24 trying to limit Charter's right under the Act, he
25 used indirect interconnection.

1 Now, the parties have agreed on this
2 DS-1 trigger, so all these issues that Mr. Watkins
3 brings up, while they're interesting, really don't
4 matter because the parties have agreed that once that
5 traffic gets to a DS-1, we're gonna go away from
6 indirect interconnection and go to direct connection.

7 Q. One of the parts that's a little
8 confusing for me and maybe you can help clarify it
9 for me is the claim that, you know, what Charter
10 wants to do is require CenturyTel to transport
11 traffic to some distant location.

12 And I don't know if they think that that
13 would even be beyond the -- the state of Missouri or
14 just what. But is -- can you, I guess, one more time
15 just clarify for me what -- what the issue is here
16 for issue No. 19?

17 A. The issue is whether Charter has a right
18 to use indirect interconnection pursuant to
19 Section 251(a) of the Act. And I think all LECs have
20 an obligation to provide for interconnection either
21 directly or indirectly. The parties have agreed that
22 when a trigger is met that we will move away from
23 using that third party for transit to a direct
24 connection between those two points. We disagree on
25 how that trigger amount will be met.

1 CenturyTel wants to use projected
2 volumes over some indeterminate amount of time.
3 Charter suggests actual volumes over a three-month
4 period to make sure that we're not just looking at an
5 aberration of traffic on a single day which would
6 cause the implementation of a DEOT or direct end
7 office trunk.

8 The goal here is to minimize expenses.
9 Transiting with indirect interconnection is a very
10 efficient way to exchange small volumes of traffic
11 because creating a direct connection is expensive.
12 It takes time and resources and facilities. So it's
13 important that we don't just require these DEOTs
14 everywhere regardless of the amount of traffic.

15 Charter is trying to control that by
16 asking for specific volumes of traffic, a DS-1 over a
17 specific period of time, three months, to set that
18 trigger. That's very common, frankly, in the
19 industry. What CenturyTel is proposing is not
20 common.

21 Q. Okay. I guess I wanted to shift gears a
22 little bit and move on to issue No. 20. And part of
23 my questions are just trying to get a better grasp of
24 what the differences really are between the parties.

25 In regards to issue No. 20, Watkins

1 characterizes Charter's position that -- or says that
2 the parties already agree Charter may lease
3 interconnection facilities from CenturyTel at
4 cost-based rates. Do you agree with that
5 characterization?

6 A. I agree that's what he says, but if you
7 read the disputed language document, there's language
8 in there that -- that talks about the need to
9 negotiate what cost-based rates really means.

10 There's language in there that suggests
11 that, you know, we need to have a discussion about
12 what the courts really meant about cost-based rates
13 and what services are subject to cost based rates.
14 That's why I mentioned earlier it's so important for
15 this Commission to come out and say definitively,
16 consistent with the Eighth Circuit, consistent with
17 its orders in the past, that interconnection
18 facilities must be priced at TELRIC rates.

19 When -- when Mr. Watkins and CenturyTel
20 talk about cost-based, we all know that can be
21 interpreted dozens of different ways. I mean, are we
22 talking about embedded costs, are we talking about
23 marginal costs, are we talking about short run, long
24 run?

25 TELRIC we know. We know that these

1 facilities are being used for interconnection. The
2 FCC, the Act and the FCC rules implementing the Act
3 say that interconnection facilities must be priced at
4 TELRIC rates. This Commission is very aware of and
5 experienced with developing and investigating and
6 approving TELRIC rates.

7 But at the outset, what we need from the
8 Commission is a definitive statement that says these
9 interconnection facilities must be priced at TELRIC,
10 and Mr. Watkins refuses to say that in his testimony.

11 MR. SCHUDEL: Again, your Honor, I
12 didn't want to interrupt the witness, but this is
13 also subject to the motion to strike.

14 JUDGE PRIDGIN: Yes, sir, I understand
15 and your objection is noted.

16 BY MR. VAN ESCHEN:

17 Q. One of -- one of the differences that I
18 gathered for issue No. 20 was a -- Charter wants a
19 negotiation period of three months, I think
20 CenturyTel six months. Is that a significant
21 difference?

22 A. It is significant because I think if
23 the -- if the period was two weeks, I think we'd end
24 up at the same loggerhead because I think based on my
25 reading of the testimony and based on my reading of

1 the disputed language, CenturyTel is not going to
2 agree to TELRIC.

3 They're going to agree to something else
4 which they have not defined, but they are not going
5 to agree to TELRIC despite the Eighth Circuit order
6 and despite this Commission's previous orders. So
7 that's why we need clarification from this Commission
8 on that direction, if you will.

9 Q. I think you may have touched on this
10 when Ms. Dietrich questioned you, but can you just
11 explain how you would go about determining an interim
12 rate in response to this issue?

13 A. Yes. The parties agreed that we will
14 establish an interim rate during the negotiation
15 period. CenturyTel has tariffed rates in place which
16 are not TELRIC rates. In other states, for instance
17 in Texas, the language before that Commission
18 includes a 50 percent relative use factor, the same
19 factor that we're proposing here.

20 Q. What is the relative use factor?

21 A. Yes, I think it's FCC Rule 51.709 that
22 talks about how you calculate a relative use factor.
23 And the idea is, based on cost causation principles,
24 if two parties share a facility, the cost of that
25 facility is shared based on the proportion of

2 So if Charter originates half the
3 traffic, obviously CenturyTel originates the other
4 half. So the relative use factor is 50 percent.
5 Now, in this proceeding, the parties have agreed to
6 bill and keep for compensation, for reciprocal
7 compensation.

13 Q. Okay. I had a couple of questions about
14 issue 21 that you testified to. The issue pertained
15 to deploying one-way trunks at Charter's discretion.
16 Can you explain to me why Charter would want to
17 deploy one-way trunks rather than two-way trunks?

25 Now, in my testimony I address the fact

1 that the vast majority of the circumstances will
2 require -- and when I say "require," I mean from an
3 engineering and economic efficiency perspective --
4 they're gonna use two-way trunks.

5 But a party, if circumstances warrant,
6 should be allowed to use one-way trunks. And I read
7 CenturyTel's language as denying Charter that
8 opportunity if it so wanted to deploy one-way trunks
9 or more specifically, forcing all those costs onto
10 Charter which would be inappropriate.

11 Charter's not suggesting that you use
12 one-way trunks if a two-way trunk is more efficient.
13 That's not the proposal. Charter would only
14 recommend a one-way trunk when that is clearly the
15 most efficient way to route traffic.

16 Q. Even though a one-way trunk is more
17 expensive for Charter than two-way trunks?

18 A. Not necessarily. It's just that if you
19 have a one-way trunk, sometimes you need two one-way
20 trunks when a two-way trunk could do the same. In
21 other words, it's cheaper to have a two-way trunk in
22 place than two one-way trunks, all other things
23 constant, like traffic engineering parameters. But
24 if the traffic is clearly one-way, you don't need a
25 two-way trunk.

1 Q. Would -- would you agree that the
2 interconnection agreement already allows Charter to
3 deploy one-way trunks?

4 A. I think it does, but then it imposes
5 costs on Charter for the CenturyTel costs of
6 deploying its one-way trunks, and that's what we're
7 trying to avoid here. Each party should be
8 responsible for the trunking costs on each side of
9 the POI -- on its side of the POI, excuse me.

10 Q. And looking at issue No. 22, there again
11 establishing -- this talks about the threshold test
12 that should be used to establish direct end office
13 trunk. Just so I'm clear in my mind, when we talk
14 about direct end office trunks, I mean from a network
15 perspective, exactly what are we talking about? I
16 mean, what -- what points are being connected?

17 A. Could I approach the board?

18 Q. That would be fine.

19 A. Or would you rather I just did it
20 verbally?

21 JUDGE PRIDGIN: However you prefer.

22 THE WITNESS: Okay. What I'm attempting
23 to draw is a very rudimentary network map to keep
24 this very simple. If Charter does not have direct
25 interconnection with CenturyTel, the only way to get

1 traffic from a Charter customer to a CenturyTel
2 customer would be through transit which is also known
3 as indirect interconnection.

4 So Charter would send that traffic to,
5 let's say, AT&T because Charter does have direct
6 interconnection with AT&T. AT&T would then route
7 that traffic with its transiting obligations, which
8 this Commission has found is a 251(c) obligation, to
9 CenturyTel.

10 Now, this interconnection agreement says
11 that once this amount of traffic -- and this could be
12 between two central offices, for instance, once that
13 amount of traffic reaches a DS-1 or 24 circuits, then
14 we're gonna put in a direct end office connection
15 between these two points.

16 Now, another situation might be as
17 follows: You've got Charter and you've got a
18 CenturyTel tandem, and then you've got CenturyTel end
19 offices. And I'll get out of the way here in just a
20 minute.

21 So here we have a situation where
22 Charter is directly interconnected with -- with the
23 tandem, okay? And all of this traffic flows through
24 the tandem and then down to the various CenturyTel
25 end offices. What the agreement allows for is when

1 we hit that DS-1 trigger between Charter and, say,
2 this first end office, then Charter will establish
3 direct end office trunks to this CenturyTel end
4 office.

5 And it might -- actually, the traffic
6 might still go through the tandem, but it would be a
7 direct trunking instead of a switched trunking. So
8 that's what we're talking about.

9 Q. Okay. Now, I know you've touched on
10 this earlier, but I thought issue No. 22 really got
11 into the issue that you referred to earlier about
12 whether actual or projected traffic should be used to
13 measure the traffic --

14 A. That's correct. I think we agree on the
15 DS-1 threshold. It's just a matter of, you know,
16 whether it's projected or actual, and if it's actual,
17 over what period of time.

18 Q. Is it -- would the projections be solely
19 based on what Charter projects or would it be based
20 on what CenturyTel might somehow project?

21 A. I'm not sure. And that's part of our
22 confusion and concern with the CenturyTel proposal.
23 It's not obvious who would do the projection, and if
24 they were competing projections, then which one
25 would -- would win in that situation.

1 What if CenturyTel said, well, I'm
2 projecting that it's going to be a DS-1 level in one
3 month and Charter says, well, I think it's gonna be
4 in three months? So how do you resolve that?

5 The better way to do that, rather than
6 arguing about whose forecast is better, is to use
7 actual traffic which is measurable and can be
8 reviewed by both parties, use that actual traffic to
9 set the trigger.

10 Q. Okay. I wanted to move on to issue
11 No. 23. I know your testimony admitted that the
12 parties don't seem to be very far apart on this
13 particular issue. Are you saying that there's really
14 no disagreement on issue No. 23?

15 A. I think there's just confusion. I think
16 we're much closer than one would think. I think we
17 concluded it -- or confused it by putting in the .005
18 rate. What we're really accepting is the rates that
19 CenturyTel has proposed for tandem switching and
20 tandem transport termination. I think that that
21 turns out to maybe 1.7 instead of 5.

22 Q. I know Watkins' testimony, you know,
23 talks about different rate elements that would apply
24 in this type of situation. It talks about an NV
25 query charge, a tandem switching charge, a tandem

1 switching facility charge and a charge to transport
2 switch termination. Would you agree all those rate
3 elements would apply in this situation?

4 A. Only three rate elements should apply.

5 Q. Which one?

6 A. The tandem switching, tandem transport
7 termination and then there would be a facility charge
8 which is a per-mile rate which I think is a five
9 decimal point rate that CenturyTel has proposed.

10 Q. So you would disagree on whether this NP
11 query charge should apply; is that correct?

12 A. I think that's the rate we're talking
13 about is the -- this is a transit charge. You add up
14 those rate elements. That's the rate that Charter
15 would pay if CenturyTel actually did a query for
16 Charter and Charter's willing to pay that amount.

17 Q. Okay. I wanted to ask a couple of
18 questions about issue No. 27, and that pertains to
19 whether CenturyTel should be allowed to assess a
20 charge for administrative costs for porting telephone
21 numbers from its network to Charter's network.

22 And I just wanted -- wanted to try and
23 be sure I understood what you were saying there. You
24 talked about F -- this FCC rule that allows ILECs to
25 assess charges that purchase switching ports as UNEs.

1 "I should point out Charter doesn't purchase
2 switching ports." What do you mean by that?

3 A. Charter is a facilities-based CLEC, so
4 it does not rely on the bundle network elements of
5 CenturyTel. Charter also does not resell CenturyTel
6 service, so none of those charges as anticipated in
7 the FCC rules would apply to Charter. Charter has
8 built out and uses its own network.

9 Q. Now, if I could just, I guess, put into
10 my own words what Charter's position is on this -- on
11 this particular issue. Are you -- are you saying
12 there should be no charge, that this -- the cost
13 recovery has already occurred through this charge
14 that CenturyTel applied to its customers?

15 A. Yes, there should be no charge. Charter
16 doesn't charge CenturyTel or any other ILEC or CLEC
17 for this activity, and CenturyTel should not charge
18 Charter.

19 Q. I guess what I did not understand about
20 your position is when you talked about the cost
21 causers, the customer and not the requesting carrier.
22 And I got the impression that you expected CenturyTel
23 to somehow bill the customer that they're losing. Is
24 that what you're saying?

25 A. No, they don't have to do that. I was

1 referring to the FCC's logic when it developed this
2 competitively neutral cost recovery mechanism. They
3 talk specifically about who is the cost causer here.
4 And the cost causer is the customer who decides to
5 change.

6 If I decide to change my carrier and I
7 call another carrier and say port my number, they
8 will port that number. Same thing happens the other
9 way. For instance, Charter may gain 20 customers in
10 a month, they might lose 15 or they might lose 25.
11 So both carriers are continually porting numbers back
12 and forth all the time.

13 And Charter doesn't charge CenturyTel or
14 any other CLECs, other CLECs don't charge Charter.
15 What CenturyTel is doing is trying to impose a tax, a
16 competitive tax, if you will, on Charter for having
17 won CenturyTel's customer. And that completely
18 conflicts with the competitive neutrality principles
19 that the FCC imposed in its numerous orders regarding
20 compensation for these costs.

21 Q. Do you acknowledge that there's costs
22 that carriers would incur to port telephone numbers?

23 A. Oh, sure. And it's -- it's a cost that
24 all carriers incur, and the people were -- carrier --
25 carriers were allowed to pass those through in a

1 tariff charge if they want to. Generally it doesn't
2 happen today.

3 So there are some costs. It's part of
4 the competitive environment. Charter doesn't charge
5 other people for the costs that it incurs, CenturyTel
6 shouldn't charge Charter for the costs that it
7 incurs.

8 We'd note that the costs that CenturyTel
9 has proposed are ridiculous on their face, but I
10 realize we've got a -- some motions and disputes over
11 whether we can talk about whether those rates are
12 reasonable even if they were allowed. Certainly they
13 shouldn't be.

14 MR. VAN ESCHEN: I think that might be
15 all the questions that I have. Let me double-check
16 to make sure.

17 BY MR. VAN ESCHEN:

18 Q. I guess I just have another question or
19 so. You filed -- you filed rebuttal testimony in
20 response to issue No. 1, and I just wanted to get it
21 straight in my mind. Do you agree that the
22 definition of VoIP that Charter would like to use is
23 a subset of IP-enabled services?

24 A. I think that the term IP-enabled
25 services is the umbrella term that the FCC has used.

1 Q. Okay.

2 A. And there are many different types of
3 VoIP.

4 Q. Okay.

5 A. But I do agree that they would be
6 subsumed under IP-enabled.

7 Q. Okay. Having agreed to that, what is
8 the harm in using the term IP-enabled services?

9 A. The harm is that it's just so vague. We
10 don't know exactly what CenturyTel means by that.
11 And we don't -- and also, there's no need for it
12 because in the proposed language, we specifically
13 identify what is a local call. And Charter has
14 agreed to this physical location definition of what
15 is a local call for purposes of reciprocal
16 compensation.

17 The parties have also agreed that
18 traffic that does not originate and terminate within
19 the same local calling area will be subject to access
20 charges. It doesn't talk about net protocol
21 conversion, doesn't talk about IP-enabled or VoIP,
22 but it says that if it originates and terminates in
23 some other local calling area, access charges apply.
24 Toll traffic, access charges apply; optional EAS.

25 And I don't have the list in front of

1 me, I don't have the language in front of me, but it
2 identifies all this traffic that the parties are
3 going to exchange. So why add this additional
4 relatively undefined term of IP-enabled when we don't
5 really know what CenturyTel means by that? I mean,
6 are they suggesting, then, that if it's IP-enabled
7 that the ISP remand order applies and the rate should
8 be 0007? I'm not sure they are because the parties
9 have agreed to bill and keep for reciprocal
10 compensation.

11 So obviously, their concern is with
12 respect to access charges and toll traffic or what
13 they would call toll traffic. I think we've
14 identified all of that traffic. If we haven't, I
15 think the parties could get together and maybe add
16 another category or two of traffic.

17 But to insert a vague term that's being
18 disputed today and every day which is IP-enabled
19 traffic, I don't think that helps to define the
20 relationship between the two parties. And I think
21 that's what we're trying to avoid going forward is
22 more confusion over how you define traffic.

23 MR. VAN ESCHEN: That's all the
24 questions that I have.

25 JUDGE PRIDGIN: Okay. Thank you. Any

1 further bench questions?

2 MS. DIETRICH: I have a couple, just a
3 couple follow-up questions.

4 QUESTIONS BY MS. DIETRICH:

5 Q. When you were talking to Mr. Van Eschen
6 about the porting charges, you said in -- I think I
7 got this down correctly, but let me know if I
8 didn't -- Charter does not charge any ILEC or other
9 CLECs, so CenturyTel should not charge. And then
10 later on you said something about Charter doesn't
11 charge any ILEC or other CLEC and no other CLECs
12 charge Charter. Is that a fair characterization --

13 A. Yes.

14 Q. -- of what you said?

15 A. That's my understanding. I may -- I
16 mean, there may have been other ILECs that have
17 attempted to charge Charter which may be in dispute,
18 but generally speaking, ILECs and LECs do not charge
19 each other.

20 Q. So are you saying that because other
21 parties have not done it that it should not be
22 charged or is this particular charge prohibited from
23 being charged?

24 A. This particular charge is prohibited
25 because these are carrier-specific costs directly

1 related to providing long-term local number
2 portability. Those costs include the cost of porting
3 a number from one carrier to the other. The FCC has
4 said very specifically in its rules, which I quote in
5 my testimony, that those costs are to be recovered
6 through end user charges.

7 The only charges that are applicable to
8 carriers would be those costs that are not directly
9 associated with local number portability, and the FCC
10 defined those as network upgrades, SS-7 upgrades,
11 advanced intelligence network upgrades or deployment,
12 and that's not what we're talking about here.

13 And the FCC has specifically said that
14 there shall be no charges for -- or surcharges or
15 charges with respect to LMP in any interconnection
16 arrangement.

17 Q. So if I look at the rules that you cite
18 in your testimony, you can get me there?

19 A. Yes.

20 Q. And then the other question that I
21 wanted to follow up on is your discussion on
22 IP-enabled services. And you had pointed out that
23 the parties agreed to the definition of local traffic
24 and what qualifies as local. So since the parties
25 agree on local, why is it necessary to have any

1 definition of IP-type -- traffic in the
2 interconnection agreement?

3 A. I tend to agree with what you're
4 suggesting. I think they put in VoIP because Charter
5 does offer a VoIP offering. So they want to
6 distinguish. But the local definition you referred
7 to distinguishes VoIP. There can be a local VoIP,
8 there can be an interexchange VoIP, and that's what
9 controls compensation.

10 MS. DIETRICH: Okay, thank you.

11 THE WITNESS: Uh-huh.

12 JUDGE PRIDGIN: Any further bench
13 questions?

14 (NO RESPONSE.)

15 JUDGE PRIDGIN: All right. Any cross
16 based on bench?

17 MR. SCHUDEL: Yes, briefly.

18 CROSS-EXAMINATION BY MR. SCHUDEL:

19 Q. Mr. Gates, I would like to ask you
20 whether you agree that CenturyTel does not oppose
21 access to its NIDs to disconnect a customer if
22 Charter wins the customer. Is that a correct
23 understanding that I have?

24 A. Yes, I think that's correct.

25 Q. And would you also agree with me that

1 Charter is in no way required to use the CenturyTel
2 NIDs in any way after the disconnect of a customer
3 from CenturyTel occurs?

4 A. Could you say that one more time,
5 please?

6 Q. Surely. Would you agree with me that
7 after the disconnect of the customer from CenturyTel
8 occurs, that Charter is in no way obligated to use
9 the CenturyTel NID?

10 A. Oh, certainly. There's no obligation to
11 use the NID, but engineering efficiency would mandate
12 that you --

13 Q. Thank you. You've answered my question.

14 A. -- establish a NID.

15 MR. DODGE: Your Honor, did the
16 transcriptionist get the entire answer?

17 THE COURT REPORTER: Uh-huh.

18 MR. DODGE: Thank you.

19 BY MR. SCHUDEL:

20 Q. Have you had occasion in conjunction
21 with preparing for your testimony to review
22 Article III, Section 53 of the interconnection
23 agreement terms as proposed by CenturyTel which
24 relate to service guide?

25 A. I've looked at numerous references to

1 the service guide. I'm not sure I know without --

2 Q. Let me --

3 A. -- looking at it --

4 Q. Let me --

5 A. -- whether I've looked at 53, Section 3.

6 Q. Would you agree that as proposed by

7 CenturyTel, that terms of the interconnection

8 agreement specify that the service guide of

9 CenturyTel may not modify or override the terms of

10 the interconnection agreement?

11 MR. HALM: Objection, your Honor. Is he

12 asking the witness to characterize CenturyTel's

13 language?

14 MR. SCHUDEL: I'm asking for his

15 understanding.

16 JUDGE PRIDGIN: I'll overrule. I think

17 the question is would you agree.

18 THE WITNESS: Could I review the

19 language, please?

20 BY MR. SCHUDEL:

21 Q. Certainly. I don't know if you have a

22 copy of the interconnection agreement. Pardon my big

23 book, but it is section -- it is Article III, Section

24 53.2. And I'm pointing your attention to the first

25 sentence. Feel free to take a moment to review it.

1 A. Thank you.

2 Q. Let me know when you're ready.

3 A. Yes, the language is what it is.

4 Q. And it states as it is, so to use your
5 terms, that the terms of the service guide may not
6 supersede the terms of the ICA, correct?

7 A. Only as to specific issues that are
8 identified. Later on in this paragraph, it talks
9 about other potential modifications to the guide
10 which obviously would impact the interconnection
11 agreement.

12 Q. Only if they didn't contradict the
13 service guide -- or the ICA, correct?

14 A. Well, the -- the language currently
15 existing in the ICA, that would be correct.

16 Q. Okay.

17 A. But there are things that could be put
18 into the service guide which would unilaterally
19 change the operating environment between the two
20 companies that aren't even currently in the -- in the
21 interconnection agreement, and that's our concern.

22 Q. So it --

23 A. So to take language from the service
24 guide, that's great, and put it into the
25 interconnection agreement so that it's fixed, but no

1 general references.

2 Q. Future changes to the service guide may
3 not be in derogation to the terms of the ICA,
4 correct?

5 A. I'm not sure I understand the legal
6 connotation of "derogation."

7 Q. In conflict with.

8 A. Generally that's what it says. But
9 obviously, the next few sentences talk about
10 conflicts and disputes and -- and a way to try and
11 resolve those. So obviously, it's not -- it's not
12 sufficient.

13 Q. And as you say, it says what it says,
14 right?

15 A. It does, yes.

16 MR. SCHUDEL: Thank you. May I have
17 just a moment?

18 JUDGE PRIDGIN: Certainly.

19 MR. SCHUDEL: Thank you, your Honor.
20 The only thing we may request because it may be
21 necessary for other witnesses to refer to it, if we
22 can retain the diagram that -- that this witness has
23 placed on the white board?

24 JUDGE PRIDGIN: Certainly. And -- and I
25 would probably ask Mr. Gates, if you could just

3 MR. DODGE: We're happy to make that
4 into an exhibit and I'm sure CenturyTel would too.

6 THE WITNESS: Okay.

9 MR. SCHUDEL: That is correct, your
10 Honor.

12 MR. COMLEY: Your Honor, as a point of a
13 procedure, the parties anticipated that on
14 cross-examination there may be multiple counsel
15 involved because of the divergence of issues that the
16 witness may be testifying to.

23 MR. SCHUDEL: I believe that's our
24 feeling.

1 MR. HALM: Thank you -- thank you,
2 Mr. Comley.

3 REDIRECT EXAMINATION BY MR. HALM:

4 Q. I think we're gonna work backwards
5 sequentially here and start with the most recent
6 questions and then move back to the oldest questions.
7 And -- and I'll start with the question that
8 CenturyTel counsel just asked you concerning how the
9 CenturyTel proposed language would work with respect
10 to service guide provisions that could or could not
11 override the terms of the interconnection agreement.

12 Do you know of any recent -- are you
13 aware of whether CenturyTel has ever in the past
14 attempted to modify the terms of the parties'
15 interconnection agreement by incorporating service
16 guide terms into the agreement?

17 A. Yes. I think we requested that on
18 discovery and received various answers from
19 CenturyTel with respect to the service guide.

20 Q. With respect to questions from
21 Mr. Van Eschen concerning the definition of
22 interconnective VoIP traffic, I think Mr. Gyori has
23 already testified that Charter's proposed definition
24 reflects the provisional service today.

25 If, for whatever reason, Charter

1 modified the way it provisioned service, is there
2 anything that would stop the parties from amending
3 the contract to reflect that new arrangement?

4 A. No. The parties could get together,
5 talk about the offerings, how that would be managed
6 and routed and discuss appropriate ways to not only
7 route the traffic but to measure it and bill it.

8 Q. Is that generally consistent with
9 approaches taken in the industry between carriers
10 when -- when things change?

11 A. Yes. Happens daily, not only
12 operationally but with respect to the law, the change
13 of law provision, for instance.

14 Q. Thank you. Mr. Van Eschen also asked
15 you about the technical feasibility standard used
16 under the FCC's rules. There was some discussion
17 about network engineering considerations and
18 technical issues. Do you know whether or not a
19 carrier's costs are consideration of whether or not
20 something -- a proposed interconnection arrangement
21 is technically feasible?

22 A. The FCC has specifically said that the
23 carrier's costs are not to be considered when
24 determining whether or not an interconnection
25 methodology is technically feasible.

1 Q. I think this is my last question, and
2 then I'll hand it off to my colleague. Going back a
3 little bit further, I think the question was
4 originally from Ms. Dietrich, possibly follow-up from
5 Mr. Van Eschen about the N-1 query charge which is
6 the charge that is associated with those limited
7 circumstances when Charter does not perform a query
8 in order to route traffic that may have been -- may
9 be delivered to a telephone number that has been
10 ported, the N-1 query charge. Do you remember that
11 questioning?

