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September 29, 2008

Judge Liz Kayser  
Judge Mick Long  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
Austin, Texas 78701

**RE: Case No. 35869; CenturyTel of Lake Dallas, Inc.'s Response to Commission Order No. 3**

Your Honors:

This letter responds to Commission Order No. 3 in Docket No. 35869 regarding the question as to which issues in dispute between the parties "implicate or involve VoIP." As the Commission is aware, the petitioner in this proceeding, Charter Fiberlink TX-CCO, LLC ("Charter"), is a Voice over Internet Protocol ("VoIP") service provider. Therefore, there is a basis to conclude that every term of the proposed interconnection agreement between Charter and CenturyTel of Lake Dallas, Inc. ("CenturyTel") "implicates" or "involves" VoIP as the exchange of such traffic pursuant to the terms of such agreement arising from this proceeding is integral to Charter's business plan in Texas.

Notwithstanding the foregoing, the issues between CenturyTel and Charter in the instant proceeding do not involve disputes over the jurisdictionalization of and/or compensation for VoIP traffic—unlike in Docket Nos. 28821 and 26381. Indeed, CenturyTel and Charter have agreed on these fundamental issues.

There is only one disputed issue in this proceeding that directly references "VoIP." In Joint DPL Issue No. 1, each party proffers a different definition for IP-enabled traffic. Charter proposes a definition for "Interconnected VoIP Service Traffic," and CenturyTel proposes a

<sup>1</sup> Charter's proposed definition for "Interconnected VoIP Service Traffic" reads as follows:

Interconnected VoIP Service Traffic is traffic that is provisioned via a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises

definition for "IP-Enabled Voice Traffic."<sup>2</sup> The principle issue represented by this dispute pertains to whether the definition should encompass:

- (1) only the subset of IP-enabled traffic that Charter originates, *i.e.*, VoIP requiring the use of customer premises equipment (Charter's position);

*or*

- (2) all traffic that utilizes a form of "internet protocol" or "IP" that is simply a form of transport technology, *i.e.*, IP-enabled traffic (CenturyTel's position).

Regardless of which definition is approved, the parties are in agreement that, to the extent such IP-enabled or VoIP traffic both originates and terminates in the same CenturyTel local calling area, such traffic will be considered *Local Traffic and subjected to bill-and-keep*. See CenturyTel's proposed Agreement, Article II, Sec. 2.89 (definition of "Local Traffic"); Article V, Sec. 4.4.2 ("bill-and-keep" provision applicable to Local Traffic). Moreover, to the extent IP-enabled/VoIP traffic does not constitute Local Traffic, the parties have also agreed that such traffic is subject to access charges. See CenturyTel's proposed Agreement, Article V, 4.2.1.3. As a result of these agreed-to provisions (*i.e.*, Article II, Section 2.89 and Article V, Sections 4.2.1.3), the parties' proposed agreement does not draw a distinction between IP-enabled/VoIP traffic and wireline traffic for compensation purposes.

Thus, the single VoIP-related issue that is specifically in dispute and presented for Commission resolution in this proceeding is *not* the same as the primary issues in dispute in Docket No. 26381 wherein AT&T and UTEX were unable to agree as to whether and under what circumstances IP-Enabled Traffic should be compensated as exchange access traffic. Likewise, the single VoIP-related issue in dispute in this proceeding *does not* require the Commission "to