12 A. Yes. And I think I struggled to find
13 circumstances where Charter would not do the query.
14 I wasn't very responsive, but I believe the vast
15 majority of the queries are done by Charter.

16 Q. And I don't know if you had the chance
17 to go back and look at the interconnection agreement
18 to see if there's any language that affirmatively
19 implies or affirmatively establishes that obligation.
20 Let's assume that there is no language in the
21 agreement right now.

22 Knowing what you know about Charter's
23 position, do you think Charter would have any concern
24 with including a statement saying they would, in
25 fact, perform the N-1 query.

1 A. No. I don't think they should have any
2 concern with that. I think that would be an
3 obligation that Charter should take on. So if
4 CenturyTel were concerned, if CenturyTel wanted to
5 propose that language, I don't think Charter would
6 object or they should not object, in my opinion.

7 MR. HALM: Thank you.

8 MR. DODGE: Thank you, Mr. Halm.

9 ADDITIONAL REDIRECT EXAMINATION BY MR. DODGE:

10 Q. Good morning, Mr. Gates.

11 A. Good morning.

12 Q. Barely good morning, Mr. Gates. I have
13 a few NID questions for you, following up on
14 questions from the bench and CenturyTel counsel.

15 A long time ago, you had a discussion
16 with Ms. Dietrich, I believe, on page 9 of your
17 rebuttal testimony. And summarizing her question, I
18 believe Ms. Dietrich asked -- asked about the concept
19 of when CenturyTel loses a customer to Charter, does
20 CenturyTel lose the source of support for the cost of
21 its NID still at that premise. Do you recall that
22 discussion?

23 A. Yes.

24 Q. What is your reaction or what is your
25 understanding of a continuing source of support for

1 CenturyTel for the NID that it might leave at a
2 former customer's premise?

3 MR. SCHUDEL: And my continuing
4 objections, of course.

5 JUDGE PRIDGIN: It's noted. Thank you.

6 THE WITNESS: I believe my first point
7 in responding to Ms. Dietrich was that there are no
8 ongoing costs because that's a fixed subcost of the
9 NID as it sits on the house. As far as ongoing
10 support, not knowing whether CenturyTel is
11 rate-of-return-regulated or price-cap-regulated, it
12 is clear that its rates have been set to recover some
13 sort of revenue requirement or capped at some level
14 that would allow it to recover its expenses, its
15 costs and provide a reasonable return on that
16 investment.

17 So the general structure would provide
18 support for those costs if they existed on an ongoing
19 basis, and I don't think they would. I think they're
20 fixed and sunk.

21 BY MR. DODGE:

22 Q. Would there be an impact on current
23 ratepayers whether CenturyTel is price-cap regulated
24 or rate-of-return regulated?

25 A. An impact on ratepayers? No, I don't

1 think there would, over -- over this NID issue? No,
2 certainly not. Rates are set to recover costs, and
3 if there was such an impact that CenturyTel was not
4 able to provide service in a cost-effective manner,
5 was unable to continue financially to provide
6 service, it could always come to the Commission and
7 seek some sort of a rate adjustment or an adjustment
8 to its rate base or an adjustment to its price caps
9 that would allow it to fix that problem. But in the
10 first instance, no, I don't think that abandoning the
11 NID is going to have any effect on CenturyTel's
12 ratepayers.

13 Q. Continuing on this same theme and the
14 questions from Ms. Dietrich, do you have any separate
15 basis for prognosticating that there's a significant
16 cost or continuing cost to CenturyTel if it, in your
17 terms, abandons a NID at a customer's premise?

18 A. Well, CenturyTel did respond to
19 discovery from Charter saying that it did not go out
20 and take NIDs off of homes when it lost customers.
21 And if there were any real value there, you would
22 think they might go out and remove the NID and, in
23 effect, actually remove the obstruction to Charter's
24 access to the NID. But they don't, they leave it
25 there.

1 Q. Thank you. In response to a question or
2 two from Mr. Couch regarding physical access to
3 customers' inside wiring, I believe he posited the
4 scenario where the Commission might rule against
5 Charter gaining any access to the customer side or
6 the customer access side of a CenturyTel NID. Do you
7 recall that discussion?

8 A. Yes.

9 Q. If that eventuality comes to pass that
10 Charter is not permitted to access the customer
11 access side or the customer side of a CenturyTel
12 NID -- and I understand you to testify that was a
13 single post or a screw within that unit -- and if
14 Charter placed its own box, its own version of a NID
15 at the customer premise, would Charter allow its
16 competitors access to its new box?

17 A. Yes, it would. It would have to if
18 it -- I mean, for symmetry purposes, if Charter wants
19 access to the CenturyTel NID for purposes of
20 connecting to a customer, then Charter would allow
21 access to its NID once it lost a customer.

22 Q. And what do you believe Charter's
23 position to be on what price it should charge
24 other -- other carriers or competitors access to its
25 newly deployed box?

3 Q. Thank you. More recently in a response
4 in colloquy with CenturyTel's counsel, I believe
5 you were asked whether CenturyTel had an obligation
6 to use the CenturyTel NID. Do you recall that
7 discussion?

8 A. Whether CenturyTel had a --

9 Q. I -- I apologize. Whether Charter has
10 an obligation to use the CenturyTel NID.

11 A. Yes, I remember that question.

12 Q. Thank you. And thank you for correcting
13 me. Did you understand the question to imply a legal
14 obligation or a technical obligation? How did you
15 interpret the word "obligation" as put to you?

16 A. I interpreted it from a -- an
17 operational perspective. It wasn't a legal
18 conclusion as to an obligation.

19 MR. DODGE: That's all I have, your
20 Honor. Thank you.

21 JUDGE PRIDGIN: All right. Thank you.

22 No further redirect? All right. Thank you.

23 Mr. Gates, thank you very much. You may step down.

24 THE WITNESS: Thank you, your Honor.

25 JUDGE PRIDGIN: You're quite welcome. I

1 show the next witness would be Mr. Webber. Does
2 CenturyTel know if you'll have cross before bench
3 questions for Mr. Webber?

4 MR. SCHUDEL: Not before bench
5 questions, I don't believe.

6 JUDGE PRIDGIN: Is Mr. Webber ready to
7 go?

8 MR. SCHUDEL: I may stand amended on
9 that.

10 JUDGE PRIDGIN: Either way is fine.

11 MR. MOORMAN: Limited.

12 JUDGE PRIDGIN: Limited. Okay. Is
13 Mr. Webber ready to go?

14 MR. HALM: Mr. Webber is ready to go.

15 MR. GATES: Your Honor, point of order.
16 I have these proprietary exhibits up here with me. I
17 don't want to leave them unattended. Should I turn
18 them over to the court reporter or --

19 MR. SCHUDEL: Actually, those are your
20 counsel's copies.

21 MR. GATES: Oh, they are? I'll return
22 them to counsel.

23 MR. DODGE: You may leave them there in
24 case there are questions for subsequent witnesses.

25 MR. GATES: Okay. Thank you.

1 JUDGE PRIDGIN: Thank you. It's still
2 my intention roughly around 12:30 to break for lunch
3 depending on how testimony goes.

4 Mr. Webber, if you'll raise your right
5 hand to be sworn.

6 (The witness was sworn.)

7 JUDGE PRIDGIN: Is there anything from
8 Charter before his exhibits are offered and he's
9 tendered for cross?

10 MR. HALM: I would just note that
11 Mr. Webber's errata page was offered as Exhibit 3A,
12 and if he could have an opportunity to explain the
13 correction that he's made in that errata page and any
14 other corrections you may have, Mr. Webber.

15 JUDGE PRIDGIN: Certainly. Whenever
16 you're ready, sir.

17 THE WITNESS: Thank you, your Honor.
18 All right. First, with respect to my direct
19 testimony, if you were to take a look at page 4 at
20 line 12 and 13, the question should be rewritten such
21 that the word "utility" is stricken and replaced with
22 "service," and the word "Texas" is replaced with
23 "Missouri."

24 Now, moving on to my rebuttal testimony,
25 the replacement page that was mentioned earlier,

1 an errata has been provided for page 18. That
2 replaces the existing page 18 in its entirety. What
3 I had noticed, unfortunately, yesterday, was that
4 the language beginning at what was line 29 and ending
5 at 45 was taken from a DPL, and that's not the
6 correct language. The correct language has been
7 inserted.

8 MR. MOORMAN: Your Honor, just a point
9 of clarification. I'm sure Mr. Halm will agree that
10 the first word on that page -- on his errata --
11 errata should be "rebuttal" instead of "direct
12 testimony," correct?

13 MR. HALM: I think that's right, yes.

14 MR. MOORMAN: So there was a -- just
15 a -- if that could be reflected?

16 JUDGE PRIDGIN: Certainly.

17 MR. HALM: One follow-up question.
18 Mr. Webber, do you understand that Charter would
19 intend to revise the DPL to reflect this approval?

20 THE WITNESS: Yes, that's my
21 understanding. Thank you.

22 MR. HALM: Thank you.

23 MR. SCHUDEL: If I may? Thank you.
24 When you're referring to the DPL, is that attached to
25 the petition or the revised statement?

1 MR. HALM: The revised statement.

2 MR. SCHUDEL: Okay.

3 JUDGE PRIDGIN: Anything further before

4 exhibits are offered and he's tendered for cross?

5 MR. HALM: No, your Honor.

6 THE WITNESS: I had just a couple of --

7 JUDGE PRIDGIN: Yes, sir. Yes, sir.

8 THE WITNESS: Page 23, line 12, after

9 the \$70,000 figure, the word "is" should be replaced

10 with the word "in," i-n.

11 MR. HALM: And Mr. Webber, you're on

12 your rebuttal testimony?

13 THE WITNESS: Yes.

14 MR. HALM: Yeah.

15 THE WITNESS: Again, the rebuttal

16 testimony at page 29, line 6, the word "recommending"

17 should be replaced with "recommended." And finally,

18 at page 37, line 23 --

19 MR. MOORMAN: Excuse me. Could you

20 repeat that for me? I'm sorry. I can't flip the

21 pages as quickly.

22 THE WITNESS: Page 29, line 6.

23 MR. MOORMAN: Okay.

24 THE WITNESS: "Recommending" should be

25 "recommended."

1 MR. MOORMAN: Thank you.

2 THE WITNESS: Page 37, line 23, after
3 "possible," we need to insert open paren, "2,"
4 closed paren. And that's all I have, your Honor.

5 JUDGE PRIDGIN: Okay. Thank you.

6 MR. SCHUDEL: Your Honor, if I may,
7 maybe this is in the form of foundational, I'm not
8 sure, but I'm just not tracking with the witness's
9 errata page going back to the -- to the attachment to
10 the petition.

11 Could -- could I just ask generally to
12 clarify whether this is a substitution of new
13 language that CenturyTel has not seen before or
14 whether this was, for example, just an error? I
15 can't make them compare right now.

16 JUDGE PRIDGIN: That's fine with me,
17 Counsel. Any objection to that? He's just trying to
18 clarify --

19 MR. HALM: No objection.

20 JUDGE PRIDGIN: All right. Certainly.
21 You may voir dire the witness.

22 VOIR DIRE BY MR. SCHUDEL:

23 Q. Could you just very simply explain to
24 me -- for example, the first change that I note in
25 your new rebuttal, page 18, is that Article XI A is

1 marked, "Intentionally Left Blank", and that deletes
2 various rates that were set forward in the attachment
3 to your petition. Can you explain why those are
4 being deleted?

5 A. Charter's proposal, as it pertains to
6 this language as is discussed in the testimony, is
7 that the rates that will be established here would be
8 rates that are cost-based or TELRIC-based rates. The
9 rates in A, I think there are two charges identified,
10 one for \$170, one for 85 which is a monthly charge.
11 Those are supposed to be cost-based rates.

12 Q. And the rates as filed in the attachment
13 to your petition were proposed by you or what was the
14 source of those rates?

15 A. I think what happened was in the
16 red-lining process while that document was being
17 prepared, I think that the CenturyTel language had
18 been left in that limited section.

19 Q. Okay. So let's then go on to B. And
20 what appears to be the change in B, again, is an
21 omission of a -- of a group of monthly recurring and
22 nonrecurring rates which reference to tariffs,
23 apparently. Can you explain your change there?

24 A. Yeah. And let me clarify. The language
25 I think you're referring to, Counsel, is it appears

1 twice. It says, quote, Per facilities for intrastate
2 access tariff, PFC -- PSC No. 2, Section 5.7, that
3 language appears twice.

4 Q. Yes.

5 A. That is supposed to be replaced with
6 cost-based rates which we describe in the testimony
7 are TELRIC-based rates. So it is not Charter's
8 intention that those rates reference the switch -- or
9 the special access tariff of CenturyTel in Missouri.

10 Q. All right. And finally C. Again, there
11 were a number of -- of -- there's language and rates
12 provided following the words "Intentionally Left
13 Blank." In fact, it goes on for, it appears, a
14 couple of pages in the attachment to your petition
15 and now that's all excised. Can you explain that?

16 A. Well, I'm not looking at the same
17 attachment you are. What I'm -- I'm looking at the
18 September 2nd DPL. And that part C wasn't included
19 there, and I don't think it was included in testimony
20 that we just changed.

21 MR. HALM: I wonder if I could interject
22 for a moment? The -- the errata page that you
23 offered, do you mind if I just pose a question for
24 clarification? The errata page that you offered was
25 intended to revise the language that's set forth

1 in which issue in the Joint DPL? Do you have a copy
2 of the Joint DPL with you?

3 THE WITNESS: I do.

4 MR. HALM: Yes. Is that language shown
5 on page 129 of the Joint DPL?

6 THE WITNESS: Yes, it is. It's the
7 second-to-the-last page under issue, I believe, 41.

8 MR. HALM: And issue 41 is --

9 THE WITNESS: Issue 41 goes to
10 particular tariff references in the agreement where
11 we had identified additional specific language. Now,
12 this also relates to issues 33 and 39, and you'll see
13 in the DPL at those issues the language that we've
14 just replaced such that the current language is in
15 the testimony is in that DPL. So we're not changing
16 the position, we're just fixing it as to where it was
17 repeated in issue 41 only.

18 MR. SCHUDEL: Your Honor, in -- in
19 summary, if this would be acceptable to you and to
20 counsel, this is obviously more than changing a "the"
21 to an "and" or what have you. I'm not suggesting
22 that it's not acceptable, I simply don't know. I
23 wasn't involved in the negotiations here as opposed
24 to Mr. Halm was. I just need to check with my client
25 because this is the first time I've seen this. May I

1 ask leave to at least wait until after our lunch
2 break to discuss this with my client before this is
3 accepted into the record?

4 MR. HALM: I have no objection.

5 JUDGE PRIDGIN: All right. I certainly
6 don't object, and this may, even though it's kind of
7 beginning of cross, it may be the most convenient
8 time to give you time to make a phone call or
9 whatever you need to do.

10 MR. SCHUDEL: Yes, thank you.

11 JUDGE PRIDGIN: And it's my
12 understanding we haven't really even begun -- begun
13 the cross-examination yet. You're still trying to
14 clarify the errata page. So we're -- just to have
15 everyone's mind geared for where we're going to pick
16 up, we'll need to take up, I guess, what issue, if
17 any, you might have with the -- with the exhibits,
18 and then we'll proceed on with cross and bench
19 questions of this witness; is that -- is that
20 correct?

21 MR. SCHUDEL: That's fine. Chances are
22 there won't be a problem, I just don't know.

23 JUDGE PRIDGIN: Okay. I understand.
24 Okay. Is there anything further from counsel before
25 we break for lunch?

1 MR. HALM: What time should we return?

2 JUDGE PRIDGIN: Let's try to resume
3 roughly at 1:45 since it's kind of a lunch hour. And
4 again, I know you're going to be in big groups, may
5 have a hard time getting in and out of the
6 restaurant, making phone calls. So let's try to
7 resume at 1:45.

8 Is there anything further?

9 (NO RESPONSE.)

10 JUDGE PRIDGIN: I see no problem with
11 you staying in the room.

12 MR. DODGE: I meant the materials.

13 JUDGE PRIDGIN: Oh sure, yeah, yeah,
14 yeah. Okay. Anything further?

15 (NO RESPONSE.)

16 JUDGE PRIDGIN: All right. Thank you.
17 We'll go off the record.

18 (THE LUNCH RECESS WAS TAKEN.)

19 JUDGE PRIDGIN: Good afternoon. We are
20 back on the record. When we adjourned for lunch, if
21 I'm not mistaken, Mr. Webber from Charter was on the
22 stand and CenturyTel had some questions about an
23 errata sheet and wanted to take, I guess, an
24 opportunity at lunchtime to hopefully clear up any
25 type of questions.

1 Does counsel have anything to announce
2 to me on either that issue or anything else?

3 MR. SCHUDEL: Your Honor, we did study
4 that over the lunch hour. I conferred with Mr. Halm
5 and have shared with him a suggested proposed
6 stipulated resolution, and I think he's agreeable,
7 and I think he's taken the penmanship to perhaps
8 speak it into the record.

9 JUDGE PRIDGIN: All right.

10 MR. HALM: Thank you, Mr. Schudel. What
11 the parties have agreed to do -- and please correct
12 me if I get any detail wrong -- is that Mr. Webber's
13 Exhibit 3A, his direct errata sheet, would be
14 withdrawn.

15 JUDGE PRIDGIN: Okay.

16 MR. HALM: And one more additional
17 correction would be made to page 18 of his rebuttal
18 testimony, and that is lines 29 through 41 would be
19 removed or struck from page 18 of his rebuttal
20 testimony.

21 JUDGE PRIDGIN: Okay. Page 18 of the
22 rebuttal, lines 29 through 41 should be stricken; is
23 that correct?

24 MR. HALM: Correct.

25 JUDGE PRIDGIN: CenturyTel, is that your

1 understanding?

2 MR. SCHUDEL: Yes, sir.

3 JUDGE PRIDGIN: Is that the resolution?

4 MR. SCHUDEL: I think there's a
5 stipulation or an understanding or connection that he
6 will give to you.

7 JUDGE PRIDGIN: Okay.

8 MR. HALM: The purpose of this paperwork
9 change is that it should reflect the parties' intent
10 that the resolution on issues 33 and 39 governing the
11 rate applicable to 911 facilities will determine
12 which language the parties will incorporate into the
13 language that is ultimately adopted for issue 41,
14 which is the tariff and corporation language.

15 MR. SCHUDEL: And the only thing I would
16 add, as on page 129 of the Joint DPL.

17 MR. HALM: Okay.

18 JUDGE PRIDGIN: All right. Before
19 Mr. Webber stands cross or if we have any other
20 issues to clear up, I just wanted to, I guess, touch
21 base with counsel. I'm not sure -- I don't have a
22 feel for what kind of progress we're making. I know
23 we have today and tomorrow set aside for hearings and
24 potentially Thursday, and I don't necessarily know if
25 we're going quickly or not.

1 It seems like we're going pretty slowly,
2 but, I mean, obviously there's a lot of testimony
3 that's been filed, so I guess my point is letting
4 counsel know I am unable to stay late tomorrow. I
5 can stay late tonight. I don't want to stay late.
6 I'm sure you don't either, and I don't want my staff
7 folks to stay late, but -- and I'm not necessarily
8 looking for any answers, but I'm just trying to throw
9 it out there that if we start falling further and
10 further behind, depending on what other witnesses'
11 and counsels' schedules are as far as flights, I'm
12 unable to stay late tomorrow, but I can stay late
13 tonight.

14 I'm not necessarily suggesting it, I'm
15 saying if we start rolling into Thursday and we're
16 running behind, we probably will be staying late on
17 Thursday. So just to let you know my availability,
18 and if counsel needs to talk at a break or if you
19 have any comments or suggestions, I'd be glad to hear
20 them. But that's just kind of -- I'm just trying to
21 keep the hearing moving as quickly as I can and give
22 everyone a chance to ask the questions they want to
23 ask.

24 Is there anything further before
25 Mr. Webber resumes his testimony?

1 MR. MOORMAN: Yes, your Honor. Tom
2 Moorman for CenturyTel. To that end and your
3 directives, Mr. Dodge for Charter Mr. Overcash,
4 counsel for CenturyTel, over the lunch break we
5 reached a stipulation of fact dealing with issues 33
6 and 39 that I'd like to read into the record.

7 Where Charter purchases 911 facilities
8 from an incumbent local exchange carrier, Charter
9 purchases these facilities pursuant to the incumbent
10 local exchange carrier's tariff.

11 JUDGE PRIDGIN: I'm sorry. Those are
12 issues 33 and 39?

13 MR. MOORMAN: And 39.

14 JUDGE PRIDGIN: So will we no longer
15 have cross-examination on these issues, I assume, or
16 do you not plan to anyway?

17 MR. MOORMAN: That will eliminate our
18 need for cross-examination on issues 33 and 39.

19 JUDGE PRIDGIN: Okay. Thank you very
20 much. Anything further from counsel before
21 Mr. Webber resumes cross-examination?

22 MR. COMLEY: I just want to make clear
23 on our order. We're offering Webber direct and
24 Webber rebuttal, Exhibit 3, and withdrawing 3A; is
25 that correct?

1 MR. HALM: That's correct.

2 JUDGE PRIDGIN: Exhibit 3A is withdrawn
3 and you're offering Exhibits 3 and 4; is that right,
4 Mr. Comley?

5 MR. COMLEY: Yes, your Honor.

6 JUDGE PRIDGIN: Any objection?

7 MR. SCHUDEL: No, sir.

8 JUDGE PRIDGIN: All right. Hearing
9 none, Exhibit 3 and 4 are admitted.

10 (EXHIBIT NOS. 3 AND 4 WERE RECEIVED INTO
11 EVIDENCE AND MADE A PART OF THE RECORD.)

12 JUDGE PRIDGIN: Anything else before
13 Mr. Webber stands cross?

14 (NO RESPONSE.)

15 JUDGE PRIDGIN: All right.
16 Cross-examination.

17 MR. MOORMAN: No cross.

18 JUDGE PRIDGIN: No cross. Thank you.
19 So we have questions from the bench. Mr. Couch?

20 MR. COUCH: I had questions about the 33
21 and 39. I didn't quite understand. Is that not an
22 issue any longer?

23 MR. MOORMAN: It still is an issue. It
24 just addressed potential area of cross-examination by
25 CenturyTel, and there was a stipulation of fact

1 entered which I read which eliminated that need.

2 Issues 33 and 39 remain.

3 QUESTIONS BY MR. COUCH:

4 Q. Okay. I guess my only question is, is
5 it seems there's a disagreement about what charges it
6 would be for the trunks, and I guess you mentioned
7 the trunks that were to the PSAP and trunks that were
8 to the router, and I'm not sure what trunks -- are
9 there charges for both sets of trunks?

10 A. There are. And let me try to explain.
11 Actually, I think about it in three pieces. I think
12 about from the selective router to the PSAP as one
13 set of charges. There is a set of charges proposed
14 by CenturyTel at the connection at the selective
15 router, and then there's another set of charges
16 proposed by CenturyTel for the actual cable
17 facilities leading into the selective router.

18 And the dispute between the parties, at
19 least as I understand Mr. Watkins' testimony, is as
20 to the facilities to the selective router and the
21 PSAP, those facilities will be paid for by the PSAP,
22 not by Charter.

23 When you get to the selective router,
24 the company has proposed a nonrecurring charge. I
25 think it's \$170, and a \$85 monthly charge per quarter

1 for termination at that location.

2 Additionally, they propose facilities
3 charges out of the special access tariff, the
4 CenturyTel Missouri special access tariff. Those
5 last two sets of charges for the facilities and for
6 that termination is Charter's proposal specific to
7 the FCC requirements, that that connectivity be
8 provided to Charter at TELRIC-based rates per the
9 FCC's requirements.

10 So that's where the difference, as I
11 understand it, lays in those two issues.

12 MR. COUCH: Okay. Thank you. I
13 understand that.

14 JUDGE PRIDGIN: Is that all you had,
15 Mr. Couch?

16 MR. COUCH: Yes, thank you.

17 JUDGE PRIDGIN: Okay. Ms. Dietrich?

18 MS. DIETRICH: Just a couple questions.

19 QUESTIONS BY MS. DIETRICH:

20 Q. Mr. Webber, if you could look at your
21 direct testimony for issue 3(B) and issue 41, you're
22 talking about the placement of tariff language in the
23 interconnection agreement. What happens if the
24 tariff rates, terms or conditions change?

25 A. If there's a location in the tariff that

1 has been identified in the agreement and that tariff
2 language changes, then that change would then also be
3 impacting, if you will, the agreements. If you take
4 a look at -- there are 11 points at which the
5 contract references the tariff. And each one of
6 those points -- you'll see it in my rebuttal
7 testimony -- they're about clarification.

8 They identify, for example, the local
9 calling area is as identified in the CenturyTel
10 tariff at a very specific location, and there isn't
11 that great a concern that those things are changing
12 frequently. They generally don't change.

13 Q. What happens if, say, for instance, one
14 of those points of clarification is on page 11 of the
15 tariff and something on page 10 changes and bumps
16 over to page 11 which makes page 11 moot, page 12, so
17 on and so forth, but in the interconnection agreement
18 you've referenced page 11. Then how would it be
19 accommodated?

20 A. In the interconnection agreement the
21 references aren't that specific. They don't go to
22 page and line number.

23 Q. Okay.

24 A. What they do go to is section number.
25 Let me give you an example. If you were to turn to

1 page 16 of my rebuttal testimony, beginning at line
2 18, the definition of intraLATA toll traffic is in
3 the CenturyTel tariff at specifically sections 3 and
4 4.

5 That's Charter's proposal that the
6 section 3 and 4 language be included, whereas
7 CenturyTel, as I understand it, would propose to
8 strike that more specific reference and just
9 reference the CenturyTel tariff.

10 Q. And you don't think it's likely that a
11 reference on a section number would change causing
12 the interconnection agreement to have to change too?

13 A. No, I don't.

14 Q. Okay. Instead of including the
15 references like Charter proposes, like, for instance,
16 the section you just pointed us to, why don't you
17 just include the tariff language in the agreement?
18 Like your example of, you know, local calling scope
19 is defined as... or whatever you said, why don't you
20 just put that language in here instead of making the
21 reference to the tariff?

22 A. Frankly I don't know why the parties
23 didn't get down to that level of specificity, and
24 that's a question I didn't ask --

25 Q. Okay.

1 A. -- when preparing the testimony. From
2 my perspective, that would be fine with me, because
3 then what you have is a single document that has all
4 the right terms and conditions. That document may be
5 longer, it may have more appendices to it, but then
6 it takes away any ambiguity as to what may or may not
7 apply.

8 Q. Then going back to your direct testimony
9 on page 18, starting at line 11.

10 A. Okay. Page 18?

11 Q. Uh-huh. Your sentence that says, "Fifth
12 and finally" at line 11?

13 A. I see that.

14 Q. Okay. If Charter is the entity
15 questioning the charge, why should CenturyTel be
16 required to initiate formal action against Charter to
17 recover the charges?

18 A. This -- this is pretty much standard
19 practice within our industry. The way invoicing
20 generally works is that one carrier will bill the
21 other carrier, and there will be a lot of charges on
22 that invoice. To the extent that there is a dispute,
23 the billed party files a dispute, the parties
24 ultimately work through a dispute resolution process.
25 Some of the charges are upheld, some of them are not

1 upheld.

2 To the extent the parties disagree as
3 they did in the case that was recently brought before
4 the Commission, it's up to the party who wants to
5 bring about an action to file before the Commission
6 to get the resolution.

7 So in the case where let's say there was
8 a \$10 charge where it was thought was improper, one
9 company doesn't pay that charge after filing the
10 proper dispute, the parties talk about it, they fail
11 to agree -- excuse me, they fail to agree.

12 If one party wanted the \$10, they would
13 have to go to the Commission and bring about an
14 action to get it, and that's generally the way things
15 are done in our industry. That's the way it's done
16 in the current agreement, the agreement that was
17 brought before the Commission recently.

18 AT&T I understand is a pretty big local
19 exchange carrier here. That's the way their generic
20 agreements are set out, and frankly, that's the way
21 all the agreements that I can recall having worked
22 with are set forth.

23 Q. So in that case, if there was a dispute
24 over a charge, it would just remain a dispute --
25 assuming the parties couldn't reach agreement, it

1 would just remain a dispute from now until eternity
2 unless the billing party came to the Commission?

3 A. Yeah.

4 Q. Okay. On page 21 of your testimony at
5 line 16, your -- there's some language there, and it
6 talks about this is agreed upon language identified
7 in the pricing article as a TBD charge, to be
8 determined charge.

9 A. I'm sorry. Could you give me the page
10 reference again?

11 Q. Page 21.

12 A. Direct or rebuttal is this?

13 Q. Direct.

14 A. Line 16?

15 Q. Line 16.

16 A. I see that.

17 Q. Okay.

18 A. That's in the proposed language.

19 Q. Right, uh-huh.

20 A. Okay.

21 Q. What is a to-be-determined charge?

22 A. It's a general circumstance where the
23 parties have agreed that a service or facility would
24 be provided but a rate hasn't been set, so in that
25 case it's referencing that a rate would be

1 determined.

2 Q. Okay. And what's the difference between
3 a to-be-determined charge and a charge for services
4 or facilities not currently covered by the
5 interconnection agreement which would also be
6 something that's not anticipated?

7 A. As a general matter, if something isn't
8 in the agreement, you wouldn't find a price for it.

9 Q. Uh-huh.

10 A. In the case of where a price is to be
11 determined, it's suggestive that there is something
12 in the agreement for which a price needs to be
13 determined, and that's how I generally look at that
14 issue.

15 Q. Okay. And do you know the reason that
16 there would be prices -- or there would be services
17 in the agreement that would still be to-be-determined
18 prices?

19 A. No, I don't. In fact, I don't know of a
20 circumstance in this case where that's happened.

21 Q. Okay. In the language right above that,
22 it's the double underlined language in lines 3
23 through 7, it's talking about CenturyTel providing a
24 quote to a CLEC in a timely manner.

25 A. I see that, and that's CenturyTel's

1 proposed language here.

2 Q. Right. What is the harm in receiving a
3 quote that must be accepted before work will begin?

4 A. Let me read the Q and A.

5 Q. Okay.

6 A. Thank you.

7 MR. DODGE: Ms. Dietrich, I'm sorry,
8 could you give us the page number again?

9 MS. DIETRICH: Page 21, lines 3 through
10 7.

11 MR. DODGE: Thank you.

12 THE WITNESS: The primary issue that I
13 see here is that if we're in a circumstance where one
14 party claims there isn't a price in the agreement for
15 something or they say that something, a service or
16 facility is not covered in the agreement, I don't
17 think that it should be up to that party to name the
18 price and then allow the other party to accept or
19 reject.

20 Rather, if the first party says this
21 facility or service you're now requesting is not in
22 the agreement, they should bring that issue before
23 the Commission, get the Commission to sign off on
24 that it's not in the agreement, and then there has to
25 be a discussion regarding pricing.

1 In the dispute case that came before the
2 Commission not too long ago, there were charges for
3 services that shouldn't have been applied because
4 there were no charges set forth in the agreement, yet
5 CenturyTel insisted that there were charges. They
6 applied the charges and it ultimately became a
7 dispute before the Commission.

8 To the extent that Charter's proposal is
9 accepted, then CenturyTel would have to go before the
10 Commission to identify the thing which they think is
11 not in the agreement. That issue would be addressed
12 up front in the dispute process, and then a dispute
13 proceeding following likely could be avoided.

14 MS. DIETRICH: Okay. I think that's it.
15 Thank you.

16 JUDGE PRIDGIN: Ms. Dietrich, thank you.
17 Mr. Van Eschen?

18 QUESTIONS BY MR. VAN ESCHEN:

19 Q. I think I understood when you were
20 talking to Ms. Dietrich about your idea for
21 referencing tariffs in a interconnection agreement.
22 And basically you want to see the section numbers of
23 the tariffs and questions cited somewhere in the
24 agreement; is that what you're saying?

25 A. Basically there are a few points in the

1 agreement where the parties have agreed that the
2 tariffs are instructive as to an issue and CenturyTel
3 on the one hand would propose to generally reference
4 and incorporate the tariffs as a general matter which
5 then means generally incorporating and referencing
6 literally hundreds, as you know, hundreds of pages
7 which aren't necessarily applicable.

8 Rather, what Charter has done here is
9 identified about a dozen paragraphs where language is
10 needed from the tariff, very specific definitions,
11 and they've identified specifically what sections are
12 applicable, and through the agreement they identify
13 that language specifically. So now we get down to
14 several pages as opposed to several hundred pages,
15 and that's really the issue.

16 So it really allows for the people who
17 have to administer the contract on a going-forward
18 basis, which is a job I used to have. It allows them
19 to do their job in a much more efficient manner
20 because they know which stack of paper they're
21 actually working with rather than fishing around
22 through hundreds of pages of paper that may not even
23 be applicable to the circumstances they're trying to
24 resolve.

25 Q. How are tariffs referenced in other

1 interconnection agreements that Charter is a party
2 to?

3 A. I haven't looked through their existing
4 agreements to see how that's done. I don't know if
5 there's another witness today who can speak to that
6 issue or not.

7 Q. Are you aware of any prior confusion
8 regarding whether certain tariff rates would apply?

9 A. I am. There was a dispute proceeding
10 that was brought before this Commission recently
11 regarding charges that CenturyTel had applied on
12 Charter's invoices for switchboards, which they were,
13 as I understand it, alleging were applicable to local
14 number portability service orders.

15 I understand that they identified one
16 set of charges and then had gone to their tariff to
17 try and identify other sets of charges that were also
18 not applicable, and the Commission found in that case
19 that their going to the tariff and looking for other
20 charges was inappropriate and that Charter's dispute
21 was set forth properly and followed the dispute
22 processes set forth in the agreement the way they
23 should have.

24 Q. I just wanted to go over I think
25 something that Ms. Dietrich went over with you, and

1 it's in regards to issue No. 13. And I just wanted
2 to make sure I understood your point of view because
3 I'm frankly not quite sure I understand it.

4 But explain to me one more time why
5 Charter should not have some sort of burden if
6 Charter disputes a charge with CenturyTel. And I
7 understand that happens some in the past. And when I
8 look at CenturyTel's testimony, they respond to your
9 inquiry as to why they want to apply that charge and
10 exchange information.

11 And as I understand it, things just sit.
12 Nothing happens. In that particular situation, why
13 shouldn't Charter have some responsibility to bring
14 the matter to closure?

15 A. I think there are a couple of things.
16 First of all, Charter is in a position where there is
17 a burden voiced on the company. They have to take
18 the invoices, they have to put those invoices into a
19 format and then dispute the invoices per CenturyTel's
20 requirements. Then if there are charges that have
21 been disputed and those disputes are rejected, they
22 have to go through a dispute resolution process with
23 CenturyTel in order to try and resolve any
24 outstanding issues. So they certainly spend time and
25 resources and they have a burden put on them to get

1 through that process.

2 To suggest that CenturyTel could at the
3 end of that process simply deny the dispute and force
4 Charter to bring a dispute before the Commission
5 rather than CenturyTel bringing forth the dispute
6 before the Commission is really accepting the notion
7 that in every instance CenturyTel is right in their
8 billing and they're right in rejecting the dispute.

9 We found that not to be true, and what
10 we're asking for here is a fair opportunity that if
11 CenturyTel thinks that a dispute has been filed and
12 they think that it shouldn't have been, that they
13 bring the issue before the Commission because they're
14 the party at that point who -- who has an axe to
15 grind, so to speak, and needs to come to the
16 Commission for resolution.

17 Q. Should the party that brings the dispute
18 to the Commission always have the burden of proof?

19 A. That gets into a legal question that I
20 don't -- I don't know that I'm able to answer, but
21 generally what I've seen in the past is the
22 complainant or the disputing party is the one that
23 bears the burden, and in this case CenturyTel would
24 be the one who had all the billing information, the
25 reason for rejecting the dispute as filed by Charter,

1 they would be in a very good position to lay forth
2 the bill, the explanation, identifying the contract
3 references and their rationale for rejecting the
4 disputed charges.

5 Q. In regards to issue 14, can you give me
6 your understanding of a contract amendment process?

7 A. I'm sorry, my understanding of?

8 Q. The contract amendment process.

9 A. Sure. I understand that in this
10 contract that's before the Commission, there are two
11 processes that you can follow to amend the
12 agreements. One of them would be under section 4,
13 one of them would be under section 12. One is a
14 circumstance where there's a change in law that
15 necessitates the change in the contract, and I would
16 expect that to happen probably more frequently than
17 the other circumstance where the parties sit down and
18 talk about an issue; maybe they want something added
19 to the agreement, they need to change terms to
20 reflect changes in engineering or something like
21 that.

22 When they get to a point where they have
23 a document that they both agree on, my understanding,
24 they would bring it to the Commission and ask that it
25 be approved. The agreement then would be amended.

1 To the extent that they couldn't come to a resolution
2 on that, then they would come to the Commission and
3 ask for the Commission to arbitrate that issue much
4 like they are here.

5 Q. How often does it occur where CenturyTel
6 wants to apply to-be-determined pricing?

7 A. Ms. Giaminetti might understand that
8 better than I do. I'm not certain.

9 Q. Okay. And I wasn't quite following in
10 regards to issue Nos. 33 and 39. Those issues are
11 still unresolved; is that correct?

12 A. That's correct.

13 Q. And the way issue No. 33 is worded, is
14 Charter's reference to cost-based rates, is that
15 referring to TELRIC-based rates?

16 A. That's right, pursuant to the FCC
17 requirements.

18 Q. Okay. Do you disagree with -- I know
19 CenturyTel's witness Watkins cites FCC decisions that
20 basically the FCC found CLECs can obtain entrance
21 facilities at low cost with no impairment to its
22 ability to compete and that CLECs are not entitled to
23 use unbundled entrance facilities at TELRIC rates.
24 Do you dispute that?

25 A. I'm not -- I'm not certain that he's got

1 that language cited incorrectly. What I would say is
2 though it's not applicable in this circumstance, I
3 cite an FCC order where the FCC says we note that the
4 Commission's currently -- the Commission currently
5 requires LECs to provide access to 911 databases and
6 interconnection to 911 facilities to all
7 telecommunications carriers pursuant to 251(a) and
8 (c), and then also it references Section 271.

9 The critical piece there is that the --
10 this is the FCC's order in 2005 requiring that ILECs
11 provide this interconnection for 911, and where they
12 identify it, it requires TELRIC pricing. So I look
13 at that and I look at what I think the FCC means
14 there when they said that, and I think that the
15 TERLIC rates are applicable.

16 Now, Mr. Watkins does talk about some
17 other issues that are tangential to this one, but I
18 don't think they're right on point. And I understand
19 that the attorneys will brief this issue quite a bit
20 and probably further explain it, but that's my
21 understanding. TELRIC is the rule as it pertains to
22 these facilities.

23 Q. But in regards to issue 39, I know you
24 went over this earlier, but when I read your
25 testimony, I got the impression that your big issue

1 centered on this \$85 trunking charge, but help me
2 understand that better. Maybe I'm misunderstanding
3 your testimony.

4 A. There's a couple issues. First of all,
5 if you look at my rebuttal testimony -- well,
6 actually, we can look at the direct testimony if
7 you've got that.

8 Q. All right.

9 A. Page 30.

10 Q. Okay.

11 A. The underscored language beginning at
12 line 26 and ending at line 30.

13 Q. Yes.

14 A. That identifies the \$85 recurring charge
15 for the -- as I understand it, the trunk termination
16 at the selective router location and then also a
17 nonrecurring charge to set that up should you
18 establish a new connection.

19 That, we believe, should be identified
20 as based on TELRIC, and surely that number \$85 would
21 then be another number. It might presumably be
22 substantially lower. Then as to the underscored
23 language proposed by CenturyTel at page 31, lines 1
24 through 3, they reference for the facilities that get
25 from Charter to the selective router for 911, that

1 interconnection, the state access or special access
2 rates, that we believe should be TELRIC as well.

3 Now, in section C, rows -- I'm sorry,
4 lines 4 through 42, again on page 31 -- again, this
5 is CenturyTel's language. Mr. Watkins in his
6 rebuttal testimony acknowledges that all of this
7 doesn't really apply to Charter the way they do
8 business. It hasn't applied and it won't, with the
9 exception, he notes, of possibly the \$380 NRC
10 identified at line 8. Perhaps it's line 9, I can't
11 tell. And then the \$250 charge, again, an NRC for an
12 additional MSAG, copy of the MSAG, at line 41.

13 So there, given that the bulk of this
14 doesn't apply to Charter, has not applied to Charter
15 and will not apply to Charter, Charter has indicated
16 that it doesn't want this language in its
17 interconnection agreement, it serves no purpose, so I
18 would strike all of that. Everybody acknowledges it
19 doesn't need to be there.

20 As to the \$380 charge and the \$250
21 charge, my understanding is leaving those items as
22 they are may not be problematic.

23 Q. Okay. I think that's helpful. In
24 regards to -- and I'm looking on page 30 of your
25 direct testimony -- the \$85 911 trunk charge and then

1 it has a nonrecurring charge of \$107.

2 A. I see that.

3 Q. And I understand your earlier statements
4 that those rates really ought to be TELRIC based and
5 consequently should be lower?

6 A. Presumably, yes.

7 Q. I guess in what -- what -- in -- in
8 simple terms, when we talk about these facilities,
9 what are we talking about? I just want to be clear
10 in my mind.

11 A. And I'm gonna speculate, and hope that
12 my attorney doesn't throw a shoe at me, just a little
13 bit here. If you look in Mr. Watkins' testimony, he
14 describes that charge being related to termination of
15 the facilities and connectivity to the selective
16 router.

17 Q. Okay.

18 A. So there's likely some sort of trunk
19 termination facility and a cross-connect into the
20 selective router.

21 Q. All right.

22 A. So, you know, think of a block and a
23 couple pieces of wire doing a cross-connect. The
24 interconnection agreement, if you go into the section
25 where it talks about 911, identifies trunks but it

1 doesn't really identify this trunk termination other
2 than to say that there's a charge there. So I'm
3 surmising from what I've been able to read that we're
4 talking about a termination of a cable facility and
5 probably a cross-connect.

6 Q. Okay.

7 A. But I don't know for certain.

8 Q. And the facilities that are referred to
9 that would be out of the special access tariff, those
10 refer to different facilities, correct?

11 A. Those would refer to the facilities that
12 allow for connection to the 911 system from Charter's
13 facilities into where that selective router of the
14 connectivity for a 911 system occurs.

15 MR. VAN ESCHEN: I think that's all the
16 questions.

17 JUDGE PRIDGIN: Any bench questions?

18 (NO RESPONSE.)

19 JUDGE PRIDGIN: Cross?

20 MR. MOORMAN: No.

21 JUDGE PRIDGIN: Redirect?

22 MR. HALM: Yes, your Honor, just a
23 couple questions.

24 REDIRECT EXAMINATION BY MR. HALM:

25 Q. Mr. Webber, Mr. Van Eschen asked about --

1 and I think Ms. Dietrich also asked about the burden
2 with respect to disputed charges. Which party bears
3 the burden of demonstrating or escalating a complaint
4 to the Commission to recover charges? Do you
5 remember those discussions and those questions?

6 A. I do, yes.

7 Q. Okay. Given recent history, do you
8 think CenturyTel is entitled to any presumption that
9 its bills are inherently accurate?

10 A. No, I don't. In the direct testimony I
11 indicated as much that you can't necessarily assume
12 that the ILECs' billing practices and the manner in
13 which they deal with disputes is accurate. You
14 shouldn't necessarily presume that they're right and
15 that they shouldn't have a burden. Since that time,
16 this Commission has found that the manner in which
17 Charter manages the dispute process is appropriate,
18 it has found that in the case of CenturyTel,
19 CenturyTel has identified charges that didn't belong,
20 placed those charges on the bills, failed to sustain
21 properly lodged disputes, and when I look at all of
22 that, particularly in this case, it seems to me that
23 the party who ought to have the burden to prove that
24 the invoicing was done accurately and to bring a
25 complaint before the Commission if they do not

1 sustain a dispute, which is always brought properly
2 before them, it should be CenturyTel who has to bring
3 that to the Commission, and it should be CenturyTel
4 who bears that burden, particularly in light of what
5 we've seen in the most recent dispute case.

6 Q. Are you aware of any reason why
7 CenturyTel could not have brought the action in the
8 previous case?

9 A. No, I'm not. And, in fact, I just
10 learned over this past week and in speaking with some
11 of the CenturyTel folks recently that there was a
12 point at which CenturyTel, after having denied the
13 dispute, threatened to terminate services and forced
14 Charter to pay approximately \$70,000 in these charges
15 that were still disputed.

16 And they did that, you know, with the
17 threat that there would be a disconnection. They
18 could have at that time while going through all that
19 process, they could have simply filed before the
20 Commission to get the dispute resolved. Yet instead,
21 they spent their energies threatening to disconnect
22 over alleged nonpayment, which as it turns out, was
23 not accurate.

24 Q. And you just said that in the past week
25 and in speaking with CenturyTel's employees you

1 learned about this. Did you mean Charter's
2 employees?

3 A. Charter's employees. Yes, thank you.

4 Q. Mr. Van Eschen also asked about some
5 confusion under the existing interconnection
6 agreement with respect to whether or not tariff
7 charges should apply. Do you remember that line of
8 questioning?

9 A. Yes.

10 Q. I think it related back to the same
11 dispute case you're talking about. If Charter's
12 language in the proposed agreement were adopted,
13 could that outcome be avoided in the future?

14 A. I believe so, yes. Ultimately, what
15 we're doing is identifying a dozen or so places in
16 the interconnection agreement that would have very
17 specific references to the tariffs, and by isolating
18 those references to the tariffs with specificity, you
19 minimize or eliminate the possibility of that sort of
20 confusion as to what applies, either the tariff or
21 the interconnection agreement.

22 MR. HALM: Thank you, Mr. Webber. No
23 more questions, your Honor.

24 QUESTIONS BY MR. VAN ESCHEN:

25 Q. I have one more question. Charter's

1 retail customers, if they dispute a charge on their
2 bill, how is that handled?

3 A. I don't know.

4 Q. I mean, the customer calls up Charter
5 and says, "I don't think I ought to pay this
6 particular charge," Charter responds and says,
7 well -- provides whatever information that they feel
8 is -- justifies the application of that charge. What
9 happens then?

10 A. I don't know. Ms. Giaminetti might, but
11 I just don't know.

12 Q. Do you feel that Charter has the burden
13 to collect that charge then?

14 A. It's been my experience in commercial
15 matters where a party refuses to pay, whether there's
16 been a dispute or not, that the billing party is
17 ultimately the one that tries to pursue whatever
18 remedies are available to it, whether it be a
19 collection action or something else. That just seems
20 to be the way commercial enterprises work.

21 MR. VAN ESCHEN: No other questions.

22 JUDGE PRIDGIN: Okay. Any further bench
23 questions?

24 (NO RESPONSE.)

25 JUDGE PRIDGIN: Cross based on that?

1 (NO RESPONSE.)

2 JUDGE PRIDGIN: Redirect?

3 MR. DODGE: Your Honor, there was a
4 reference on Ms. Giaminetti. I may get a shoe from
5 Ms. Lewis, but we think it may be Ms. Lewis here at
6 the counsel table who knows that process.

7 JUDGE PRIDGIN: All right. Very good.
8 Anything further from this witness?

9 (NO RESPONSE.)

10 JUDGE PRIDGIN: All right. Thank you
11 very much, sir. You may step down.

12 THE WITNESS: Thank you, your Honor.

13 JUDGE PRIDGIN: And would it be
14 Mr. Blair, is that correct, who is the next witness?

15 MR. COMLEY: Yes, your Honor.

16 JUDGE PRIDGIN: Mr. Blair, come forward
17 to be sworn, please. And I don't know if I've asked
18 previously. Obviously these witnesses are free to
19 stay, but can these witnesses be released? Is there
20 anything else the parties need of them?

21 (NO RESPONSE.)

22 JUDGE PRIDGIN: That is to assume when a
23 witness steps down, they're free to go? All right.
24 Mr. Blair, if you'd raise your right hand, please.

25 (The witness was sworn.)

1 JUDGE PRIDGIN: Anything from Charter
2 before he stands cross-examination?

3 MR. DODGE: Yes, your Honor. I believe
4 that Mr. Blair may have a few minor changes to his
5 testimony, and I would ask that he alert you
6 concerning those.

7 JUDGE PRIDGIN: Certainly. Whenever
8 you're ready, sir.

9 THE WITNESS: Under direct testimony,
10 starting with page 1, line 13, it references Charter
11 Fiberlink-Texas. That should be Missouri. And also
12 on page two, line 7, and once again on line 15, the
13 same edit.

14 MR. DODGE: Anything else, Mr. Blair?

15 THE WITNESS: That's it.

16 MR. DODGE: We tender him for bench or
17 for cross-examination.

18 JUDGE PRIDGIN: Did you wish to offer 7
19 and 8 at this time or wait?

20 MR. DODGE: If appropriate, we would
21 move the admission of Charter Exhibit 7 and 8, your
22 Honor.

23 JUDGE PRIDGIN: So Mr. Blair's direct
24 and rebuttal are marked as Exhibit 7 and 8 and have
25 been offered. Are there any objections?

1 MR. SCHUDEL: No, sir.

2 JUDGE PRIDGIN: 7 and 8 are admitted.

3 (EXHIBIT NOS. 7 AND 8 WERE RECEIVED INTO
4 EVIDENCE AND MADE A PART OF THE RECORD.)

5 JUDGE PRIDGIN: Cross-examination?

6 MR. MOORMAN: No, we have none.

7 JUDGE PRIDGIN: Bench questions,
8 Mr. Couch?

9 QUESTIONS BY MR. COUCH:

10 Q. I return to the NID. Is there any light
11 that you can shed on this dispute over the NID and
12 the fact that Charter wants to use a NID as a means
13 of connecting the facilities to the inside wire?

14 A. You know, I was involved from the very
15 beginning of our policy --

16 MR. SCHUDEL: I'm sorry, I can't hear
17 you.

18 THE WITNESS: I was involved at the very
19 beginning of our policy, and so the goal was really
20 to make it the least intrusive to a customer and that
21 it would also not disrupt, if a customer decides to
22 leave Charter, that they would be able to go back.
23 So we just need to have access to that customer's
24 house wiring, and that house wiring comes typically
25 through the side of the house or right into the back

1 of the NID. And in order to get access to that, we
2 said we would just go ahead and make our connection
3 with the house wiring right there.

4 BY MR. COUCH:

5 Q. Is this what the company has been doing
6 up until now? Is what you've been doing?

7 A. Right. And there are really two
8 scenarios, and I give both examples in my direct
9 testimony. The first one is what we call a back
10 feed. So remember, we don't make a traditional
11 connection as an ILEC does.

12 We actually house our equipment inside
13 of the home and then are running a piece of copper
14 twisted pair into the customer's house wiring. So
15 the first scenario would be that we would back feed
16 directly into an outlet inside of the home. So the
17 only thing we would need to do is just make a
18 disconnect within the customer's side of that NID.

19 The second choice would be that if we
20 had -- if we had to get to that centralized point, we
21 would feed back from the inside of the house out to
22 the outside to that location where the house wiring
23 all congregates and basically connect a twisted pair
24 to the house wiring.

25 Q. Is there any other scenario other than

1 using CenturyTel's NID? Is there anything else that
2 you can think of that would work for your company?

3 A. Well, you know, if you look at the
4 reasons why we drove those decisions, our biggest
5 issue was that the wiring coming into the NID are not
6 long enough to really pull anywhere, you know.

7 For example, we have a house box, not
8 with the same configuration of a NID, but a place
9 basically to conceal the cables from the weather,
10 environment or anyone tampering with them, and, you
11 know, we have that there. But the wires are not long
12 enough to pull over to it, and this is -- I go back
13 to our first decision.

14 The goal was to be the least intrusive
15 to the customer's house and house wiring that we just
16 needed to make a connection to it to provide our
17 cable or cable phone service on that line. So that
18 is really the number one reason why we don't pull it
19 out.

20 So let's take the circumstance where we
21 would actually take it to another box. You know, in
22 a lot of cases the wire's really not even hardly long
23 enough to pull out, and if we do, we're gonna have to
24 put a splice there on a very small wire and it's
25 exposed trying to find something that would cover

1 that up, and then we would route over to another box.

2 So we were really trying to look at it
3 from a, you know, what was the most practical for the
4 customer. As we were looking for near a residence,
5 you know, what does it look like, its activity, is
6 there any kind of a hazard and how does it leave the
7 existing wiring with the ILEC? And we're saying that
8 we would hope that Charter would compete in a way
9 that they would want to stay with us. But if the
10 customer goes back, what does it need to switch back
11 over? And we didn't want to disrupt and make it
12 miserable for the customer.

13 Q. In that case, then, you're objecting, I
14 guess, to the charges that CenturyTel wants to charge
15 for the use of that NID?

16 A. I'm looking at, I guess, in terms of how
17 Charter -- when we leave boxes on a house box, the
18 customer has access to it. So I look at it very much
19 the same way. You know, that we were only wanting to
20 get to the house wiring. It wasn't long enough to
21 get anywhere else, the NID is really in the way, but
22 we're saying here's how we work around it. We either
23 feed back out from the inside, and it's just a matter
24 of disconnecting, or if we take a twisted pair to the
25 outside where it congregates and a Scotchlock

1 connection.

2 Q. I guess, then, it doesn't sound as
3 though you have another solution? That using the NID
4 seems to be the best solution for your purpose, and
5 you don't really have another way to make that
6 connection?

7 A. I feel like it's practical in the
8 situations where we go back to the NID and actually
9 connect to the house wiring. And as a matter of
10 fact, I would even tell you that that is a smaller
11 percentage.

12 When we initially rolled out our policy,
13 we were going back to the NID in all cases because we
14 actually thought it was the very best for the
15 customer and the ILEC. We walked into it saying that
16 our goal was not to, you know, cause chaos here; that
17 we wanted to have something that we would, you know,
18 give a customer an option but, you know, not look
19 like it is such a fight between the competitors; that
20 we make the fight, you know, how good is your service
21 and your reliability and cost.

22 And then from about, oh, two years into
23 it, I actually added the policy where we do a back
24 feed. It's actually less costly for us to do a back
25 feed, so our goal is any time we can feed from the

1 in -- bring the house wire in and then in that case,
2 only have to disconnect the NID, we will do that, and
3 that is our first option.

4 MR. COUCH: Okay. Thank you.

5 QUESTIONS BY MS. DIETRICH:

6 Q. All right. Mr. Blair, just one
7 question. Charter and CenturyTel are competing for
8 the definition of the NID, right?

9 A. Right.

10 Q. Other than it's unambiguous and
11 consistent with FCC ruling, what is wrong with
12 CenturyTel's definition of the NID?

13 A. I probably think that's more of a policy
14 question. I looked at it probably more from a
15 simplicity technical-operation standpoint.

16 Q. And that's what I'm talking about is
17 that, you know, what technically is wrong with their
18 definition?

19 A. So if you look at, say, where it talks
20 about the 12 -- or the nine inches within the FCC
21 definition --

22 Q. Uh-huh.

23 A. -- whereas I'm saying the house wiring
24 is the only part that I'm interested in. That adds a
25 complexity to it that, like I say, it's policy, not

1 necessarily the practical side, that the house wiring
2 is what I need access to.

3 Q. I'm just trying to determine from a
4 technical aspect how your definition is better than
5 their definition.

6 A. And, you know, I guess, you know, the
7 policy side really was addressed from our other
8 expert. I'm really looking at it from the technical
9 operations side that the definition of the NID really
10 just says that it's a point where the house wiring is
11 gathered and can be disconnected from the ILEC and
12 which would also be a point where we would connect
13 our service to the home wiring.

14 MS. DIETRICH: Okay. Thank you.

15 JUDGE PRIDGIN: Mr. Van Eschen, any
16 questions?

17 MR. VAN ESCHEN: I'm not sure that I do.

18 QUESTIONS BY MR. VAN ESCHEN:

19 Q. CenturyTel admits that they install --
20 would you agree that they own the entire NID?

21 A. They placed it there for a customer's...

22 Q. In regard to the customer having part
23 ownership, that's really not an issue, right?

24 A. You know, not an issue. The one example
25 I would give here is, and it's in relationship to our

1 cabling that we would put into a customer's home, so
2 the coax portion. Once we disconnect the house from
3 the cable service, that cabling belongs to the
4 customer. So I guess I looked at the NID, you know,
5 the wiring goes into it, so the house wiring is what
6 we're after.

7 But being inside of the NID, our real
8 problem is that it's covering the house wiring, it's
9 very short, it's delicate, it's difficult for us to
10 find a way to pull it out and put it into another
11 box, so...

12 Q. When I heard you describe to Mr. Couch
13 what you actually had to do, I got the impression,
14 okay, you put this piece of equipment inside the
15 house --

16 A. Yes.

17 Q. -- and you need to run some wire back
18 out on the NID, and that allows you to connect to all
19 the other phones that might be in the house; is that
20 correct?

21 A. And that would be the way we would
22 install some percentage of the homes.

23 Q. But not all?

24 A. Not all of them. The other percentage
25 would be where we actually back-feed from the inside

1 house wiring back out to where the wires are
2 connected into the NID. And I could reference one of
3 the documents in my direct statement. The diagram is
4 maybe a good way to look at that.

5 Q. Which diagram are you referring to?

6 A. So page -- page 10 and page 11 if I can
7 find my -- I'm sorry -- page 10 and page 12. So on
8 page 10, the diagram 2, and these would be the two
9 scenarios that I would speak of. This would be where
10 we're actually back-feeding into the existing house
11 wiring from inside the home.

12 So we would replace the jack where a
13 phone is connected and actually put a dual jack so
14 that we could feed right into that, and what we need
15 to do is make sure we disconnect from the ILEC on the
16 exterior of the home. So that would be the one
17 scenario.

18 Q. Okay.

19 A. And then the other scenario on
20 page 12 -- and this -- so here would be an example
21 where we would actually -- let's say that if you look
22 at this, we actually fed from the house back out to
23 the NID and really just need to connect to the wire
24 feeding into the house.

25 Q. On that diagram on page 12 you need

1 access to the NID?

2 A. Right.

3 Q. The NID is the disconnected demark box
4 thing that you have labeled there?

5 A. Yes.

6 MR. VAN ESCHEN: I don't believe I have
7 any other questions.

8 THE WITNESS: Okay.

9 JUDGE PRIDGIN: Thank you. Further
10 bench questions?

11 (NO RESPONSE.)

12 JUDGE PRIDGIN: Any cross?

13 MR. SCHUDEL: Yes, a couple.

14 CROSS-EXAMINATION BY MR. SCHUDEL:

15 Q. Mr. Blair, Ms. Dietrich asked you on at
16 least a couple of occasions whether you had
17 identified anything defective in CenturyTel's
18 definition of a NID from a technical aspect. Do you
19 remember those questions?

20 A. Yes.

21 Q. Please refer to page 4 of your rebuttal,
22 lines 14 and 15, where you state, quote, The parties
23 seem to be in agreement as to what a NID is from an
24 engineering perspective, closed quote. Isn't the
25 answer to her question that from an engineering

1 perspec -- perspective, you didn't find a defect with
2 the CenturyTel definition?

3 A. Yes.

4 Q. Okay. Now, I just want to clarify
5 something back on your direct on page 10 and your
6 diagram 2 that you just explained to Mr. Van Eschen.
7 As I understand it, in looking at that diagram, and
8 correct me if I'm misperceiving, that in that
9 diagram, the only thing that Charter needs to do is
10 to have -- to access a NID on the customer access
11 side and disconnect the Charter -- excuse me -- the
12 CenturyTel facility, and otherwise, you're doing a
13 back-feed and you're using your own facilities; is
14 that correct?

15 A. Yes, that's correct.

16 Q. And under that scenario, do you have an
17 understanding -- strike that. Is it your
18 understanding under that scenario that your service
19 people are currently being offered that access by
20 CenturyTel without a charge?

21 A. Yes.

22 Q. And is it your further understanding
23 that under that scenario as shown in your diagram 2,
24 CenturyTel proposes no ongoing charges to you?

25 A. Yes.

1 Q. I should say to Charter.

2 A. Yes.

3 MR. SCHUDEL: Thank you. That's all I
4 have.

5 JUDGE PRIDGIN: Thank you. Redirect?

6 MR. DODGE: No, thank you, your Honor.

7 JUDGE PRIDGIN: All right. Thank you.

8 MR. VAN ESCHEN: Could I have one more
9 question?

10 JUDGE PRIDGIN: Absolutely.

11 QUESTIONS BY MR. VAN ESCHEN:

12 Q. These two ways, I guess diagram 2 versus
13 diagram 3, what percent of the installations would be
14 the diagram 3 where you need access to the NID?

15 A. It becomes -- it depends upon the
16 market, but I'll give you like a -- from across the
17 company what I think the general percentage is, and
18 that's about 70 percent back-feed, 30 percent that
19 we -- that we actually feed it back there.

20 Q. So 70 percent would be this -- this
21 diagram 3 on page --

22 A. Oh, I'm sorry. 30 percent would be
23 diagram 3.

24 Q. 30 percent would be diagram 3 on
25 page 12 --

1 A. Yes.

2 Q. -- of your direct and 70 percent of your
3 installations would be diagram No. 2?

4 A. Yes.

5 Q. Okay. And that's where you don't need
6 to have access to CenturyTel's NID?

7 A. Correct.

8 MR. VAN ESCHEN: Okay. Thank you.

9 JUDGE PRIDGIN: That's all you have?

10 MR. VAN ESCHEN: Yeah.

11 JUDGE PRIDGIN: Further bench questions?
12 Cross based on that?

13 MR. SCHUDEL: No, sir.

14 JUDGE PRIDGIN: Redirect?

15 (NO RESPONSE.)

16 JUDGE PRIDGIN: All right. Mr. Blair,
17 thank you very much, sir. You may step down.

18 (The witness was sworn.)

19 MR. COMLEY: Your Honor, for foundation
20 for Ms. Hankins' testimony, we do have some questions
21 for her.

22 JUDGE PRIDGIN: All right. Whenever
23 you're ready.

24 MR. HALM: Thank you, your Honor.

25 DIRECT EXAMINATION BY MR. HALM:

1 Q. Ms. Lewis, would you state your full
2 name for the Commission?

3 A. Patricia Susan Lewis.

4 Q. And are you employed by Charter
5 Communications?

6 A. I am.

7 Q. And what is your position with the
8 company?

9 A. Vice president of service fulfillment.

10 Q. Can you briefly describe your relevant
11 education and work experience?

12 A. I have a bachelor's degree in business
13 administration/accounting and a master's degree in
14 finance. I have been in the telecommunications
15 industry since '86 starting out wireless and in CLECs
16 since 1996.

17 Q. And how long have you been with Charter
18 Communications?

19 A. About seven and a half years.

20 Q. Okay. Can you briefly describe your
21 duties and responsibilities with the company?

22 A. I have a couple things I do there. I
23 have been primarily responsible for the telephone
24 rollout across the country and project managing that,
25 and also managing the day-to-day service delivery

1 organizations. So that would be from the time that
2 we take an order from our customer care department
3 doing the negotiation with the other carriers to get
4 those numbers ported over to supporting the
5 technicians on day of install to get the service
6 turned up and activated.

7 Q. Do you have a copy of the direct and
8 rebuttal prefiled testimony of Ms. Hankins?

9 A. I do.

10 Q. We have marked those as Exhibits 9 and
11 10. Have you reviewed the questions and answers
12 supplied in those exhibits?

13 A. I have.

14 Q. And in your position, do you have
15 personal knowledge of the facts that are set forth in
16 those exhibits?

17 A. I do.

18 Q. Do you have any corrections or revisions
19 to the testimony?

20 A. I do not.

21 Q. Ms. Lewis, is it your intention to adopt
22 Ms. Hankins' testimony in full today?

23 A. It is.

24 Q. And if I were to ask you these questions
25 as set forth in these papers today, would the answers

1 be the same?

2 A. They would.

3 MR. HALM: Your Honor, I would move to
4 admit Exhibits 9 and 10 into the record.

5 JUDGE PRIDGIN: 9 and 10 have been
6 offered. Any objections?

7 MR. SCHUDEL: No, sir.

8 JUDGE PRIDGIN: 9 and 10 are admitted.

9 (EXHIBIT NOS. 9 AND 10 WERE RECEIVED
10 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

11 JUDGE PRIDGIN: Anything further?

12 MR. HALM: No. I'd like to tender the
13 witness for cross.

14 JUDGE PRIDGIN: All right. Thank you.
15 Cross-examination?

16 MR. SCHUDEL: Yes, sir. Thank you.

17 CROSS-EXAMINATION BY MR. SCHUDEL:

18 Q. Ms. Lewis, I'd like to ask you to refer
19 to page 4, lines 16 through 18 on page 4 of your
20 direct which reads, "So Charter simply seeks some
21 reasonable and explicit parameters surrounding how
22 CenturyTel would propose to monitor and audit
23 Charter's use of a system." Did I read that
24 correctly?

25 A. You did.

1 Q. Charter's proposed language for
2 Article 10, Sections 8.3.2 and 8.3.3 --

3 MR. HALM: Excuse me, Mr. Schudel.
4 Could you -- could you direct us again to the page?

5 MR. SCHUDEL: Certainly. Page 4,
6 lines 16 through 18 of what I just read.

7 MR. HALM: Thank you. Okay.

8 BY MR. SCHUDEL:

9 Q. And -- and, Ms. Lewis, to resume my
10 questioning, Charter's proposed language in
11 Article 10, Sections 8.3.2 and 8.3.3 that appear on
12 pages 4 and 5 of your testimony, condition Charter's
13 ability to audit or monitor the -- excuse me --
14 condition CenturyTel's ability to audit or monitor
15 Charter's use of the OSS system of CenturyTel upon
16 the provision of prior consent by Charter; is that
17 correct?

18 A. That's correct.

19 Q. Charter's position is that this consent
20 may be withheld in Charter's sole discretion; isn't
21 that correct?

22 A. I'm not sure what you're -- do you have
23 a line item that you're referring to there?

24 Q. No. I'm just trying to understand the
25 words that you have proposed in 8.3.2 and 8.3.3. And

1 my question is, is it Charter's position that the
2 consent, the words that you've inserted in 8.3.2 and
3 8.3.3 means that Charter may withhold that consent
4 within its sole discretion?

5 A. Well, let's be clear about --

6 Q. Excuse me. Do you have an understanding
7 of my question?

8 A. Actually, I don't, so if you could
9 rephrase that for me.

10 Q. Does Charter -- well, let's back up.
11 You see where I'm referring on page 4, line 36 to the
12 boldfaced language, correct?

13 A. Uh-huh.

14 Q. And on page 5, lines 9 and 10, you again
15 see that boldfaced language, correct?

16 A. I do.

17 Q. Both of those boldfaced language speak
18 in terms of CLEC's consent. In this instance you
19 agree that CLEC is Charter, correct?

20 A. Yes, I agree.

21 Q. So my question is simply trying to
22 understand what your words that you've stated that
23 you're adopting in this testimony means. Does it
24 mean that Charter may withhold that consent in its
25 sole discretion?

1 A. It could withhold that consent.

2 Q. In its sole discretion?

3 A. In its sole discretion.

4 MR. SCHUDEL: All right. That's all I
5 have.

6 JUDGE PRIDGIN: Thank you. Bench
7 questions, Mr. Couch?

8 QUESTIONS BY MR. COUCH:

9 Q. This issue of OSS, can you tell me what
10 the problem is -- if Charter is using CenturyTel's
11 OSS, why would it be a problem for them to monitor
12 the use of that?

13 A. We don't have an issue with them
14 monitoring the use of the system, but the way the
15 language is in the current -- proposed language,
16 doesn't actually specify when, how, what, any kind of
17 parameters around what that actually means. So we
18 don't understand what that means to our business.

19 So that's why there's -- okay, then,
20 let's give consent absent some better language in
21 there to explain how's it gonna happen, what does it
22 mean, is there a time limit, what do we have to do to
23 comply, that sort of thing.

24 Q. In other words, if the wording was more
25 exacting or at least it seemed exacting to Charter,

1 then it would be all right for them to monitor --
2 this is the system that belongs to Charter --
3 CenturyTel, it would seem -- it would seem a
4 necessary part of their business with this to monitor
5 how it's being used, and I guess it's just a matter
6 of language more than it is --

7 A. Absolutely.

8 Q. Okay.

9 A. Uh-huh.

10 MR. COUCH: That's all I have.

11 JUDGE PRIDGIN: Thank you.

12 Ms. Dietrich?

13 QUESTIONS BY MS. DIETRICH:

14 Q. Going back to the questions about the
15 language on page 4, can you give me an example of
16 some auditing and monitoring functions that would be
17 acceptable?

18 A. Well, we'd just like to know generally
19 what does auditing mean, what does -- so if they told
20 us why they would do it, so is there a suspicion that
21 we've maybe done something wrong, is there something
22 that indicates that there's a need? What would --
23 what would the audit entail? Is it something -- are
24 we not granted access to the system during that
25 period of time that the audit's underway so our

1 business has to stop? It's pretty open-ended right
2 now.

3 Q. Has Charter proposed any kind of
4 language as how to define those terms that would be
5 acceptable or make it more understandable?

6 A. There is discussion about language that
7 we currently have in some of our other
8 interconnection agreements that really specifies more
9 what that -- why an audit would happen, some duration
10 or sort of a bit of a process as to how that audit
11 would be notified of and the expectations and
12 whatnot, so...

13 Q. I recall some discussion, or I think it
14 was perhaps with AT&T. Is there any examples of
15 language with CenturyTel that are already in place?

16 A. No.

17 MR. SCHUDEL: And let me say -- and I'm
18 a bit behind the time on this, but her answer to your
19 question went to one of the points in my motion to
20 strike, as you may recall. So again, in my ongoing
21 routine, I would preserve that objection.

22 JUDGE PRIDGIN: I understand. Thank
23 you, Mr. Schudel.

24 BY MS. DIETRICH:

25 Q. On issue 30, Charter is requesting

1 certain information about closed dates for
2 directories. Are you familiar with that?

3 A. Yes.

4 Q. Ms. Pam Hankins of CenturyTel states
5 that CenturyTel maintains a spreadsheet of directory
6 information. Have you reviewed CenturyTel's on line
7 spreadsheet or publication of information?

8 A. Yes.

9 Q. And that's not sufficient for what you
10 need?

11 A. The issue is really we wanted some
12 language in here that says that certain data elements
13 will be included. It wasn't until recently that we
14 got some more information that tells us about the
15 closed dates, particularly when closed dates change,
16 which areas are included in particular directories,
17 that sort of thing.

18 Q. So that information is available now?

19 A. It is available now. It's fairly recent
20 that that all became available.

21 Q. And is that information satisfactory,
22 then?

23 A. Currently, but what we're looking for is
24 something that says that those data elements will
25 be -- contractually that they'll still supply those

1 data elements because tomorrow they could no longer
2 supply that -- what they're supplying today.

3 Q. On page 13 of the direct testimony
4 beginning at line 20, you discuss a problem with
5 CenturyTel's third-party vendor. Do you see that?

6 A. Uh-huh.

7 Q. Is Charter suggesting CenturyTel should
8 make any contact with the third-party vendor because
9 it is CenturyTel's vendor?

10 A. Yes.

11 Q. I don't know if you're familiar with the
12 DPL language on that issue.

13 A. I don't have that in front of me.

14 Q. Okay. There's -- in the DPL there's a
15 whole paragraph. It's called "CenturyTel
16 Obligations." And it talks about CenturyTel will
17 accept, include and maintain in the same manner that
18 CenturyTel treats listings of its own end user CLEC
19 subscriber --

20 MR. HALM: Excuse me, your Honor.

21 JUDGE PRIDGIN: I'm sorry. Did you wish
22 to approach with that language?

23 MR. HALM: I apologize for the
24 interruption. Just so she's got a copy to look at.

25 MS. DIETRICH: I'm on page 106 of the

1 DPL.

2 JUDGE PRIDGIN: Thank you.

3 MR. HALM: Thank you.

4 THE WITNESS: Okay. I'm there.

5 BY MS. DIETRICH:

6 Q. Do you see the section where it says
7 "CenturyTel Obligations" and there's several lines
8 there?

9 A. "CenturyTel Obligations." I've got
10 CenturyTel's language on page 106, right.

11 Q. Page 106, the column says "Charter's
12 Language."

13 A. Okay. Sorry. Gotcha.

14 Q. If Charter's issue is that CenturyTel
15 should make the contact with the vendor, then why not
16 just say that instead of including all those
17 additional obligations to CenturyTel?

18 A. It's my understanding that this is --
19 they're required to do this under the law anyways.

20 Q. Do what under the law?

21 A. Accept our directory listing information
22 from our -- that we supply to them as part of the
23 directory service requests -- it's a page on the top
24 of the local service request -- to be able to process
25 that, put that into their databases.

1 Today we actually -- in the past they
2 refused to accept that information, so we've had to
3 go around the system and send it directly to the
4 publisher and directly to a national database.

5 Q. Okay.

6 A. And then the issue here or that we had
7 with CenturyTel in the past is that their vendor
8 wasn't also dipping that national database, so
9 CenturyTel's customers, when requesting Charter
10 customer directory information, were not receiving
11 it. I know, it's confusing.

12 Q. So the issue is more than just making
13 sure that CenturyTel makes the contact with the
14 vendor? There's several issues with the directory
15 listings and how the information is passed on to
16 their vendor and how it's maintained and that type of
17 thing?

18 A. Correct. This language speaks to that
19 obligation under the law.

20 Q. And in rebuttal testimony on page 7
21 beginning at line 32 and then continuing on to page 8
22 through line 2, you're talking about CenturyTel
23 distributing electronic notices about directory
24 closing dates, and it appears that those notices do
25 not provide enough detail; is that correct?

1 MR. MOORMAN: Excuse me, your Honor.

2 Ms. Dietrich, is this in her rebuttal? I'm sorry. I
3 missed it.

4 MS. DIETRICH: Yes, rebuttal.

5 MR. DODGE: Bottom of page 7 on top of
6 page 8.

7 MR. MOORMAN: Thank you.

8 THE WITNESS: Correct.

9 BY MS. DIETRICH:

10 Q. Okay. What is provided in the notices
11 that are received?

12 A. Well, now, fairly recently, it includes
13 the directory name, it's got the NPA -- I don't have
14 one in front of me, so -- and it's got what those
15 cutoff dates are. And I think it's actually starting
16 to highlight now if they changed. Before, if
17 something changed, we couldn't tell what changed.

18 Q. Okay. And is there additional
19 information that is needed on those notices that is
20 not provided?

21 A. What we would like to see from a data
22 element perspective -- when I mean data element, I'm
23 talking about a date or a name, that sort of thing --
24 so the names of the directories, the areas that they
25 cover, typically the way the areas that a directory

1 covers via NPA and expenses, the closed date and then
2 if the closed date is going to be changed or if it's
3 changed what the old closed date was versus what the
4 new closed date is.

5 Q. Okay. And I was trying to get down as
6 you talk, it sounds like most if not all of the
7 things that you would like to see are on the notices?

8 A. They are now, but we'd like to make sure
9 that it stays that way, that that information stays
10 there.

11 Q. Okay. And then going to your comment
12 about if the date was changed, you not only would
13 like to see the new date but the old date, what value
14 does having the old date provide? Why -- why is that
15 an issue?

16 A. Well, we need to make sure from a
17 business perspective that we've got things in in
18 time. So depending on if -- how -- how different
19 that is in the change from the old date to the new
20 date, we might be missing changes into a directory
21 because it might be a six-month period of time where
22 we're operating under an old date, that sort of
23 thing. So we want to make sure that we understand
24 what that cutoff date is so that the customer's
25 information does make that publication.

1 Q. Have there been times where the new date
2 is prior to what you were previously aware of?

3 A. I can't speak to that one. I'd have
4 to...

5 MS. DIETRICH: That's all. Thank you.

6 JUDGE PRIDGIN: Mr. Van Eschen?

7 QUESTIONS BY MR. VAN ESCHEN:

8 Q. So is issue No. 30 resolved?

9 A. No.

10 Q. I thought I heard -- was the issue you
11 just -- you just want to see CenturyTel continue what
12 they're currently doing; is that correct?

13 A. We want it -- we want to have the
14 language in the interconnection agreement that they
15 will continue to provide the data elements that we're
16 looking for.

17 Q. And what they're currently providing is
18 satisfactory; is that correct?

19 A. Yes.

20 Q. Okay. All right. And in regards to
21 issue 32, directory assistance obligations, is it
22 accurate to say that when CenturyTel says that
23 Charter already sends its list to the national
24 database, is that correct?

25 A. We send our directory listings to the

1 national database in the states in which we compete
2 with CenturyTel.

3 Q. So the answer is yes, right?

4 A. Not globally, just in the states in
5 which we compete with CenturyTel.

6 Q. Okay. So in Missouri --

7 A. In Missouri.

8 Q. -- you send it to the national database?

9 A. That's correct.

10 Q. And so if that happens, somebody tries
11 to get a number through directory assistance, they're
12 gonna get the number; is that right?

13 A. Only if that directory assistance
14 provider, that third-party vendor, also dips into the
15 national database.

16 Q. All right.

17 A. They'll dip into the local. If they
18 don't also dip into the national, they wouldn't get
19 the customer's information.

20 Q. Okay. Do you concur with, I believe
21 it's Mr. Miller's assertion that it's really not a
22 good idea to have both Charter and CenturyTel insert
23 Charter's listings into a database? And I think he,
24 you know, noted that the problem is, you might get
25 duplicate listings because if CenturyTel references a

1 road and Charter references a street, that would not
2 be an identical listing and so the listing would get
3 listed twice. Is that your understanding of how
4 things would work?

5 A. It is not.

6 Q. No?

7 A. No. In our other markets, there is
8 indicators on -- on the directory service request,
9 DSR, which is part of the local service request that
10 can stay as is. So you're leaving the publication as
11 it is with the ILEC, so there isn't actually
12 submitting a second listing, it's just keeping in
13 there what's already in there unless the customer
14 makes a change. So we can change that current record
15 to reflect whatever that change is. We do it all the
16 time. We haven't had that issue.

17 Q. All right. In regards to issue 28, do
18 you have other interconnection agreements where ILEC
19 has the right to audit your access to the operational
20 support system?

21 A. Yes, we do.

22 Q. And how is that wording different than
23 what CenturyTel is proposing?

24 A. So the -- well, for example, AT&T,
25 formerly SBC, they will audit the system. If they

1 have a suspicion of misuse, they'll notify us of that
2 suspicion. They have sort of a whole process by
3 which they follow to conduct that audit. So we're
4 aware that it's happening.

5 And in particular, they have language in
6 their agreement that specifies that those folks
7 conducting the audit will keep that information
8 confidential so it's not going to be shared within
9 the company for people who do marketing,
10 retention-type purposes and -- which has been an
11 issue.

12 Verizon was using information that was
13 submitted through their OSS to conduct marketing
14 tactics to essentially get in the way of competition.

15 Q. So in regards to your arrangements with
16 AT&T, AT&T could only audit your access to AT&T's OSS
17 if they think you're misusing; is that accurate?

18 A. Yes.

19 Q. Do they just have to assert that they
20 think you're misusing it?

21 A. They'd just send a letter. We haven't
22 been accused of that thus far, but --

23 Q. So that really hasn't been tested?

24 A. Been tested, yeah.

25 Q. Okay.

1 A. So -- but the thing that's really
2 important to us is to make sure that the information
3 that's obtained through that audit or any sort of
4 monitoring of our use of the OSS system is not being
5 used for anticompetitive behavior that would create
6 an unfair advantage. So that was a situation that
7 was found in another ILEC and frowned upon.

8 MR. VAN ESCHEN: All right. I don't
9 believe I have any other questions.

10 JUDGE PRIDGIN: Thank you. Anything
11 else from the bench?

12 (NO RESPONSE.)

13 JUDGE PRIDGIN: Cross based on bench
14 questions?

15 MR. SCHUDEL: Just briefly.

16 JUDGE PRIDGIN: Yes, sir.

17 CROSS-EXAMINATION BY MR. SCHUDEL:

18 Q. With regard to the prior problems that
19 you've identified in the directory assistance area,
20 am I correct that those related to the state of
21 Wisconsin?

22 A. The -- I'm sorry -- what problems?

23 Q. What you testified to as the prior
24 directory assistance -- assistance problems with
25 CenturyTel, those related to the state of Wisconsin,

1 if I understand correctly?

2 A. Yes.

3 Q. And those -- in point of time or during
4 2007 or at least prior to the end of 2007; is that
5 accurate?

6 A. I don't have the exact date.

7 Q. Does that sound right?

8 A. That might be right.

9 MR. SCHUDEL: Okay. That's all I have.

10 JUDGE PRIDGIN: All right. Thank you.

11 Redirect?

12 MR. HALM: Yes, your Honor.

13 REDIRECT EXAMINATION BY MR. HALM:

14 Q. Ms. Lewis, Mr. Van Eschen asked you
15 about whether or not there could be a problem with
16 the submission of duplicative information if Charter
17 and CenturyTel both submitted directory assistance
18 information in the same database. I think you said
19 that that generally would not be a problem when you
20 submit DSRs; is that right?

21 A. Correct.

22 Q. When you use the DSR process?

23 A. Correct.

24 Q. Are you able to use the DSR process with
25 CenturyTel today?

1 A. We are not.

2 Q. And why not?

3 A. They wouldn't process the information
4 that we submitted on the DSRs for us.

5 Q. So you tried to submit this type of
6 information through the DSRs and they said they
7 wouldn't process it?

8 A. That's correct.

9 Q. And in response to a question from
10 Ms. Dietrich, you referenced dipping a database.
11 What does that mean, dipping?

12 A. Sorry. When -- if a customer dials 411
13 and they get a directory assistance provider. So in
14 a lot of cases, ILECs use a third party like a call
15 center, a computer system, whatnot. That system
16 would have to go to a database, dip into the database
17 to retrieve the information for Patty Lewis's
18 address.

19 So if they dip into the local database
20 and I'm not in there, it would return "information
21 not available." But if they first dip there and
22 don't -- didn't find anything, they would need to dip
23 to the national database, maybe they can dip them at
24 the same time, I don't know technically, but then
25 they would have found me in this case.

1 So in the prior issue that we had with
2 CenturyTel, their third-party vendor was not also
3 dipping that national database. So when their
4 customers, CenturyTel's customers dialed 411 asking
5 for Patty Lewis, they wouldn't find me.

6 MR. HALM: Great. No further questions.
7 Thank you. Thank you, your Honor.

8 JUDGE PRIDGIN: Thank you. All right.
9 Ms. Dietrich? Yes, ma'am.

10 QUESTIONS BY MS. DIETRICH:

11 Q. There was some exchange about DSRs.

12 A. Uh-huh.

13 Q. Is the DSR a CenturyTel form -- or
14 excuse me, a Charter form?

15 A. No. It's an industry standard form.

16 Q. Okay.

17 A. The ordering and billing form which is
18 an industry-standard-setting body, if you will, that
19 carriers participate in, so it's a standard format.

20 Q. I see.

21 A. There's some fields that maybe an ILEC
22 chooses to use or not to use. There's a bunch of
23 goofy fields on there of information, extra
24 information that is not necessarily needed to
25 negotiate all the local number portability.

1 Q. To negotiate?

2 A. I'm sorry, local number portability.

3 JUDGE PRIDGIN: Further bench questions?

4 (NO RESPONSE.)

5 JUDGE PRIDGIN: Cross based on that
6 redirect?

7 (NO RESPONSE.)

8 JUDGE PRIDGIN: All right. Ms. Lewis,
9 thank you very much. You may step down.

10 I'm showing the clock to show about
11 3:15. This looks to be a convenient time to break.
12 I'd like to break for about 15 minutes, and it looks
13 like Ms. Giaminetti would be the next and final
14 Charter witness; is that correct?

15 If I could get -- during the break if I
16 could get counsel to at least consider talking -- it
17 looks like the first witness that CenturyTel would
18 want to put on would be Mr. Watkins, and depending on
19 how long Ms. Giaminetti's testimony takes, it looks
20 like Mr. Watkins has several issues and maybe
21 Mr. Miller has several issues. But you also have
22 other witnesses who don't have as many issues.

23 And my -- my goal for getting you to
24 discuss maybe considering moving the witnesses around
25 is to maybe get a witness complete around five

1 o'clock rather than have Mr. Watkins stopping in the
2 middle of his testimony and us having to pick back
3 up.

4 But if it's something you're not
5 comfortable with, I sure don't want to force you to
6 do it. But if it's something you can at least talk
7 about, I would appreciate it.

8 Is there anything else from counsel
9 before we go off the record?

10 (NO RESPONSE.)

11 JUDGE PRIDGIN: All right. Let's
12 reconvene, then, at 3:30. Thank you. We're off the
13 record.

14 (A RECESS WAS TAKEN.)

15 (EXHIBIT NO. 24 WAS MARKED FOR
16 IDENTIFICATION BY THE COURT REPORTER.)

17 JUDGE PRIDGIN: We're back on the
18 record, please. When we went off record, I noted
19 that it looks like Ms. Giaminetti is the final
20 Charter witness, and I asked counsel to at least
21 consider speaking about considering moving some of
22 the CenturyTel witnesses around to try to get more
23 witnesses in today that don't have as many issues or
24 as much direct testimony as others. And I didn't
25 know if counsel had a chance to visit about that?

1 MR. SCHUDEL: We did, your Honor.

2 JUDGE PRIDGIN: Okay. Any -- any
3 announcements?

4 MR. SCHUDEL: I would estimate based
5 upon the time that has been taken by the previous
6 Charter witnesses, that we ought to be done with
7 Ms. Giaminetti by 4:15, shall we say, at the latest.

8 If your Honor and your staff would be
9 willing, as you indicated earlier today, to stay
10 beyond 5:00, if you wish, we'd certainly like to stay
11 with our order. We -- we have socialized that with
12 the counsel for -- for Charter ahead of time and
13 bring Mr. Watkins on. And we relied on that in
14 preparing our witnesses for today.

15 JUDGE PRIDGIN: Okay. So is it my
16 understanding that you would prefer to, after
17 Ms. Giaminetti is finished, to have Mr. Watkins go,
18 and then that might necessitate us going beyond five
19 o'clock?

20 MR. SCHUDEL: Yeah, and we're prepared
21 to stay -- stay to a reasonable hour which I would
22 just throw out 6:00, and if, per chance, he's not
23 done, then we'll have him here tomorrow.

24 JUDGE PRIDGIN: All right.

25 MR. HALM: And, your Honor, just for the

1 record, we would be willing to switch the order of
2 the witnesses. I mean, we could probably be finished
3 with Ms. Hankins and Mr. Schultheis, at least
4 Ms. Hankins and probably Mr. Schultheis by the end of
5 the day which would then allow us to have a complete
6 period of time tomorrow morning to cross Mr. Watkins.

7 MR. SCHUDEL: And I would just respond
8 that if -- if they had planned their lives to be away
9 from Jeff City tomorrow and could leave tonight, that
10 would make a difference. It -- it doesn't. They're
11 planning to be here. They will be here tomorrow, so
12 I would stand by my earlier remarks.

13 JUDGE PRIDGIN: If -- if -- you know, if
14 the parties -- if the parties aren't gonna come to an
15 agreement, I'll just stick with the order as was
16 presented in that e-mail and we'll go with
17 Mr. Watkins because it sounds like that's what
18 everybody had relied on previously.

19 If counsel wants to do something
20 different, we certainly can, but if they're -- if
21 you're not able to agree on how to fit things in,
22 we'll just continue with the order and would more
23 than likely cut off either at the end of Mr. Watkins'
24 examination or somewhere around six o'clock if his
25 examination is continuing. Does that sound agreeable

1 to counsel?

2 MR. SCHUDEL: Thank you, your Honor.

3 JUDGE PRIDGIN: And -- all right. And
4 Ms. Giaminetti, you've taken the stand; is that
5 correct?

6 (The witness was sworn.)

7 JUDGE PRIDGIN: Thank you very much.
8 And I should have inquired, is there anything further
9 from counsel before Ms. Giaminetti stands cross?

10 MR. OVERCASH: Your Honor, James
11 Overcash, CenturyTel. There is an exhibit that has
12 been marked as Exhibit No. 24. It reflects the
13 drawing that was made this morning by Charter witness
14 Gates. It has been given to the court reporter, and
15 I believe between Mr. Dodge and myself, we would
16 jointly offer that into the record.

17 JUDGE PRIDGIN: So Exhibit 24 would be
18 a -- would be a drawing, and you might need to refresh
19 my recollection. Was it Mr. Webber or Mr. Gates --

20 MR. OVERCASH: It was Mr. Gates, I
21 believe, your Honor.

22 JUDGE PRIDGIN: That made the -- that
23 made the drawing. And this was a joint exhibit; is
24 that correct?

25 MR. OVERCASH: However you'd like to do

1 it. I think --

2 MR. SCHUDEL: I think it's jointly
3 offered.

4 JUDGE PRIDGIN: Okay. Since it's
5 jointly offered, I'm gonna assume there's no
6 objection, but just in case.

7 MR. OVERCASH: We have no objections,
8 your Honor.

9 JUDGE PRIDGIN: All right.

10 MR. DODGE: Well, your Honor -- no
11 objections.

12 JUDGE PRIDGIN: All right. Exhibit 24
13 is offered and admitted.

14 (EXHIBIT NO. 24 WAS RECEIVED INTO
15 EVIDENCE AND MADE A PART OF THE RECORD.)

16 JUDGE PRIDGIN: Anything further?

17 MR. SCHUDEL: Maybe a housekeeping
18 matter.

19 JUDGE PRIDGIN: Yes, sir.

20 MR. SCHUDEL: In connection with the
21 data requests that were received as 23, it would be
22 nonproprietary. There were -- was an identification
23 of three interconnection agreements and the Charter
24 Missouri tariffs.

25 Just as a matter of recordkeeping, did

1 you wish to have those marked in any way or are you
2 just taking administrative notice of those so that we
3 understand they are officially a part of the record?

4 JUDGE PRIDGIN: They would -- and I can't
5 say that I've gone through that entire stack of
6 Exhibits 23.

7 MR. SCHUDEL: Sure.

8 JUDGE PRIDGIN: I'm comfortable with
9 taking notice of any kind of interconnection
10 agreements or tariffs that are on file with the
11 Commission.

12 MR. SCHUDEL: The -- I believe it's the
13 response to data request 1 referenced -- referenced
14 the interconnection agreements, and the tariffs, I
15 believe, John, are 7. I'm not 100 percent sure.

16 MR. DODGE: That sounds right.

17 MR. SCHUDEL: Yeah. The point is,
18 they're simply enumerated under those two responses.
19 I thought it was an easy way to reference them.

20 JUDGE PRIDGIN: I think -- I think
21 that's fine. I see no reason for you to have to file
22 something extra as long as it's somehow identified
23 where we can look it up in our -- in our records.

24 MR. SCHUDEL: Are you okay with that?

25 MR. DODGE: Yes.

1 MR. SCHUDEL: We'll proceed on that
2 basis, then.

3 JUDGE PRIDGIN: All right. Very good.
4 Thank you. Anything further?

5 (NO RESPONSE.)

6 JUDGE PRIDGIN: All right.
7 Ms. Giaminetti is on the stand. Anything from
8 Charter before she stands cross?

9 (NO RESPONSE.)

10 DIRECT EXAMINATION BY MR. DODGE:

11 Q. Ms. Giaminetti, thank you for your
12 patience today. Good afternoon. I know you've been
13 supplied with a copy of your direct and rebuttal
14 testimonies. Do you have any changes to note before
15 being tendered for cross here today?

16 A. Yes, I have two minor changes.

17 Q. Okay. Could you enumerate those for the
18 court reporter and the rest of us, please?

19 A. First of all, on page 32 of my direct
20 testimony, appears it's on line 23. The testimony
21 currently references another state that should
22 really -- so it currently says "thus" and another
23 state, and it should say "thus and Missouri."

24 Q. I'm sorry. Could you give the page and
25 line number again?

1 A. I'm sorry. Of direct -- my direct
2 testimony, page 32, line 23.

3 The second correction is in my rebuttal
4 testimony. It's on page 4, line 24. There is an
5 amount reference currently in the testimony of
6 "\$110.26." That should be "\$69.77." And those are
7 the only corrections that I have.

8 MR. DODGE: With that, your Honor, she
9 is available for cross-examination.

10 JUDGE PRIDGIN: All right. Thank you.
11 And do you wish to offer Exhibit 12 at this time?

12 MR. DODGE: I go to too many states,
13 your Honor. If appropriate, Charter would move the
14 admission of Exhibits 11 and 12 at this time.

15 JUDGE PRIDGIN: All right. Thank you.
16 Any objections?

17 MR. SCHUDEL: No, sir.

18 JUDGE PRIDGIN: Very good. Exhibits 11
19 and 12 are admitted.

20 (EXHIBIT NOS. 11 AND 12 WERE RECEIVED
21 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

22 JUDGE PRIDGIN: Cross-examination?

23 MR. MOORMAN: Yes.

24 CROSS-EXAMINATION BY MR. MOORMAN:

25 Q. Good afternoon, Ms. Giaminetti. My name

1 is Tom Moorman. I'm going to be cross-examining you
2 today.

3 A. Good afternoon.

4 Q. On page -- if you could turn to page 1,
5 line 6 to 7 of your rebuttal testimony.

6 A. Yes, sir.

7 Q. Am I correct when I read that the
8 reference to Charter includes both Charter
9 Communications, Inc. and its subsidiary, Charter
10 Fiberlink-Missouri, LLC, the petitioner in this
11 proceeding?

12 A. That is correct.

13 Q. Thank you. If you would turn to page 17
14 of your rebuttal. On line 13 am I correct that your
15 reference to Charter is to Charter
16 Fiberlink-Missouri, LLC?

17 A. That's correct.

18 Q. On lines 16 to 17 on that same page, am
19 I correct that your reference to Charter refers again
20 to Charter Fiberlink-Missouri, LLC?

21 A. That's correct.

22 Q. On line 25 of that same page, am I
23 correct that your reference to Charter is to Charter
24 Communications?

25 A. That is correct.

1 Q. And on line 26, am I correct that your
2 first reference to "company" is also to Charter
3 Communications?

4 A. That is correct.

5 Q. And on line 26, is the second reference
6 to the "company" Charter or is your second reference
7 to the word or term "company," that is also to
8 Charter Communications?

9 A. That is correct.

10 Q. Turning to page 18 of your rebuttal
11 testimony, am I correct that -- on line 1, am I
12 correct that your reference to "Charter" is to
13 Charter Communications?

14 A. That is correct.

15 Q. On line 3, am I correct that your
16 reference to, quote, unquote, we, is also to Charter
17 Communications?

18 A. That is correct.

19 Q. On line 8, am I correct that your
20 reference to the word "we" is to Charter
21 Communications?

22 A. That is correct, but Charter-Fiberlink
23 is a wholly owned subsidiary of Charter
24 Communications, so when we say "we," we're talking
25 about the combined company.

1 Q. So the term "we" in line 8 is to Charter
2 Communications?

3 A. But Charter-Fiberlink is the CLEC entity
4 that offers voice services. So although Charter
5 Communications and its wholly owned subsidiary,
6 Charter Fiberlink, we're saying "we," but who offers
7 voice services is the CLEC, Charter-Fiberlink. I
8 just want to make sure that's clear.

9 Q. But Charter-Fiberlink of Missouri, LLC
10 only offers service within the state of Missouri,
11 correct?

12 A. That's correct.

13 Q. On line 13 of page 18, am I correct that
14 your reference to the term, quote, unquote, we've,
15 w-e, apostrophe, v-e, is to Charter Communications?

16 A. That is correct.

17 Q. On line 14, am I correct that your
18 reference to, quote, unquote, Charter is to Charter
19 Communications?

20 A. That is correct.

21 Q. On line 15, am I correct that your
22 reference to the word, quote, unquote, we, is also to
23 Charter Communications?

24 A. That is correct.

25 Q. On line 15, am I correct that your

1 reference to "Charter" after the word "also" comma,
2 is to Charter Communications?

3 A. That is correct.

4 Q. On line 17, am I correct that your
5 reference to "Charter" in -- on line 17 is -- is to
6 Charter Communications?

7 A. That is also correct.

8 Q. On line 23, am I correct that your
9 reference to "Charter" there is to Charter
10 Communications?

11 A. That is correct.

12 Q. And on line 25, am I correct that your
13 reference there to "Charter" is to Charter
14 Fiberlink-Missouri, LLC?

15 A. That is correct.

16 Q. Thank you. Subject to check, on your
17 direct testimony, page 21, lines 16 to 18, you
18 stated, quote, Charter has never defaulted on any
19 obligation to CenturyTel or any other carriers; is
20 that correct?

21 A. That is correct.

22 Q. Turning to your rebuttal testimony on
23 page 15, lines 6 to 8, am I correct that you state
24 there, "I would like to reiterate that Charter has
25 never defaulted on an interconnection agreement"?

1 A. That is definitely correct.

2 Q. And on page 21, lines 20 to 21 of your
3 rebuttal, you state, As I mentioned in my direct
4 testimony, Charter has never defaulted on any
5 interconnection agreement obligation?

6 A. I'm sorry. Could you point me to that
7 reference again, what -- what page?

8 Q. Sure. Page 21.

9 A. Okay.

10 Q. Lines 20 to 21.

11 A. That's correct.

12 MR. DODGE: Tom, forgive me. When you
13 read that, did you say "and" or "any"?

14 MR. MOORMAN: As I -- why don't we read
15 it again. "As I mentioned in my direct testimony,
16 comma, Charter has never defaulted on an
17 interconnection agreement obligation."

18 MR. DODGE: Thank you.

19 BY MR. MOORMAN:

20 Q. And that is, Ms. Giaminetti -- excuse
21 me -- a correct recitation of your testimony on
22 page 21 of your rebuttal, lines 20 to 21?

23 A. That is correct.

24 Q. Turning to your exhibits, if you would,
25 schedule PG-1 of your rebuttal testimony -- do you

1 have that?

2 A. Yes, I do.

3 Q. This is a letter that indicates the "Re"
4 line, "Notice from CenturyTel-Wisconsin ILEC's
5 footnote collectively, CenturyTel to
6 Charter-Fiberlink, LLC Charter, July 11th, 2007,"
7 with reference to an agreement in Wisconsin; is that
8 correct?

9 A. That is correct.

10 Q. Am I correct that in response to that
11 letter, isn't -- or isn't it true that in response to
12 that letter, Charter paid CenturyTel approximately
13 39,000 or a little bit over \$39,000?

14 A. That's not my understanding at all.

15 MR. MOORMAN: Your Honor, I would like
16 to approach the witness with a communication to help
17 refresh her memory.

18 JUDGE PRIDGIN: You may.

19 MR. MOORMAN: And I'd like to have this
20 communication identified as Exhibit 25 or --

21 JUDGE PRIDGIN: I'm on 25. If that's
22 what counsel is showing, I've got 25.

23 (EXHIBIT NO. 25 WAS MARKED FOR
24 IDENTIFICATION BY THE COURT REPORTER.)

25 BY MR. MOORMAN:

1 Q. Ms. Giaminetti, this is an e-mail from
2 Julia Lorenz to Pam Hankins dated Friday, July 27,
3 2007, time-stamped or timed 5:35 p.m.; is that
4 correct?

5 A. That's correct.

6 Q. And on the cc line, a variety of
7 individuals, but the last individual is "Giaminetti,
8 comma, Peggy."

9 A. That's me.

10 Q. And that's you?

11 A. That's correct.

12 Q. And in this e-mail, Ms. Lorenz indicates
13 that they will be paying an account payable of
14 \$39,680.15. Is that what this says?

15 A. That's what this says, yes.

16 Q. And is it your understanding that this
17 payment was made in response to the July 11th, 2007
18 letter that you included as schedule PG-1?

19 A. Could I have a few minutes to refresh my
20 memory as to this e-mail, please?

21 Q. Sure.

22 A. Okay. I've read the e-mail. Thank you.

23 Q. Do you remember the question that I just
24 posed?

25 A. No. Could you repeat it, please?

1 Q. Am I correct that the payment of
2 \$39,680.15 referenced in the e-mail from Julia Lorenz
3 to Pam Hankins that you have before you, Exhibit 25,
4 was made in response to the July 11th, 2007 letter
5 that you included as schedule PG-1 to your rebuttal
6 testimony?

7 A. Well, although I see that this payment
8 was made, I don't think this has anything to do with
9 the amounts that were in dispute and continue to be
10 in dispute. So this talks about where we made a
11 payment, and again, I don't have all of the -- I
12 don't remember all the circumstances behind this
13 payment.

14 Certainly we made a payment that we sent
15 to CenturyTel but we continued -- as Julie states
16 further down in the e-mail, that we continued to
17 dispute the Wisconsin service order charges. We have
18 two agreements in Wisconsin, one was for the rural
19 and one was for nonrural. And it's my understanding
20 that we were being billed, I believe it's the
21 nonrural service charges on either the rural or
22 nonrural incorrectly.

23 And for a period of time, CenturyTel
24 removed those from our bill routinely when we
25 disputed them, and then all of a sudden they stopped

1 removing them, and that was part of the reason why
2 this letter was sent.

3 And subsequent to this letter,
4 CenturyTel agreed to honor that dispute and remove
5 those amounts. So I think from looking at this,
6 these two things really aren't even related.

7 Q. So the payment of thirty -- according to
8 your recollection, the payment of \$39,680.15 was not
9 related to the July 21st, 2007 letter?

10 MR. SCHUDEL: July 11th.

11 THE WITNESS: From as much --

12 BY MR. MOORMAN:

13 Q. July --

14 A. -- as I can read this letter and try to
15 remember the circumstances that happened, certainly
16 we received this demand letter, but it was really
17 related to our disputes in both Wisconsin and
18 Missouri, and this just simply was a payment that we
19 made for valid charges.

20 Q. And in the response that you just
21 provided, you were referencing two agreements in the
22 state of Wisconsin; is that correct?

23 A. That's correct.

24 Q. A rural agreement, let's call it, and a
25 nonrural agreement; is that correct?

1 A. That is correct.

2 Q. And the nonrural agreement, are you
3 familiar with that?

4 A. I'm familiar that there is a rural and
5 nonrural agreement, but I can honestly say I have not
6 looked at the interconnection agreement that pertains
7 to both of those.

8 MR. MOORMAN: Your Honor, I'd like to
9 have identified as Exhibit 26 -- if I could approach?

10 JUDGE PRIDGIN: Certainly.

11 (EXHIBIT NO. 26 WAS MARKED FOR
12 IDENTIFICATION BY THE COURT REPORTER.)

13 MR. MOORMAN: -- a copy of the adoption
14 notice as well as portions of the -- of the agreement
15 that refers to the nonrural companies that I believe
16 are cross-referenced as well in the PG -- schedule
17 PG-1. And those are -- the nonrural companies are
18 CenturyTel of the Midwest Kendall, LLC, CenturyTel of
19 Central Wisconsin, LLC and Telephone USA of
20 Wisconsin, LLC.

21 BY MR. MOORMAN:

22 Q. You've seen those references,
23 Ms. Giaminetti?

24 A. I have seen the references. I have
25 never seen this letter previously.

1 Q. In the attached excerpts from the
2 agreement, you reference local service charges, I
3 think, in your response to me that you said, "One of
4 the agreements didn't have LSR charges, one of them
5 did."

6 In appendix B to the interconnection
7 resale on bundling agreement between CenturyTel of
8 the Midwest Kendall LLC, CenturyTel of Wisconsin,
9 LLC -- of Central Wisconsin, LLC, Telephone USA of
10 Wisconsin, LLC and Sprint Communications Company
11 which was the adopted agreement that you entered
12 into.

13 There's an appendix B, "Rates and
14 charges for number portability." Do you see that?

15 A. I confess I don't see anything that says
16 rates and charges -- okay, yes, I do.

17 Q. And there -- down on that page, there's
18 bolded language, "Nonrecurring charges, NRCs for
19 number portability." Do you see that?

20 A. Yes, I do.

21 Q. And you see "Ordering and Provisioning,"
22 the second subsection of charges underneath that
23 heading?

24 A. Yes, I do.

25 Q. And the first one is labeled "Initial

1 service order"?

2 A. Yes, I do.

3 Q. And is it -- would you not agree that
4 those are the service order charges that was being --
5 were being referenced by you and by Ms. Lorenz in her
6 e-mail dated Friday, July 27th, 2007 which has been
7 marked as Exhibit 25?

8 A. Again, it's very hard for me to read
9 this e-mail just seeing it today when remembering the
10 circumstances that occurred over a year ago. I do
11 know we are paying the 41.58 charges, and this is the
12 rural or nonrural, I keep forgetting which one this
13 is.

14 But it was the charges in the other
15 agreement that we were formally disputing, that we
16 talk about in Ms. Lorenz's e-mail. We have not
17 disputed this 41.58 charge because, although -- and
18 it's an exorbitant rate -- we did agree to it, and if
19 it's in the terms of our agreement, we are paying all
20 charges that are in our interconnection agreements.

21 MR. MOORMAN: Your Honor, I would like
22 to have moved into evidence Exhibit 25 and
23 Exhibit 26.

24 JUDGE PRIDGIN: 25 and 26 are offered.
25 Any objections?

1 MR. DODGE: Your Honor, a clarifying
2 question. May -- may we ask for the matter asserted
3 underlying both of these exhibits?

4 MR. MOORMAN: She had indicated that
5 there was no default or nonpayment under ICAs, and
6 she has indicated that she has been making payments.
7 And she agreed that the payments under the CenturyTel
8 rural c] agreement for local service orders
9 associated with -- or initial service order charges
10 for rates and charges for number porting -- number
11 portability order and provisioning were being paid.
12 And I think it goes to the credibility of her
13 assertions within her -- her testimony on the -- on
14 that fact.

15 MR. HALM: Mr. Moorman, you just
16 referred to the rural agreement. Did you mean to say
17 the nonrural agreement?

18 MR. MOORMAN: Yes.

19 MR. DODGE: We would object to both
20 on -- on the grounds of relevance and foundation. I
21 believe what Ms. Giaminetti testified, both in her
22 prefiled written testimony and here today, was that
23 there has been no default of an interconnection
24 agreement, and we don't believe that either of these
25 e-mails, as Ms. Giaminetti has so eloquently stated

1 on the stand, goes to the issue that Mr. Moorman has
2 now raised.

3 MR. MOORMAN: Your Honor, may I respond?

4 JUDGE PRIDGIN: You may.

5 MR. MOORMAN: The concept of default
6 under an interconnection agreement is a legal
7 conclusion. And while counsel may assert that as
8 its -- as his legal conclusion, he can continue to
9 argue that in the -- in the brief. But the facts
10 that I have offered these exhibits for stand as the
11 facts.

12 JUDGE PRIDGIN: All right. I'm going
13 to overrule the objections, and 25 and 26 are
14 admitted.

15 (EXHIBIT NOS. 25 AND 26 WERE RECEIVED
16 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

17 JUDGE PRIDGIN: Further cross?

18 MR. MOORMAN: Nothing further.

19 JUDGE PRIDGIN: All right. Thank you.
20 Bench questions? Mr. Couch, any questions?

21 MR. COUCH: No.

22 JUDGE PRIDGIN: Mr. Van Eschen?

23 MR. VAN ESCHEN: I believe a couple.

24 QUESTIONS BY MR. VAN ESCHEN:

25 Q. Let's see. If Charter doesn't pay its

1 bill that it receives from CenturyTel, can and
2 CenturyTel provide written notice that it plans to
3 terminate service to Charter? What -- what are you
4 recommending happen?

5 A. Well, I think, you know, as kind of
6 what's happened in the past, we spend a considerable
7 amount of time going through these bills on a monthly
8 basis. Probably takes us two and a half times more
9 to dispute the charges with a CenturyTel process as
10 any of the other service providers that we deal with.

11 What we would propose is to really make
12 sure that the language in our Internet connection
13 agreements, we remove all the ambiguity from the
14 amounts so we exactly know from both sides what's the
15 correct amount of charges to pay.

16 You know, in the past there have been
17 charges they've billed us for that clearly are not in
18 our agreement. They've referenced tariffs or UNI
19 resale agreements which are not part of our
20 interconnection agreement. They routinely charge us
21 these amounts year after year after year requiring
22 Charter to continue to dispute those charges.

23 So I think what we would propose is to
24 really streamline the agreements to remove all that
25 ambiguity so we know both sides can avoid the cost of

1 having to dispute charges on a monthly basis. If we
2 are billed charges, to your question, that are
3 inadequate and we go back to CenturyTel and they
4 immediately dispute it, I mean, we're left in a
5 position where we have a contract. I'm an
6 accountant, we're looking to an agreement to validate
7 a rate, and we do what we're supposed to do from our
8 fiduciary responsibility for Charter.

9 If the rate's not there, it's hard for
10 me to justify to pay that bill. So we're disputing
11 it through the informal dispute process. We really
12 feel it's up to CenturyTel to escalate it to the next
13 level and to prove to the Commission that those
14 charges are valid.

15 Q. I -- I -- I guess I don't quite
16 understand that, and I'm just thinking out loud. You
17 know, if Charter doesn't pay its bill and CenturyTel
18 notifies Charter that, hey, we're going to terminate
19 service if you don't pay within a certain date, I --
20 I -- I don't understand why CenturyTel cannot just go
21 ahead and terminate service and put the burden on
22 Charter to come to the Commission and say, look, you
23 know, stop this. Can you kind of rectify that in my
24 mind for me?

25 A. If I just look at any contract, if I

1 sign a contract to purchase a car and it says I'm
2 going to pay a monthly payment of \$200 a month, and
3 the first bill I get is \$400 a month and I don't pay
4 that amount, typically, the onus is going to be on
5 whoever provided that bill to me to escalate it to
6 the next level and take action. And I think that's
7 what we're saying is they -- again, we're looking at
8 a contract that clearly to us stipulates what those
9 rates are.

10 If there's disagreement, it should be
11 really up to CenturyTel to prove that those amounts
12 are correct. And every time we dispute a charge
13 that's consistently happened over the four years that
14 we've worked with Charter, every single month,
15 25 percent of the charges in the state of Missouri we
16 dispute, we would be in a situation where we would be
17 coming to the Commission every month.

18 So I think it's up to them to, first of
19 all, make sure that their bills reflect what's in the
20 interconnection agreement, and if they disagree with
21 that, escalate it to the Commission to move to get
22 the contract changed.

23 Q. Okay. In regards to issue No. 6
24 regarding under what conditions should CenturyTel be
25 permitted to require a deposit, as I understand your

1 position, you should only require a deposit upon a
2 specific predetermined event like a -- what can
3 you -- what do you mean by a predetermined event?

4 A. Well, first of all -- and I think, you
5 know, in the standpoint with Charter, how Charter
6 offers their service also, typically what you're
7 looking for is for someone to prove that they make
8 timely payments month over month. And we would say
9 that we are making timely payments month over month,
10 you know, less the disputed charges that we feel were
11 validated by this Commission that we could dispute.

12 So I think number one is, you know, to
13 CenturyTel, we want to get their bills in, pay the
14 accurate charges and we're paying them within the
15 time frame due on that invoice. I think that's
16 really been evidenced by CenturyTel because they've
17 never assessed a deposit on our account in any of the
18 three states that we operate. We have no security
19 deposit currently.

20 So what we're saying going forward,
21 again, I'm responsible for financial analysis and
22 planning, I want to make sure I understand, you know,
23 what type of constraints we have on the company's
24 resources going forward. So there should be a
25 predefined criteria when all of a sudden CenturyTel

1 can decide although we've been paying our bills
2 timely every month, to assess a deposit.

3 So we have said that that really should
4 be if we're not paying our bills timely, they can
5 come back at any time and assess a deposit or if the
6 company would enter into some type of bankruptcy
7 proceeding.

8 Q. So if -- under -- those are the two
9 examples --

10 A. That's correct.

11 Q. -- if we don't pay on time, they could
12 ask for a deposit; if you file for bankruptcy, that's
13 another example --

14 A. That's correct.

15 Q. -- of when -- I mean, when -- if a
16 company files for bankruptcy, isn't that almost too
17 late to -- I mean --

18 A. Well, I think that's why, you know,
19 again, we're paying our bills timely. Certainly
20 CenturyTel, if we weren't paying our bills timely,
21 would be able to assess a deposit at any time.
22 Certainly, if we would enter into any type of
23 bankruptcy proceeding, I'm not an expert on
24 bankruptcy law, but, you know, at least if it was a
25 reorganization, I think on a going-forward basis,

1 their payments would be guaranteed.

2 So if the company at any time started to
3 not remit their payments as timely as what they are
4 today, and again, they can prove that it's a
5 documented, you know, fact, we would certainly, you
6 know, be willing to have a deposit.

7 Q. Is there a dispute between Charter and
8 CenturyTel as to the amount of the deposit?

9 A. To my understanding, the dispute as it
10 currently -- first of all, CenturyTel's never
11 requested us to have a deposit, so we've never been
12 in an argument over an amount or if there was a
13 deposit required on the account.

14 As we're now going back through our
15 interconnection agreements and trying to make sure
16 that this language is clear and removes any
17 uncertainty, I think the issue that they're taking
18 exception to is they want to have the opportunity at
19 any time for any reason taking any type of
20 information into consideration to arbitrarily decide
21 if a deposit is required.

22 And we're saying it should just really
23 be based upon these two predefined events; we either
24 pay our bills timely or in some type of bankruptcy
25 proceeding.

1 Q. I guess I'm just asking about if this
2 situation does come up where CenturyTel feels as
3 though we need a deposit, the amount that Charter
4 would have to put up for a deposit is how that's
5 calculated in dispute?

6 A. Yes, I believe part of that is the
7 issue, although I think we've tried to agree to
8 CenturyTel's term. We've suggested --

9 Q. I -- and because when I read the
10 testimony, I can't really tell if -- if the parties
11 are in dispute. What I'm hearing when I -- or
12 what -- what I'm reading appears to be the deposit
13 amount would be based on two months' billing. Is
14 that your understanding?

15 A. My understanding in the testimony
16 received from CenturyTel, there was some question as
17 to how you would pick those two months. And I think
18 we'd even thrown out we'll give you the highest two
19 months.

20 And what I would say is, you know, we've
21 been doing business -- Charter has been doing
22 business in Missouri for over five years. The amount
23 of charges that we have on a monthly basis from
24 CenturyTel are pretty normalized, so we know what
25 those amounts are. So whether it's the highest two

1 amounts or any two amounts, I think we're fine with
2 that language.

3 Q. In regards to issue 8 B which -- as
4 Charter brings the issue, should the bill dispute
5 provisions to ensure that neither party can
6 improperly terminate the agreement in a manner that
7 could impair service to the public? Do you agree
8 this issue solely pertains to situations involving
9 undisputed charges?

10 A. Well, first of all, I would say we have
11 no undisputed charges with CenturyTel, although they
12 would think we do. So I think part of our problem in
13 the past is, although it sounds like it should only
14 be put in place if there's a -- if we would lose a
15 dispute on a disputed charge, we have not had that
16 situation.

17 And we have had CenturyTel come back to
18 us with letters threatening to no longer port numbers
19 or to terminate our agreement because they felt that
20 the charges we had disputed were not accurate. And
21 although this Commission has found that we had
22 disputed those amounts accurately in accordance with
23 our agreement, they found in Charter's favor.

24 Q. Could you explain to me why Charter
25 would -- would not seek to dispute the charges if

1 they were sent a bill that they felt that they would
2 not have to pay?

3 A. Exactly. Why wouldn't we? We do
4 formally dispute charges that are inaccurate
5 routinely month over month. If we're billed an
6 amount which we are consistently billed for either
7 service order charges that don't appear in our
8 interconnection agreement or every single month, we
9 are continued to be billed on our invoices from
10 CenturyTel for end user charges that quite clearly
11 should not be on there, some of which they
12 subsequently remove, some of them they do not, every
13 single month we are -- we are delivered inaccurately
14 from CenturyTel and we go through great expense
15 and -- it's a time-consuming process and very
16 expensive to continue to dispute these bills month
17 over month.

18 Q. In regards to issue No. 13 in your
19 direct testimony, you talk about some instances where
20 CenturyTel's invoices are not correct. For example,
21 you know, you -- you cite a practice that occurred on
22 263 separate occasions where CenturyTel apparently
23 credited Charter for payments made by CenturyTel
24 customers. I mean, in that respect, that benefits
25 Charter; is that correct?

1 A. Well, it does, but they're crediting
2 amounts on our bill that we don't feel are due to us,
3 and I don't think they do either. So we routinely
4 would also dispute those charges, and again, it's
5 usually small dollars.

6 And in the terms of the time we've been,
7 you know, tracking for the disputes that we've had
8 since 2004 with CenturyTel, it's been about \$30,000.
9 We still have about \$10,000 of that that Missouri end
10 users paid to CenturyTel or should have paid to
11 CenturyTel that are sitting as credits on Charter's
12 invoices that we have not applied to our open
13 balance. We've told them about these amounts, we've
14 disputed the amounts, and they've never removed them
15 from our bill.

16 Q. Are you the witness -- when I was
17 cross-examining Mr. Webber that I had asked him a
18 question about how often does it occur where
19 CenturyTel wants to apply the to-be-determined
20 pricing, are you the witness that --

21 A. I don't know what that pricing is.

22 Q. -- that suggested would be better suited
23 to address that question?

24 A. Could you ask the question again? I
25 don't recall it.

1 Q. The question, basically, is how often
2 does it occur where CenturyTel wants to apply
3 to-be-determined pricing?

4 A. I don't know if that really pertains in
5 this situation. They've determined what it is,
6 they've just determined it to be the incorrect
7 amount. So I don't think -- so maybe I'm not
8 understanding your line of questioning.

9 Q. It had to do with issue No. 14, and I
10 don't know if you addressed that particular issue.

11 A. I don't think I did.

12 Q. And I asked Mr. Webber that question
13 that occurred to someone else. And I may have
14 misinterpreted who the witness was.

15 A. I don't recall what issue 14 was. I'm
16 sorry.

17 MR. VAN ESCHEN: That's all I have.

18 JUDGE PRIDGIN: Mr. Van Eschen, thank
19 you. Ms. Dietrich?

20 QUESTIONS BY MS. DIETRICH:

21 Q. Ms. Giaminetti, on page 5 of your direct
22 testimony at lines 28 through 30, you state that
23 CenturyTel proposed to terminate upon several events
24 of default including where a bill dispute has arisen.
25 Can you show me where in CenturyTel's language it

1 says it can terminate service due to bill dispute?

2 A. Well, I don't think they are supposed to
3 terminate due to bill dispute. I think the issue --
4 and I guess I need to read the language more
5 specifically before I respond -- but I think they
6 have attempted to terminate our agreement when we
7 have validly disputed charges.

8 Q. Okay. Well, your language at 28 says,
9 "CenturyTel proposes that the agreement allow for
10 termination," so on and on forth, "or where a bill
11 dispute has arisen."

12 And so that's where I'm trying to figure
13 out what you're referring to in their language which
14 I think is laid out in the question above.

15 A. Okay. So I think what we're talking
16 about here, if I look at D, the proposed language
17 that CenturyTel had, basically -- because this is the
18 scenario that's developed with us over the years --
19 is they have in D, so they can terminate the
20 agreement with respect to -- and I think this one
21 talks about not limited to -- I think that says
22 undisputed charges.

23 Again, our charges are disputed, but in
24 CenturyTel's mind, the charges are undisputed. So
25 they have moved to terminate the agreement under this

1 clause because they feel that the charges are
2 undisputed, although we have properly disputed. So I
3 think it's the classification of our disputes as
4 accurately disputed or not that's come into play.

5 And they've used that terminology to,
6 first of all, kind of use strong-arm tactics to
7 either get us to pay under protest because they
8 refuse to port any telephone numbers in the state of
9 Missouri, and then if we don't then pay, then move to
10 terminate the agreement.

11 Q. So it's not so much that the language
12 says they can terminate when a bill's in dispute,
13 it's the interpretation of when a bill is in dispute?

14 A. So I think what we would say that --

15 Q. I'm asking you is that what you're
16 saying?

17 A. That's what the language says. But what
18 we're trying to add to this agreement, that -- that
19 the Commission would need to be involved to ensure
20 that those type of miscommunications don't happen
21 into the future. And that would eliminate those
22 mischaracter -- you know, them mischaracterizing the
23 disputes as not formally filed in accordance with our
24 dispute provision.

25 Q. On page 12, the excerpt of Charter's

1 language that starts at line 25 and goes through
2 line 40, if I'm reading the language correctly,
3 Charter's proposed language suggests that a potential
4 buyer should accept the terms of an interconnection
5 agreement. Is that a fair summary of the language?

6 A. That is correct.

7 Q. What happens if the buyer does not
8 accept the terms of the agreement?

9 A. Well, I guess if the buyer would not
10 accept the terms of the agreement, that's really --
11 they would have to take that into consideration in
12 order to acquire some of the assets of CenturyTel in
13 this particular situation, that we feel after going
14 through the kind of time and expense of both -- both
15 sides and the Commission that the interconnection
16 agreement should continue irrespective of selling of
17 a service area by CenturyTel.

18 Q. Would it -- if they just said we're not
19 going to do it, does the sale fall through in your
20 mind?

21 A. I -- I don't know legally if that's what
22 would happen, but certainly they would have to
23 consider our agreement before they could finalize the
24 transaction.

25 Q. Okay. On page 23 the language at lines

1 18 through 22, is this language suggesting that if a
2 payment has been made and then the bill is later
3 disputed, a refund should be made on the amount paid
4 pending the dispute's resolution?

5 A. I'm sorry. Could you repeat the
6 question, please?

7 Q. Uh-huh. Is this language suggesting
8 that if payment has been made by Charter and then the
9 bill is later disputed by Charter, that CenturyTel
10 should refund the money pending the resolution of the
11 dispute?

12 A. That is correct.

13 Q. Okay. And on page 27 at lines 2 through
14 5, you're discussing CenturyTel's "free use of
15 Charter's payment." Do you see that?

16 A. I'm sorry. Page 27, line 2?

17 Q. Lines 2 to 5.

18 A. Okay.

19 Q. Then actually the quote on line 5.

20 A. Okay.

21 Q. Should CenturyTel be required to pay
22 interest to Charter even if Charter does not
23 prevail -- prevail in a dispute?

24 A. No.

25 Q. So the interest payment would only be if

1 Charter wins the dispute?

2 A. That's correct, uh-huh.

3 Q. And then at page 28, lines 1 and 2,
4 your -- your statement says as to issue 8 B,
5 "CenturyTel also proposes to terminate the agreement
6 if Charter fails to pay any undisputed amounts." And
7 that statement is limited only to undisputed amounts;
8 is that correct?

9 A. That's correct, but it goes back to the
10 issue of who determines what's undisputed versus
11 disputed in accordance with the terms of our dispute
12 resolution or agreement.

13 Q. Okay. On page 29 at line 6 through 9,
14 starting at line 6, you say, "As proposed, Charter
15 believes..." Do you see that language?

16 A. Yes, I do.

17 Q. Can you explain to me how CenturyTel's
18 proposed language prevents those actions that Charter
19 is looking for?

20 A. Again, what we're proposing in the case
21 of any situation where CenturyTel would move to
22 terminate our agreement, that first of all, it would
23 be escalated to the Commission to make sure that all
24 the facts were known, our disputes have been properly
25 characterized. Without having this requirement to

1 escalate to the Commission, they could move to stop
2 porting our numbers or terminate our agreement
3 without any oversight.

4 And we have found in the past that that
5 has not been an accurate, you know -- an accurate way
6 to proceed under the agreement.

7 Q. Do you have a copy of Pam Hankins'
8 rebuttal testimony, by any chance?

9 A. Not with me, no.

10 Q. She had some questions in there that I'd
11 like to hear your response based on Charter's
12 proposal for determining a deposit. So I'll just go
13 through and read her questions to you and you can
14 respond, if that would be okay. They're fairly
15 short.

16 MR. HALM: Excuse me, your Honor. Would
17 it be all right if we gave the witness a copy of
18 Ms. Hankins' testimony?

19 JUDGE PRIDGIN: Certainly.

20 MS. DIETRICH: I'm looking at her
21 rebuttal, page 9.

22 MR. MOORMAN: Your Honor, understanding
23 how I keep my attorney notebook, I presume the
24 agreement that you gave her -- or the copy was clean
25 without any notes from counsel, et cetera?

1 MR. DODGE: Promise.

2 MR. MOORMAN: No, I just -- I just know
3 how I keep my notebook.

4 MR. DODGE: Not even a sticky.

5 MR. MOORMAN: Thank you.

6 MR. DODGE: And you have my permission
7 to erase anything you see.

8 BY MS. DIETRICH:

9 Q. Okay. Her questions start at line 9, so
10 under Charter's proposal for determining a deposit.
11 For instance, the first question is, "How are the two
12 months picked under Charter's proposal?" Could you
13 respond?

14 A. Well, first of all, I think we've
15 already agreed that we would be willing to pick the
16 highest two months. Again, we have been in
17 operations with CenturyTel for over four years. And
18 what I have found, the monthly amounts of the bills
19 are fairly normalized anyway.

20 Q. Okay. And then the next question I
21 don't think applies under that circumstance. The
22 next question, Which party should pick the two
23 months? It would just be on its face, whichever were
24 the two highest?

25 A. I think that's fine with us, yes.

1 Q. Okay. And do the two months chosen
2 fairly represent the anticipated charges to be
3 incurred by Charter?

4 A. Again, I think that's -- the charges are
5 fairly normal. This is a mature operation in the
6 state of Missouri, so we're not seeing a lot of
7 fluctuation in the monthly billed amounts.

8 Q. Okay. That's the extent of her
9 questions. Okay. Now, I'd like to refer you back to
10 your direct testimony at page 35. Starting at the
11 very end of line 24, you say, "In other words, if
12 Charter submits a bill dispute..." Do you see
13 that --

14 A. Yes, I do.

15 Q. -- that sentence? Near the end of
16 line 26, you talk about an action. What type of
17 action are you referring to?

18 A. Again, what I would hope's going to come
19 out of this process is our interconnection agreements
20 will contain more clear and specific terms so we
21 don't get through this process and through informal
22 dispute resolution process, both companies can come
23 to agreement.

24 But if that doesn't happen, as has been
25 the history, unfortunately, between the two

1 companies, within two years CenturyTel would be
2 required to escalate the complaint to the Commission
3 through a formal dispute process.

4 Q. And how does this formal dispute process
5 within two years fit into the general dispute
6 resolution process in the interconnection agreement?

7 A. I guess I would need to go back and read
8 that language just to make sure, but I think -- I'd
9 have to read the language to make sure.

10 MS. DIETRICH: That's fine. That's all
11 I have. Thank you.

12 JUDGE PRIDGIN: Thank you. Anything
13 further from the bench?

14 (NO RESPONSE.)

15 JUDGE PRIDGIN: Cross based on bench
16 questions?

17 MR. MOORMAN: No questions.

18 JUDGE PRIDGIN: Redirect?

19 MR. DODGE: Yes, your Honor, a few
20 questions. Thank you.

21 REDIRECT EXAMINATION BY MR. DODGE:

22 Q. Ms. Giaminetti, do you recall a
23 discussion with Mr. Moorman about Exhibit 25 which
24 was an e-mail from Ms. Lorenz to Pam Hankins?

25 A. Yes, I do.

1 Q. Do you still have that in front of you?

2 A. Yes, I do.

3 Q. I direct your attention to the third
4 sentence of the first paragraph. Have you read that
5 to yourself?

6 A. Yes, I have.

7 Q. Can you explain to me and to the
8 Commission what happens once Ms. Lorenz or her
9 colleagues send payment authorizations, AP -- which I
10 presume is accounts payable?

11 A. That's correct.

12 Q. In what form has payment been rendered
13 to CenturyTel?

14 A. It's my understanding that we are
15 sending checks to CenturyTel.

16 Q. To the best of your knowledge, did
17 CenturyTel deposit that check?

18 A. To the best of my knowledge.

19 Q. To the best of your knowledge, did that
20 check clear?

21 A. I'm sure it did or we would have heard
22 back from them.

23 Q. Thank you. Now, you had quite a lengthy
24 discussion with Mr. Van Eschen about payment
25 chronology and deposit chronology. Do you remember

1 those questions?

2 A. Yes, I do.

3 Q. Given your personal -- personal
4 knowledge of the history between the companies over
5 billing disputes, are you comfortable always
6 presuming that CenturyTel's invoices are accurate?

7 A. Unfortunately, we have a history that
8 shows that the invoices we receive from CenturyTel
9 are inaccurate month over month.

10 Q. Relative to other ILECs with whom you
11 have interactions on billing matters, how does
12 Charter's investment of time and resources in
13 reviewing CenturyTel's invoices in disputing those
14 invoices compare to other ILECs?

15 A. It takes us about twice the amount of
16 time to dispute the relatively small dollars that we
17 have disputed with CenturyTel month over month. It's
18 really kind of part of the process that they've set
19 up through this automated portal.

20 We have an electronic bill processing
21 system internally that we use to analyze and validate
22 all the bills. Most of the other ILECs or carriers
23 that we deal with allow us to take information
24 directly out of that system, put on their form and
25 send it to them.

1 In the case of CenturyTel, we have to
2 utilize their portal, which, a lot of times, times
3 out. We have to go through the bill, we have to put
4 each individual charge, the date that it happened,
5 the bill page, the amount.

6 Each one of those items have to be
7 disputed individually every single month. It takes
8 about two and a half hours to dispute roughly \$3,800
9 dollar worth of charges a month.

10 Q. Did I recall you to say in response to a
11 question from Mr. Van Eschen that 25 percent of each
12 month's charges from CenturyTel are not validly
13 invoiced?

14 A. That has been our experience over the
15 past quarter, that is correct.

16 Q. Educate me, Ms. Giaminetti. When you
17 alert or notify CenturyTel that you are disputing
18 that 25 percent of the invoice, what is their general
19 response or their usual response?

20 A. Well, first of all, what makes it very
21 difficult with CenturyTel, unlike some of the other
22 carriers we deal with, is we never talk to a person.
23 It's all through their dispute portal. We have to
24 continually go back and make sure within their portal
25 that they're even working our disputes. And they

1 don't do it in the same time frame every month, so we
2 don't know if something got kicked out because we
3 failed in this, you know, very detailed process to
4 put a page number.

5 So there's no interaction with any
6 individual at CenturyTel other than through its
7 automated system. What happens month over month and
8 has continued to happen in the case of the service
9 order charges that are inaccurately being charged, we
10 port a number, they dispute those charges.

11 Q. Thank you. I'd like to have you turn
12 back to page 23 of your rebuttal testimony -- excuse
13 me -- your direct testimony. Do I recall correctly
14 that Ms. Dietrich asked you a question or two about
15 Section 9.4.2 of the interconnection agreement?

16 A. Yes, sir.

17 Q. I want to make sure I understand,
18 because it's late in the day and I'm tired. Is it
19 Charter's proposal in this proceeding that when
20 monies are refunded to Charter from CenturyTel with
21 interest, that will happen while a bill is still
22 under dispute?

23 A. I'm sorry. Could you state that again?
24 I don't know if I quite understand the question.

25 Q. Sure. I'm not supposed to do that after

1 your witness training, but let me try and rephrase
2 it.

3 I thought I heard you say that Charter's
4 proposal was to ask for, say, an overpayment back
5 with interest while an amount was still under dispute
6 with CenturyTel; is that accurate.

7 A. No. I think what we're saying here,
8 because there's such a -- a long process to review
9 CenturyTel's bills and we, quite frankly, every month
10 find an error in those bills, there could be
11 something that slipped through that both CenturyTel
12 and Charter would agree that was an incorrect charge.

13 All we're saying is, once we -- and we
14 may pay that just because of the time frame to make
15 sure that we're paying the bills timely. Once we've
16 identified that an amount was incorrect and we send
17 that dispute to CenturyTel and they agree, we feel
18 that they should then reimburse us for that amount
19 back as a credit with the applicable interest that
20 they would charge us if we had short-paid the amount.

21 Q. So in sum, the bill is no longer in
22 dispute?

23 A. That's correct.

24 MR. DODGE: Thank you, your Honor.

25 That's all I have.

1 JUDGE PRIDGIN: All right. Thank you.

2 Anything from the bench?

3 (NO RESPONSE.)

4 JUDGE PRIDGIN: All right.

5 Ms. Giaminetti, thank you very much.

6 And just to clarify that I understand

7 there are no further Charter witnesses and we're

8 ready to move on to Mr. Watkins from CenturyTel?

9 (NO RESPONSE.)

10 JUDGE PRIDGIN: All right. And that

11 will more than likely be our last witness of the day,

12 I would assume, judging from the time.

13 (The witness was sworn.)

14 JUDGE PRIDGIN: Thank you very much,

15 sir. If you would please have a seat. And

16 Mr. Dority or whoever's counsel on this witness,

17 anything before he stands cross?

18 MR. DORITY: We do have an errata which

19 has previously been marked as Exhibit 14A.

20 MR. MOORMAN: Your Honor, earlier today

21 we were discussing -- Mr. Dodge and I with you off

22 the record. It's really up to you on the bench if

23 you would like Mr. Watkins to walk through these

24 changes or if the errata is fine. If -- Mr. Watkins

25 is free to do that, willing to do that, if that would

1 be of assistance to you-all. If not, the document
2 speaks for itself.

3 JUDGE PRIDGIN: Unless -- unless my
4 staff will go -- what you're talking about, this
5 14 A, if you want him to go through and talk about
6 the changes he made, if that would assist you in any
7 way, or otherwise, if you just want to read the
8 document.

9 MS. DIETRICH: I guess the only thing I
10 would ask is if we ask a question and it's been
11 changed, if you could just make note of that.

12 THE WITNESS: Okay.

13 JUDGE PRIDGIN: If that's clear. If
14 it's all right with counsel, we'll just let the
15 document speak for itself. No need to walk through
16 it.

17 MR. MOORMAN: That would be fine.

18 JUDGE PRIDGIN: Anything further before
19 this witness stands cross?

20 MR. MOORMAN: Yes. We would like to
21 offer Exhibits 13 and 14 as well as 14A into
22 evidence.

23 JUDGE PRIDGIN: All right. 13, 14 and
24 14A have been offered. Any objections?

25 MR. DODGE: Subject to the pending

1 motions which I'm not sure are relevant here, no
2 objections, your Honor.

3 JUDGE PRIDGIN: All right. Then I'll
4 show them admitted, and pending any type of motions
5 to strike that might still be outstanding.

6 (EXHIBIT NOS. 13, 14 AND 14A WERE
7 RECEIVED INTO EVIDENCE AND MADE A PART OF THE
8 RECORD.)

9 JUDGE PRIDGIN: All right.
10 Cross-examination, then? When you're ready, sir.

11 MR. DODGE: Thank you, your Honor.

12 CROSS-EXAMINATION BY MR. DODGE:

13 Q. Good afternoon, Mr. Watkins.

14 A. Good afternoon.

15 Q. Do you have your direct testimony in
16 front of you, sir?

17 A. I do.

18 Q. Would you mind turning to page 4 of that
19 direct testimony, please? And in particular I'd
20 direct your attention to line 9.

21 A. Yes.

22 Q. I want to make sure I read that first
23 sentence correctly. "At base, the dispute is whether
24 the agreement should address all IP traffic or only a
25 limited subset of the potential traffic." Did I read

1 that correctly?

2 A. You left the word "types" out.

3 Q. Thank you. "Types of traffic." That's
4 not how Charter characterizes this issue; is that
5 correct?

6 A. I'm not certain I agree.

7 Q. You believe that Charter uses the
8 language that I've just read from your direct
9 testimony?

10 A. Charter attempts to -- to suggest that
11 there's some difference between defining service
12 providers and defining the traffic that arises from
13 those type of service providers. In the end, the
14 real purpose -- or real objective of the issue is
15 that all traffic between the parties be defined.

16 And if some of that traffic arises
17 because of IP applications and that -- so there's
18 a -- there's an intermingling dependency between
19 defining particular service providers and the traffic
20 that arises with those kind of service providers. So
21 I believe it's one and the same issue.

22 Q. Thank you. For the traffic that Charter
23 hands off to CenturyTel, how is that traffic created?
24 Where does it originate?

25 A. I'm not certain I provided any testimony

1 on that. My understanding is you provide service to
2 end users in the same territory that CenturyTel
3 operates in competition with CenturyTel and it
4 originates from those end users.

5 Q. Do you know -- and only if you know,
6 sir -- do you know how a Charter end user originates
7 a call or starts a call at his or her premise?

8 A. I don't.

9 Q. Would you know where that call travels
10 upon leaving the end user's premise?

11 A. It eventually travels to a point of
12 interconnection with -- with CenturyTel for
13 termination to a CenturyTel end user within the local
14 calling area.

15 Q. When it's still on the Charter network,
16 do you know its routing?

17 A. No.

18 Q. Do you know its -- its protocol when
19 it's on the Charter network?

20 A. I don't understand how that's relevant
21 to my testimony, but I generally know what Charter
22 does as a cable TV provider that also provides
23 telephone service, and I know that we've attempted to
24 define certain types of applications for purposes of
25 defining certain types of traffic. And we would

1 intend those provisions to apply depending upon how
2 Charter provisions its service and however it fits
3 within those definitions.

4 Q. Are you comfortable sharing with us
5 today how Charter provisions that service on its
6 network?

7 A. Not for any specific example, no.

8 Q. Thank you. You mentioned a moment ago
9 that the traffic eventually meets -- reaches a point
10 of interconnection; is that correct?

11 A. Correct.

12 Q. Do you know what format or protocol the
13 traffic is in when it reaches that point of
14 interconnection?

15 A. The particular facilities that the
16 carriers interconnect with would determine the
17 protocol, and I believe there's a number of
18 provisions in the agreement that specify what -- what
19 those technical aspects are.

20 Q. Do you recall that the agreement
21 requires that the traffic be handed off from Charter
22 to CenturyTel in so-called TDM format?

23 A. I don't recall that. If you want to --
24 I didn't provide any testimony about that.

25 Q. Do you have any reason to believe that

1 that's not true?

2 MR. MOORMAN: Your Honor, if Mr. Dodge
3 has questions for this witness that relate to the
4 testimony that the witness has provided, I'm more
5 than happy for him to ask those questions, but
6 Mr. Watkins, I don't believe, provided testimony with
7 respect to other provisions of the agreement that
8 may, as Mr. Dodge had indicated, provide the response
9 that he's looking for. I think the agreement speaks
10 for itself.

11 The issue, one, is whether or not there
12 should be a conclusive or inclusive definition of
13 IP-enabled traffic versus the limited subset which
14 was demonstrated this morning through the discussions
15 with your technical staff, one of the Charter
16 witnesses on the stand.

17 MR. DODGE: Your Honor, I tried to
18 phrase the question to go to Mr. Watkins' knowledge.
19 If he doesn't know or if he's not comfortable
20 answering, he can indicate.

21 JUDGE PRIDGIN: Okay. I'll -- I'll
22 overrule that, and I -- I may have recalled it wrong.
23 I think his -- I think his point was that he
24 didn't -- that he didn't know the answer and that I
25 think you then phrased your question to the extent do

1 you have any reason to think that that's not true. I
2 think that was his objection.

3 So if you -- I'm going to overrule the
4 objection, and if you want to take that question
5 again, I'll let you answer. But then if we're
6 getting into things he doesn't know, we'll probably
7 need to move on.

8 MR. DODGE: That's fine. I suspect
9 Mr. Watkins is indicating if he's not comfortable in
10 answering.

11 BY MR. DODGE:

12 Q. Let me ask it a little bit different for
13 you, Mr. Watkins. Are you aware of where -- any
14 circumstance where Charter has tried to hand off
15 traffic to CenturyTel in other than TDM format?

16 A. Again, that's not the subject of my
17 testimony, and I didn't provide any testimony about
18 that subject, so I have no knowledge.

19 Q. Thank you. Does traffic that's
20 originated or transported in so-called Internet
21 protocol format have identifying information with it
22 that would tell where that call is originated?

23 A. I'm not certain I know the answer to
24 that either.

25 Q. Sticking to page 4 of your direct

1 testimony, lines 10 and 11, could you direct me,
2 Mr. Watkins, to where in its prefiled testimony
3 Charter says that its language is, "...derived from a
4 single, specific FCC action which attempts to define
5 a subset of carriers using a form of IP technology
6 that are, in turn, subject to E911 regulatory
7 requirements"?

8 A. Yeah, I referenced -- well, I don't have
9 the testimony in front of me, but the -- the order is
10 the one where the FCC applied E911 requirements to a
11 particular set of carriers that defined as -- as
12 interconnected WIC providers, and it's my
13 understanding and memory that that is what your
14 witnesses referred to as the basis for their proposed
15 definition.

16 Q. And do you recall that that was the only
17 basis for their definition?

18 A. I'm not sure.

19 Q. Moving down to line 16 and 17, still on
20 page 4 of your direct, am I correct that there you
21 reference -- or use the phrase "All IP-related
22 traffic between the parties that will be exchanged or
23 may be exchanged"? Does that phrase appear in your
24 testimony?

25 A. Yes.

1 Q. What IP traffic will be exchanged
2 between the parties during the term -- term of this
3 agreement?

4 A. I'm not certain that we know that.
5 Neither -- neither party knows that. That's why we
6 want the language to be as expansive as possible.

7 Q. Thank you. Let's move ahead to the
8 bottom of page 4, top of page 5. And there you
9 reference, I believe, "Ambiguity arising from the
10 scope of traffic"; is that correct?

11 A. Correct.

12 Q. To the best of your knowledge,
13 Mr. Watkins, has Charter ever tried to avoid paying
14 access charges to CenturyTel?

15 A. No. But the purpose of the provision is
16 to -- the provision could also apply to other CLECs
17 that adopt this agreement, and it's not to say
18 that -- that Charter won't decide to do something in
19 the future. We have experience with other carriers
20 across the country terminating nonlocal traffic
21 claiming that it's some form of Internet
22 protocol-based traffic and claiming that it's not
23 defined and therefore we don't owe any compensation
24 for nonlocal traffic. So we want to be sure that we
25 don't have language that leaves that as a possibility

1 with any carrier.

2 Q. Just to clarify, you have no personal
3 basis to know that Charter has attempted to do that
4 in the past or will attempt to do that in the future?

5 A. I do not.

6 Q. If you know, and only if you know,
7 Mr. Watkins, does Charter have the technical
8 capability to strip out so-called ANI or CPNI
9 information from its SS-7 traffic?

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

11 Q. If we can move ahead to page 8 of your
12 direct testimony. Are you at page 8?

13 A. Uh-huh.

14 Q. Let's look at lines 10 through 13.

15 A. Okay.

16 Q. And the Q&A there, am I correct,
17 addresses a type of service -- I guess it's the
18 commercial name "free world dialup." Could you
19 explain for me a little bit more what is that type of
20 service?

21 A. That is a service that doesn't use the
22 local exchange carrier public switch network. It --
23 it's a communication between two end users who have
24 broadband connections, and the Internet is used
25 between those two end users. And there really is no

1 implication for the parties here because that doesn't
2 use the public switch network for origination or
3 termination.

4 Q. Thank you. Do you believe that Charter
5 and CenturyTel would ever exchange that type of
6 traffic or could exchange that type of traffic?

7 A. No. I think my explanation says it's
8 not really relevant to that relationship.

9 Q. Thank you. On page 9 of your direct,
10 line 5, is it CenturyTel's position that the scope of
11 traffic is not properly defined in the pending
12 agreement?

13 A. It is not properly defined because, as
14 your witnesses admit, it's only a subset of the
15 potential more expansive definition of IP-enabled,
16 and therefore there's something beyond your
17 definition that's included in IP-enabled that's not
18 included in your definition.

19 Q. But to clarify, you have no personal
20 knowledge that Charter and CenturyTel will exchange
21 other than the definitional type of traffic that our
22 witnesses have identified; is that correct?

23 A. I don't, but I don't think that's the
24 relevant issue here.

25 Q. Page 9 on line 13 of your direct

1 testimony. There you reference a part of getting a,
2 quote, free ride on the PSTN, and I assume that's
3 public switch telephone network?

4 A. Correct.

5 Q. Do you have any personal knowledge that
6 Charter has ever received a free ride on CenturyTel's
7 PSTN?

8 A. I don't.

9 Q. Let's jump into your rebuttal testimony,
10 please, Mr. Watkins. The first is page 2. Down
11 starting on lines 22 and 23, am I correct that there
12 you reference Mr. Gyori's testimony in which you
13 state that -- and here I'll try to quote accurately:
14 "Charter provides only a subset of IP-enabled
15 services." Did I quote that correctly?

16 A. Yes.

17 Q. Do you have any personal knowledge that
18 Charter provides other sets of IP-enabled services
19 beyond those identified by Mr. Gyori?

20 A. I don't. I also know that Charter
21 hasn't been willing to include language that would
22 say that it doesn't intend to do that.

23 Q. Moving to page 3 of your rebuttal
24 testimony, lines 16 through 20. And there you
25 reference again the FCC E911 definition of IP-enabled

1 services; is that correct?

2 A. That's correct.

3 Q. Do you have any personal knowledge that
4 the IP-enabled service offered today by Charter
5 differs from that particular FCC definition?

6 A. I don't, other than what you've put in
7 your -- your witness testimony, no.

8 Q. Do you think our witnesses' testimony
9 indicates that traffic -- that the IP-enabled traffic
10 we currently transport differs from that SEP
11 definition?

12 A. I don't, but again, that's not the
13 relevant issue.

14 Q. Does Mr. Gyori's testimony to your
15 knowledge and recollection, or any other Charter
16 witness's testimony, suggest that the FCC's E911
17 definition encompasses all IP-enabled traffic?

18 A. I'm sorry. Let me hear the question
19 again.

20 Q. Sure. Do you recall in Mr. Gyori's
21 testimony or any other Charter witness testimony in
22 this case that a Charter witness suggested that the
23 FCC's E911 definition encompasses all IP-enabled
24 service or IP-enabled traffic?

25 A. No, I think your witnesses agree it does

1 not.

2 Q. Thank you. For the first time today,
3 we're going to try a hypothetical. Mr. Watkins, I'd
4 like for you to assume that the Commission adopts
5 Charter's definition of IP-enabled services. Do you
6 understand that part of the hypothetical?

7 A. Okay.

8 Q. I would like you to further assume that
9 in one year another CLEC, not Charter, wants to opt
10 into this agreement. Are you still with me?

11 A. Uh-huh.

12 Q. Next, I would like you to assume that
13 this new CLEC not related to Charter comes to
14 CenturyTel and requests to exchange traffic at a POI,
15 point of interconnection, in IP format. What would
16 be CenturyTel's response to that hypothetical?

17 A. Well, if the new CLEC was within the
18 limited definition as Charter would like to define
19 IP-related, then the new CLEC would operate under the
20 same terms as Charter. If the new CLEC had some form
21 of IP-related traffic that was beyond the scope of
22 the limited definition that Charter has proposed, the
23 agreement would be -- would be deficient in how that
24 traffic was supposed to be addressed.

25 Q. And I want to clarify the hypothetical.

1 New CLEC comes to CenturyTel and says we want to hand
2 off IP traffic, not TDM traffic, but IP traffic.

3 A. I'm not certain that I know all the
4 distinctions of what you mean by that statement.

5 Q. That's fine. If a new CLEC came to
6 CenturyTel and said we want to pass off TDM or IP
7 traffic but we want to strip out ANI or CPNI, what
8 would CenturyTel's response be?

9 A. Well, I'm not certain that that's
10 exactly on target with my issue here, and I'm
11 speculating, but if they -- if they -- there are
12 provisions in the agreement that require the parties
13 to do various things, and if they're not in
14 compliance with what the parties are required to do,
15 they would object.

16 MR. DODGE: Thank you. Just a moment,
17 your Honor.

18 JUDGE PRIDGIN: Certainly.

19 BY MR. DODGE:

20 Q. If you know, Mr. Watkins, does the
21 pending agreement include resale terms?

22 A. I don't believe it does.

23 Q. Do you know why not?

24 A. No, I don't.

25 Q. If a resale-based CLEC a year out from

1 now adopted the pending agreement as is, could it use
2 that agreement to exchange traffic with CenturyTel?

3 A. No.

4 Q. Going back to your direct testimony,
5 page 9, please, specifically line 6 through 9. You
6 testified there, did you not, that because Charter's
7 definitions do not cover all types of IP-enabled
8 traffic, that it could be used by a party to avoid
9 paying access charges? Did I capture the sentiment
10 there?

11 A. Uh-huh.

12 Q. Have you explained that to CenturyTel's
13 counsel, Mr. Moorman?

14 A. Have I explained what?

15 Q. What you just shared in your testimony.
16 Have you discussed that with Mr. Moorman?

17 A. Mr. Moorman has read my testimony and
18 we've discussed edits to it.

19 Q. Would you know why -- and only if you
20 know why --

21 MR. MOORMAN: Objection, your Honor.
22 This has to do with conversations that -- that the
23 CenturyTel counsel has had with the witnesses in
24 preparation of this case. I don't know where
25 Mr. Dodge is going, but -- and it's otherwise

1 privileged communications.

2 MR. DODGE: Your Honor, I very clearly
3 did not ask -- ask for the substance of the
4 communication. I merely asked whether communication
5 existed. I don't --

6 MR. SCHUDEL: You asked why.

7 MR. MOORMAN: I'm pretty sure he did ask
8 why.

9 JUDGE PRIDGIN: If I recall -- and I may
10 need you to ask the question again -- I think you
11 asked earlier and there was no objection whether he
12 had talked to counsel. And I don't see any objection
13 to that. But if you're going to get into what they
14 talked about, I think I'm going to have a problem
15 letting that in.

16 MR. DODGE: I'm not going to ask that.

17 JUDGE PRIDGIN: Do you want to ask your
18 question again?

19 MR. DODGE: I'll -- I'll move on.

20 JUDGE PRIDGIN: All right. Thank you.

21 MR. DODGE: I'm going to ask Mr. Halm to
22 be my transport vehicle here. Your Honor, we're
23 distributing what we would like to have marked as
24 Exhibit 27.

25 BY MR. DODGE:

1 Q. Do you have that exhibit in front you,
2 Mr. Watkins?

3 A. I do.

4 Q. Have you seen this document before?

5 A. I have not.

6 (EXHIBIT NO. 27 WAS MARKED FOR
7 IDENTIFICATION BY THE COURT REPORTER.)

8 BY MR. DODGE:

9 Q. Do you know, Mr. Watkins, whether the
10 scope of the dispute for issue 1 in Texas differs
11 from the scope of the dispute --

12 MR. MOORMAN: Your Honor, I object to
13 any questions on this. They're improper foundation.
14 Mr. Watkins says he's never seen it before.
15 What's...

16 JUDGE PRIDGIN: I think his question was
17 do you know. I'm not sure what -- he did say he
18 didn't know. I don't know if he's going to offer
19 this or what foundation might come later, but I think
20 all he established is that he hasn't seen this before
21 and he was in the middle of a question that began,
22 "Do you know." So at this point, I'm going to
23 overrule.

24 MR. MOORMAN: Your Honor, I have
25 another. I object also on relevancy.

1 JUDGE PRIDGIN: Well, I don't know what
2 the relevance is yet. I --

3 MR. DODGE: Well, we haven't offered it
4 yet so I'm not sure why he's attempting an objection.

5 JUDGE PRIDGIN: I understand. I'll --
6 at least it's overruled for now.

7 BY MR. DODGE:

8 Q. Let me try to complete the question,
9 Mr. Watkins. Do you know if the scope of issue 1 in
10 dispute in Texas differs from the scope of issue 1
11 here in Missouri?

12 A. I don't know the nuances of what the
13 difference may be in Texas.

14 Q. Thank you. We're going to move on now,
15 Mr. Watkins, to issue 9, some general questions for
16 you. And I understand that CenturyTel has proposed a
17 so-called TBD or to-be-determined charge in the
18 circumstance where CenturyTel builds interconnection
19 facilities at Charter's request and Charter fails to
20 use such facilities within six months; is that
21 correct?

22 A. That's correct.

23 Q. What I'm trying to understand and
24 grapple with, is that TBD charge different from a
25 material breach or a default under the agreement?

1 A. I'm sorry. I don't understand your
2 question.

3 Q. Let me try to ask it a different way.
4 Presuming that Charter made the request for
5 interconnection facilities via order and that
6 CenturyTel built out those facilities and within six
7 months Charter did not use those facilities --

8 A. Okay.

9 Q. -- would CenturyTel both try to apply a
10 TBD charge and accuse Charter of materially breaching
11 or defaulting under the agreement?

12 A. Well, first of all, it can't apply a TBD
13 charge until the to-be-determined charge is
14 determined. And I believe there is definitive
15 language in the proposed agreement that both parties
16 have agreed to as to the manner in which the
17 to-be-determined rate in that instance would be
18 determined, including any differences of opinion
19 potentially.

20 Q. That's a great answer, but I don't think
21 it went to my question. Let me try it one more time.
22 There's a TBD charge proposed by CenturyTel, correct?

23 A. Yes.

24 Q. And under the circumstance where
25 CenturyTel wants to apply that TBD charge, will

1 CenturyTel also allege that Charter is in material
2 breach or under default of the agreement?

3 A. CenturyTel will apply the provisions
4 that have already been agreed to for the
5 determination of the to-be-determined rate however
6 the agreement says they are to be determined. And
7 that will follow its course. If that gets to a
8 course where there is a situation of default, then
9 yes, default would apply. It requires speculation as
10 to what happens when you go to apply all the terms of
11 the agreement.

12 Q. Thank you. Am I correct, Mr. Watkins,
13 that CenturyTel's main concern here is part of the
14 order but not use of the new interconnection
15 facilities as an anticompetitive tactic?

16 A. That's potentially a possibility, yes.

17 Q. Is it the main concern?

18 A. Well, that they will be -- their main
19 concern is that you will order facilities and we
20 build them at some cost, and then we're stuck with
21 them and they're not used and it's stranded
22 investment that we should have -- we could avoided
23 the cost.

24 Q. Did you identify in your direct or
25 rebuttal testimony any instances in which Charter has

1 ordered but not used CenturyTel facilities?

2 A. No. And again, that's not really the
3 relevant issue. We're -- we're happy to find out
4 that that is the case, and we think having the
5 provision in there helps guarantee that that will be
6 the case.

7 Q. Are you personally aware that Charter
8 during the term of this agreement has any plans to
9 order but not use CenturyTel facilities?

10 A. That would require speculation on my
11 part. I don't.

12 Q. Do you have any basis for
13 prognosticating any risk of such behavior by Charter?

14 A. Again, speculation on your -- on
15 Charter's actions.

16 Q. Am I to understand that
17 CenturyTel-Missouri has fiber between all of its
18 local serving areas?

19 A. I don't know that.

20 Q. Mr. Watkins, would CenturyTel agree to a
21 reciprocal TBD-stranded land charge?

22 A. We don't order plant from Charter that
23 we would be obtaining from Charter. We only are --
24 as the incumbent, we're required to respond to the
25 CLECs' request, not vice versa, so that wouldn't make

1 any sense.

2 Q. Is that a no?

3 A. That's a no.

4 Q. Thank you. So am I correct in
5 summarizing your testimony that where there is no
6 likelihood that CenturyTel would ever order
7 interconnection facilities, no TBD charge is
8 necessary?

9 A. It's willing to say it will never order
10 facilities from Charter.

11 Q. Am I correct that to date Charter's
12 history is that it has never ordered interconnection
13 facilities from CenturyTel Missouri?

14 A. I think you already asked that.

15 Q. You can answer again.

16 A. If that's what you claim, yes.

17 Q. Do you dispute that?

18 A. We don't dispute that.

19 Q. Let's go back to your rebuttal
20 testimony, page 17. Mr. Watkins, on page 17,
21 lines 10 through 22 --

22 A. Okay.

23 Q. -- and there the Q&A, am I correct,
24 discusses the circumstance in which an ILEC you claim
25 is given a statutory right to assess a

1 to-be-determined stranded investment charge, is that
2 what you're getting at there?

3 A. Well, I need to see Mr. Gates' testimony
4 that I'm responding to.

5 Q. Okay. I'm happy to approach with a copy
6 or your counsel can make a copy of it available.

7 MR. DODGE: There's nothing written on
8 that, right, Tom?

9 MR. MOORMAN: In mine there is.

10 MR. SCHUDEL: Rebuttal or direct?

11 MR. DODGE: I don't have --

12 THE WITNESS: It's -- well, his direct.

13 MR. DODGE: I have a clean copy. It's
14 even fine if it has notes on it.

15 MR. SCHUDEL: I won't guarantee it, but
16 I didn't try to put notes on it.

17 BY MR. DODGE:

18 Q. I'll let you review that and then I'll
19 ask the question. So tell me when you've had a
20 chance to reread lines 10 through 22.

21 A. Okay.

22 Q. Where, Mr. Watkins, in Section 251 of
23 the Telecommunications Act is an ILEC given the
24 statutory right to assess a to-be-determined stranded
25 investment charge?

1 A. It's not what my testimony says.

2 Q. That was the question, though. Do you
3 understand the question?

4 A. I do, but my testimony -- I did not
5 provide any testimony. My testimony says that
6 Mr. Gates claims there is some provision that
7 prohibits it when there is no such prohibition.

8 Q. Okay. Does Section 251, to your
9 knowledge, even use the phrase "stranded investment
10 charge"?

11 A. No.

12 Q. Thank you. Let's turn to page 18 of
13 your rebuttal, line 13. Let me know when you're
14 there.

15 A. Okay.

16 Q. And there you reference Charter's
17 Missouri tariff; is that correct?

18 A. Yes.

19 Q. Would you mind turning ahead to schedule
20 SEW-1 which is, I believe, attached to your
21 testimony?

22 A. Unfortunately, I didn't bring the
23 attachments.

24 Q. All right. Mr. Watkins, where in
25 Section 1.9.1 does Charter-Missouri's tariff grant

1 the company the ability to assess the
2 to-be-determined stranded plant charge?

3 A. Under the third paragraph.

4 Q. Would you mind reading the sentence or
5 phrase which is the last --

6 A. "The customer must pay for any special
7 construction prior to the activation of service or --
8 and/or cancellation of contract."

9 Q. Does that sentence or part of the
10 sentence that you read use the term "stranded plant
11 investment charge"?

12 A. No. But that -- that's -- would seem to
13 be the conclusion one would draw that -- of what that
14 sentence could apply to.

15 Q. Well, let me walk you through perhaps a
16 different interpretation of that phrase that you've
17 just cited. Doesn't that section that you've just
18 read imply that the customers pay up front for any
19 special construction? Can we agree on that?

20 A. Not yet. Let me hear the rest of your
21 question.

22 Q. Wise. And/or cancellation of the
23 contract?

24 A. Yes, the "and/or" means it's and/or.

25 Q. Gotcha. So if a Charter customer

1 cancels a special construction contract, the customer
2 pays the actual cost; is that correct?

3 A. It doesn't exactly say, nor do I think
4 there is any rates -- although I haven't looked,
5 specific rates. I think it would remain for Charter
6 to determine what it would propose to charge the --
7 the end user for the construction costs that are
8 stranded.

9 Q. So you read Section 1.91 to grant
10 Charter-Missouri the right to charge both a -- the
11 construction and facilities fee or cancellation fee
12 and a stranded plant fee?

13 A. No. The cancellation fee would be alike
14 to a stranded investment. You might decide to charge
15 part of it up front, and then if the customer
16 canceled, charge some more of it on the tail end.

17 Q. Does this phrase say anything about a
18 specific cancellation fee?

19 A. No. I just said you don't set forth
20 what the exact rate would be.

21 Q. Is CenturyTel proposing to limit its
22 to-be-determined stranded investment charge to its
23 actual construction cost?

24 A. Again, the parties have agreed as to how
25 they're going to -- going to cooperate in determining

1 the to-be-determined rates and whatever those
2 provisions say as the process will govern that
3 process. I didn't get into the details of that.

4 Q. If you know, Mr. Watkins, how much
5 stranded investment or stranded plant does
6 CenturyTel-Missouri have at present?

7 A. I don't know.

8 Q. Let's go to page 19 of your testimony.
9 Again, we're still in your rebuttal. Am I correct in
10 reading this portion of your testimony that given
11 Charter's ordering expertise -- your phrase, not
12 mine -- there's really no concern with this TBD
13 charge because it will never come into play?

14 A. If Charter never -- if there is never a
15 situation with Charter where they order something and
16 we build it, and even if it's not used, then we
17 should have no concern about the provision because it
18 would never apply.

19 Q. Thank you. Now, turning to page 20,
20 down around lines 14 through 17, please. And I think
21 this is picking up on something you've said a couple
22 of times in response to my prior questions. Am I
23 correct that your rebuttal testimony states or
24 provides that if Charter disagrees with the TBD
25 charge, Charter can invoke dispute resolution?

1 A. Again, whatever the already-agreed-to
2 provisions for the determination of to-be-determined
3 rates states. I don't have that here in front of me.
4 I guess it's Article 3, Section 46.1. CenturyTel is
5 certainly committed to complying with whatever that
6 section says.

7 Q. Thank you. If the parties do not reach
8 agreement on the TBD charge via dispute resolution,
9 what happens?

10 A. I don't know. What does that section
11 say happens? I don't -- I don't have the section in
12 front me.

13 Q. Do you not know? It may be answered on
14 page 21 of your testimony at the top of the page.
15 There you say that, "Mr. Gates fails to note that the
16 dispute resolution process can be used by Charter
17 with respect to Section 11.6." And that dispute
18 resolution process anticipates full Commission
19 involvement; is that correct?

20 A. Correct. Well, whatever the dispute
21 resolution processes are, I think it can be escalated
22 to involving the Commission, yes.

23 Q. So just to make sure I understand, if
24 Charter does not agree to a TBD charge and the
25 parties do not agree after dispute resolution as to a

1 TBD charge, the Commission would be fully involved in
2 determining whether a charge could be assessed and
3 how much?

4 A. I think that the dispute resolution
5 process would resolve the answer to that question
6 beyond another step of taking something else to the
7 Commission.

8 Q. Let's assume a hypothetical where it
9 didn't. Would the Commission become involved?

10 A. No. The dispute resolution process set
11 forth in the agreement would resolve disputes,
12 absolutely.

13 MR. DODGE: Just a moment, your Honor.

14 JUDGE PRIDGIN: Certainly.

15 BY MR. DODGE:

16 Q. Mr. Watkins, we're going to go back to
17 your direct testimony, please, specifically, page 11.
18 And I'd direct your attention to line 9. And just so
19 I'm clear, in your direct testimony you -- you said
20 that, "Charter wants the billing party to return the
21 overpayment plus interest while the parties pursue
22 dispute resolution over the disputed bill," correct?

23 A. Yes. I corrected that in my rebuttal
24 testimony.

25 Q. And that was at page 9 of your rebuttal?

1 A. I corrected it just like your witness
2 needed to correct it earlier.

3 Q. Did they make the same mistake?

4 A. I was confused by -- by reading your
5 discussion of the issue which came up as confusion in
6 your witness earlier.

7 Q. So in formulating --

8 A. But I -- I corrected myself in the
9 rebuttal testimony.

10 Q. So in formulating your direct testimony,
11 did you look at -- what?

12 A. I looked at the positions of the parties
13 that had been filed and tried to ascertain what the
14 nature of the dispute was.

15 Q. Did you look at the contract language?

16 A. I did.

17 Q. Thank you. With apologies for skipping
18 around, let's go back to your rebuttal testimony on
19 page 8, please. And the reason why I'm jumping
20 around, we're trying to cut back on questions and get
21 you out of here today.

22 Again, page 8 of your rebuttal, lines 6
23 through 18, am I correct, Mr. Watkins, that I heard
24 you testify that there has been some sort of mismatch
25 in Ms. Giaminetti's testimony?

1 A. Yes.

2 Q. And you note that Section 9.3 of the
3 agreement addresses undisputed charges while Section
4 9.4.2 relates to disputed charges; is that correct?

5 A. Correct.

6 Q. Do you have Section 9.4.2 in front of
7 you?

8 A. No. I have it in the DPL, I think.

9 Okay. I'm reading it in the DPL, the revised DPL,
10 September the 2nd.

11 Q. Should be the same.

12 A. Okay.

13 Q. Do you read that Section to only come
14 into play after a dispute is resolved in favor of the
15 billed party?

16 A. You mean under Charter's proposal or
17 under CenturyTel's proposal?

18 Q. Under Charter's proposal.

19 A. Let's see here. It is poorly written.
20 The phrase toward the end of the very long first
21 sentence, "Prior to the date that is one year after
22 the date of the invoice," it's not clear whether that
23 phrase applies to the period of time you have to
24 dispute or the period of time you -- you might want
25 to seek a refund.

1 Q. Accepting as gospel that it is poorly
2 written, I'm focusing on something different. I'd
3 like to know when the repayment plus interest has to
4 happen under Charter's language.

5 A. Again, it's not totally clear to me.

6 Q. Well, let me ask it this way: Would the
7 billed party ever be able to demand overpayment plus
8 interest if the bill was billed in dispute?

9 A. There's a possibility that that
10 confusion still exists with the language, yes.

11 Q. Is that CenturyTel's position --

12 A. That's not CenturyTel's position ever
13 and, apparently, from what I heard from your witness,
14 that's not your intention either.

15 Q. Let me reask the question. Is it
16 CenturyTel's position that Charter's language in
17 9.4.2 would operate in a circumstance where a bill
18 was still under dispute?

19 A. I think it's poorly written, and as a
20 result, that might be someone's interpretation.

21 Q. I'd like to talk a little bit about your
22 credit card example on pages 8 and 9 of your rebuttal
23 testimony. Am I correct that toward the top of
24 page 9 you state that, "A consumer who overpays a
25 credit card bill shouldn't expect a refund plus

1 interest"; is that correct?

2 A. That's correct.

3 Q. And I'm presuming your example is the
4 type of credit card that interest starts accruing as
5 soon as a purchase is made?

6 A. I mean, there's all kinds of different
7 terms for credit cards, but let me hear your question
8 and we can presume that for --

9 Q. Sure. I'd like for you to consider the
10 following hypothetical. Let's suppose a consumer has
11 a \$50 balance on his credit card account. Let's also
12 presume that he sent in \$100 in payment by mistake.
13 Do you understand?

14 A. Okay.

15 Q. That would be a \$50 balance in favor of
16 the consumer; is that correct? Well, let's continue
17 the hypothetical. Let's presume that in the next
18 billing cycle, the consumer did not request a refund.
19 The balance would carry forward, wouldn't it?

20 A. I've actually had that happen to me and
21 they show a credit -- a credit balance on my account.

22 Q. Good.

23 A. And they don't send it back until two or
24 three months later when you call them up and ask them
25 to send it back.

1 Q. Excellent. You've anticipated some of
2 my questions. Let me go through them anyway. Let's
3 assume that our hypothetical clueless customer who,
4 unlike you, didn't notice that you could ask for the
5 refund buys a new item with that same card for \$50.
6 Do you still understand?

7 A. (No response.)

8 Q. What interest rate would the credit card
9 company apply to that new \$50 purchase?

10 A. Whatever interest rate the terms and
11 conditions apply.

12 Q. So even though the consumer has a \$50
13 credit, it's your testimony that the credit card
14 company would apply interest to the purchase amount?

15 A. No. I'm not exactly sure how they would
16 handle that.

17 Q. Thank you. Does CenturyTel issue credit
18 cards?

19 A. I don't know.

20 Q. Have you ever worked for a credit card
21 company?

22 A. No.

23 Q. Have you ever testified on behalf of a
24 credit card company?

25 A. No.

1 Q. Do you consider yourself an expert on
2 credit cards?

3 A. Only the ones that I have.

4 MR. DODGE: Your Honor, that's all the
5 questions I have for Mr. Watkins. Mr. Halm has
6 several and I'll it turn it over to him.

7 JUDGE PRIDGIN: All right. Thank you.
8 When you're ready, sir.

9 ADDITIONAL CROSS-EXAMINATION BY MR. HALM:

10 Q. Mr. Watkins, I'm K.C. Halm on behalf of
11 Charter-Fiberlink. Thank you for your time today.
12 I'd like to talk a little bit about issue 16, the
13 network upgrades issue. Is it true that there's
14 nothing in the draft agreement that would affect
15 either parties' rights for a plan to upgrade its
16 networks?

17 A. I think I said in my testimony, yes.

18 Q. Okay. So Charter can upgrade its
19 network at any time?

20 A. Provided that it continues to comply
21 with the requirements that it's agreed to in the
22 agreement.

23 Q. And has Charter suggested that it does
24 not intend to comply with those --

25 A. No, but I -- that -- when I -- I made

1 that statement in my testimony. Provided that
2 Charter continues to comply with the terms and
3 conditions and its obligations in the agreement, it's
4 free to do anything it wants with its -- with its
5 network.

6 Q. And if it doesn't comply with a certain
7 notice issue or requirement, it's -- it's not allowed
8 to upgrade its network?

9 A. Charter has no requirement of notice.

10 Q. Which particular terms do you expect
11 could prevent Charter from upgrading its network if
12 Charter didn't comply with those terms?

13 A. That's -- I didn't have any testimony on
14 that because my testimony is that there are no terms
15 that prevent Charter from doing anything for its
16 networks except -- and so long as it continues to
17 comply with the responsibilities under the agreement.

18 Q. What about CenturyTel, could they
19 upgrade their network at any time?

20 A. Yes.

21 Q. Why, then, do we need Section 47 of this
22 proposed contract?

23 A. Because sometimes CLECs have argued that
24 when the incumbent upgrades its network, that somehow
25 or another, that causes some sort of change, that the

1 CLEC cries foul and asks the incumbent to pay the
2 CLEC for its costs that result from the incumbent
3 upgrading its network.

4 So the incumbents have routinely
5 included that language to make clear that when the
6 incumbent upgrades its network, it's not responsible
7 for paying the CLEC anything.

8 Q. Has Charter objected to that language?

9 A. I don't think so.

10 Q. So that issue is not in dispute, is it?

11 A. Not in that direction, no.

12 Q. No? But you believe Charter's proposed
13 language requires CenturyTel to apply ILEC
14 requirements regarding network changes in Charter's
15 operations; is that right?

16 A. Can you direct me to something in my
17 testimony that you're asking me about?

18 Q. Yes. I am thinking of your direct
19 testimony on page 19, specifically lines 15 through
20 17.

21 A. I see that. And then I go on many pages
22 afterwards to explain -- explain that.

23 Q. Are you ready to answer the question?

24 A. I'm sorry?

25 Q. Can you answer the question I just posed

1 to you?

2 A. You asked me if the statement that is
3 contained on 15 and 16 is in my testimony. Is that
4 your question?

5 Q. No.

6 JUDGE PRIDGIN: Do you want to ask it
7 again or have the court reporter ask it again?

8 MR. HALM: Yes, please. Would the court
9 reporter --

10 THE COURT REPORTER: If you could ask it
11 again? I'm sorry.

12 MR. HALM: Okay.

13 BY MR. HALM:

14 Q. Do you believe that Charter's language
15 requires CenturyTel to apply ILEC requirements
16 regarding network changes to Charter's operations?

17 A. I believe that's what that sentence
18 says, yes.

19 Q. All right. So you do believe that?

20 A. Yes.

21 Q. Okay. And you have reviewed Charter's
22 proposed language in the Joint DPL?

23 A. Yes.

24 Q. And you know, then, that Charter's
25 proposed language is simply taken verbatim from

1 CenturyTel's proposal?

2 A. No, I don't know that.

3 Q. Do you want to take a moment to look at

4 the DPL?

5 A. CenturyTel has its language and Charter

6 has its language.

7 Q. You're talking about issue 16, right,

8 Section 47 of the contract? Do you have a copy of

9 the Joint DPL there?

10 A. I am. I'm not finding it. Which page

11 are we on?

12 Q. Page 63.

13 A. And your question is?

14 Q. Did you know that Charter's proposed

15 language mirrors CenturyTel's language?

16 A. It's the opposite of CenturyTel's

17 language.

18 Q. Other than replacing the parties' names,

19 are there any other differences?

20 A. I don't think so, other than -- other

21 than for all the reasons I explained in my testimony

22 why the provision relates to interconnection with the

23 incumbent's network, not CenturyTel's interconnection

24 with the CLEC network. That's not a mirror -- that's

25 not a mirror issue.

1 Q. The language then seeks reciprocity on
2 this question; is that right?

3 A. For something that I don't think makes
4 sense to have reciprocity for.

5 Q. Yes, but it does seek reciprocity?

6 A. That's what it apparently seeks, yes.

7 Q. All right. In which of the two proposed
8 sentences that Charter has offered does its language
9 require CenturyTel to apply ILECs -- to apply ILEC
10 requirements regarding network changes to Charter's
11 operations?

12 A. Well, I explained the rationale as to
13 why CenturyTel as the incumbent and other incumbents
14 include this as a routine provision because it's the
15 incumbent that the CLEC is -- incumbent's network to
16 which the CLEC is interconnecting.

17 Q. But -- I'm sorry, Mr. Watkins. Are you
18 responding to my question about which of these two
19 sentences contain that term?

20 A. The two sentences -- both sentences turn
21 that around to an application that's inconsistent
22 with the relationship between the parties, so I
23 object to both sentences.

24 Q. So under your construction of these
25 sentences, you think there's a problem?

1 A. I do.

2 Q. This language says nothing about network
3 notices, does it?

4 A. No.

5 Q. And you agree Charter's free to make
6 changes on its network, right?

7 A. Correct.

8 Q. I'd like to move to issue 18.
9 CenturyTel is an incumbent local exchange carrier, an
10 ILEC within the meaning of Section 251; is that
11 correct?

12 A. That's correct.

13 Q. Do you agree with the following
14 statements under Section 251(c)(2)(b), "An incumbent
15 LEC must allow a requesting telecommunications
16 carrier to interconnect to any technically feasible
17 point"?

18 A. That's what Section 251(c)(2)(b) says.

19 Q. Great. Do you agree that the FCC has
20 interpreted this provision to mean that a
21 competitive -- excuse me -- "That competitive LECs
22 have the option to interconnect at a single point of
23 interconnection per LATA"?

24 A. It has not.

25 Q. You don't agree that that's true?

1 A. I do not agree.

2 Q. How about this statement: Is it true
3 that the FCC rules preclude a LEC from charging
4 carriers for traffic that originates on the LEC's
5 network?

6 A. That is a provision. There's nothing
7 that CenturyTel is proposing that that is in
8 prohibition -- that is in -- contrary to that role.

9 Q. But you don't agree with that second
10 sentence?

11 A. What second sentence?

12 Q. I'll read it in for you. "The FCC has
13 interpreted 251(c)(2)(b) to mean that competitive
14 LECs have the option to interconnect at a single
15 point of interconnection per LATA."

16 A. I don't agree that they've interpreted
17 it as to apply to CenturyTel at this point in time,
18 no.

19 Q. Would you be surprised to learn that
20 these statements are taken verbatim from paragraph 87
21 of the FCC's 2005 intercarrier compensation NPRM?

22 A. They are, but they're not complete.

23 Q. They're not complete?

24 A. No, you --

25 Q. I just read you the sentences from that

1 order.

2 A. And -- and --

3 Q. You're saying the FCC is -- there's
4 drafting errors in this order?

5 A. No. Those sentences are based upon
6 footnotes as the basis for that statement, and the
7 basis for that statement is a Section 271 proceeding
8 with a Bell Operating Company as the sole basis for
9 that -- that statement, and it was simply making it
10 in reference to the Bell Companies that that has been
11 applied to.

12 Q. And when has the FCC said that incumbent
13 LECs that are now BOCs are not required to
14 interconnect to a single point of interconnection?

15 A. I don't think that -- that a negative
16 statement like that has been made.

17 Q. Okay. You have suggested that citations
18 to a notice of proposed rulemaking are inappropriate
19 because they simply identify rules that are to be
20 proposed. Do you remember that portion of your
21 testimony?

22 A. Would you like to direct me to it?

23 Q. How about your rebuttal testimony at
24 page 27, line 17?

25 A. All right. I also reference my direct

1 testimony there.

2 Q. And you say, "The Unified Inter-carrier
3 Compensation Regime NPRM is still only a proposal
4 from the FCC for comment."

5 A. That's correct.

6 Q. Didn't you testify earlier today that
7 reliance upon a notice of proposed rulemaking is the
8 proper basis for CenturyTel's proposed definition of
9 IP-enabled traffic?

10 A. For a different -- different approach.

11 Q. You did?

12 A. Yes, but for --

13 Q. Thank you.

14 A. -- under different circumstances.

15 MR. MOORMAN: Your Honor -- your Honor,
16 can he respond to the question as to why he agreed --
17 why he -- he said "yes, but," and then counsel is
18 cutting him off.

19 MR. HALM: I thought he did respond.

20 JUDGE PRIDGIN: I think -- I think he
21 got the answer that he wanted and I think he's trying
22 to lead the witness and he's trying to narrate and
23 get an answer to a question he's not been asked. So
24 no, I'm not going to allow it. If you think a
25 witness -- and this goes for everybody -- if you

1 think a witness isn't being responsive, speak up and
2 I'll be glad to rule on motions to strike.

3 BY MR. HALM:

4 Q. Okay. With respect to the NPRM, the
5 2005 intercarrier compensation NPRM, did the FCC in
6 those orders -- in that document refer to its then
7 current rules for single points of interconnection?

8 A. Again, in the context of a Bell Company
9 and the basis of the Section 271 proceedings.

10 Q. So then, at least in the context of a
11 Bell Company, the statements in the NPRM do reflect
12 current rules?

13 A. I would say that's probably accurate.

14 Q. Okay. And do you know whether the FCC
15 has ever said in a document other than an NPRM that
16 incumbent LECs are required to interconnect with
17 CLECs at a single point of interconnection?

18 A. Actually, I --

19 THE COURT REPORTER: I didn't hear the
20 last part of your question.

21 MR. HALM: Okay. I'll slow down.

22 BY MR. HALM:

23 Q. Do you know whether the FCC has ever
24 stated that incumbent LECs were required to
25 interconnect with CLECS at a single point of

1 interconnection?

2 A. I don't know.

3 Q. Are you familiar with the Wireline
4 Competition Bureau's 2002 decision arbitrating terms
5 for Verizon?

6 A. I am familiar.

7 Q. And are you familiar with paragraph 67
8 of that order?

9 A. I can recall that. I would add that
10 exactly the same basis appears in that order
11 addressing Verizon in the state of Virginia, and that
12 is the basis for the rule you are suggesting is the
13 Section 271 proceedings with Bell Companies.

14 Q. But the FCC did say, and I'm going to
15 quote here, that, "FCC rules establish that
16 competitive LECs have the right, subject to questions
17 of technical feasibility, to determine where they
18 will interconnect with and deliver their traffic to
19 the incumbent LEC's network."

20 A. It says that and its -- and its basis
21 for that statement is the Section 271 proceeding with
22 the Bell Company.

23 Q. And the following statement in this same
24 paragraph is, "The competitive LECs may at their
25 option interconnect with the incumbent's network at

1 only one place in the LATA."

2 A. Again, yes, same answer.

3 Q. But in paragraph 67 they didn't apply
4 this only to Bell Operating Companies.

5 A. If you examine that order, you'll see
6 that the basis for their statements in that order
7 regarding the single POI all come back to the
8 Section 271 proceedings with Bell Companies.

9 Q. But they didn't exclude that in
10 paragraph 67 in that order, did they?

11 A. I think that's --

12 Q. That's your construction of the
13 language, right?

14 MR. MOORMAN: Asked and answered, your
15 Honor.

16 JUDGE PRIDGIN: Overruled. I don't know
17 what his answer was. Could you ask it again, please?

18 BY MR. HALM:

19 Q. Did the FCC specifically say in
20 paragraph 67 of this order that incumbent LECs, as it
21 used the term there, are only BOCs?

22 A. No. It said that that sentence has to
23 be viewed in the context of the previous similar
24 sentences where the basis that it gave for that
25 statement was the Section 271. The fact that it

1 didn't put the same footnote in the order every time
2 it made the same statement in the order doesn't mean
3 that it didn't mean the same basis as it provided
4 earlier in the order.

5 Q. Were you working at the FCC at the time
6 that order was written?

7 A. No. But that's a very logical
8 conclusion that they don't put the footnote multiple
9 times after they've done it once.

10 Q. But did you speak with the author of
11 that order?

12 A. No.

13 Q. No. It's your construction, right?

14 A. It is.

15 Q. Can you point us to the specific page of
16 your testimony where you assert that it would be
17 technically infeasible for Charter to interconnect
18 with CenturyTel at a single POI?

19 A. I -- I -- I explain possible situations
20 where that would be the result, but we don't have any
21 ironclad examples or requests from Charter to analyze
22 to give you a specific answer.

23 If you ask to be connected at one point
24 and -- on their network that doesn't have connecting
25 facilities to some other point in their network where

1 you're competing, then it certainly isn't technically
2 feasible for them to be able to exchange traffic at
3 that distant location.

4 Q. Are you speculating now?

5 A. If -- if that was the request you made,
6 then that would be an example where it would be
7 technically infeasible.

8 Q. Well, let's go to that question, because
9 in your direct testimony, you have stated that there,
10 quote, may be no CenturyTel network between
11 CenturyTel and offices. Do you remember that?

12 MR. MOORMAN: Mr. Halm, what page, what
13 line?

14 MR. HALM: Page 28.

15 MR. MOORMAN: Of his?

16 MR. HALM: Direct, lines 6 and 7.

17 THE WITNESS: That's consistent with
18 what I said a minute ago, yes.

19 BY MR. HALM:

20 Q. Are you familiar with the CenturyTel
21 network in Missouri?

22 A. Not all of it, no.

23 Q. How about those portions of the network
24 that serve the communities of Wentzville, Bourbon,
25 Cuba, O'Fallon and St. Peters?

1 A. I'm partially familiar.

2 Q. I'm sorry. I didn't hear you.

3 A. I'm partially familiar, yes.

4 Q. Okay. Can you tell us whether there is
5 such a network in those communities?

6 A. There is some connecting facilities used
7 for interexchange access traffic, but not for
8 local -- local traffic purposes.

9 MR. HALM: Okay. At this point I would
10 like to offer a proprietary exhibit, your Honor.

11 JUDGE PRIDGIN: Has that already been
12 marked?

13 THE WITNESS: It has, yes. It's
14 Schedule TJG-8 of Mr. Gates' rebuttal testimony. So
15 it is in the record, but if we were going to discuss
16 it, I wanted to make sure we comply with the
17 procedures.

18 JUDGE PRIDGIN: Let me make sure I'm
19 clear on the exhibit number. Would you give me that
20 number again, please?

21 MR. HALM: Yes. It should be an exhibit
22 to Mr. Gates' rebuttal testimony.

23 MR. COMLEY: It would be in 2 P, I
24 think.

25 JUDGE PRIDGIN: So 2 P's already been

1 offered and admitted over an objection on some
2 motions to strike. I don't know if that proprietary
3 information has anything to do with the motion to
4 strike or not.

5 MR. HALM: I don't think it does.

6 JUDGE PRIDGIN: Okay. So you're wanting
7 to offer something in addition or are you just
8 wanting to discuss it?

9 MR. HALM: I want to discuss Schedule
10 TJG-8 which is proprietary.

11 JUDGE PRIDGIN: It's already in the
12 record, but we need to go in-camera; is that what I'm
13 understanding?

14 MR. HALM: Yes.

15 JUDGE PRIDGIN: All right. If you'll
16 bear with me just a moment. Let me ask counsel to
17 verify, is there someone in the room that's not
18 entitled to be here for this discussion?

19 MR. HALM: I don't believe that Charter
20 witnesses have signed a nondisclosure. Let me -- if
21 I can confer?

22 JUDGE PRIDGIN: Certainly.

23 MR. DODGE: Your Honor, Mr. Williams
24 left. He has signed, and I suspect he will come
25 back. In fact, here he comes.

1 JUDGE PRIDGIN: We're not in-camera yet,
2 so if you'll hang on just a second -- let me do this.
3 Before we even go in-camera, let me, I guess, get
4 counsel's information on how much longer to go.

5 I would -- if we're not going to be at a
6 stopping point there about six o'clock or so, I plan
7 on kind of bringing us to a halt. Is there -- and I
8 don't know how long you plan to go in-camera or how
9 much more questioning you have. I'm just kind of
10 looking for a natural breaking point rather than just
11 abruptly stopping around 6:00.

12 MR. HALM: Right. I think we can get
13 through by 6:00 or -- you know, 6:15 at the latest.
14 Would that be all right? Or --

15 JUDGE PRIDGIN: And then we still have
16 bench questions. You mean you get through with your
17 part, correct?

18 MR. HALM: Right, yes.

19 JUDGE PRIDGIN: You know, I -- you know,
20 they've already left. Let's join them. What do you
21 say? We'll pick back up in the morning, and I'll
22 certainly, you know, have counsel remind me where we
23 are. But I guess we'll almost immediately go
24 in-camera.

25 And let me see if there's anything else

1 counsel needs to bring -- bring to my attention. And
2 we'll plan on resuming at 8:30 again, that being kind
3 of an opening bid. Is there -- is there anything
4 from counsel before we go off the record this
5 evening?

6 (NO RESPONSE.)

7 JUDGE PRIDGIN: All right. If there's
8 nothing further, we will adjourn and we will resume
9 in the morning at 8:30. Thank you very much. We're
10 off the record.

11 (WHEREUPON, the hearing of this case was
12 recessed until 8:30 a.m. on October 29, 2008.)

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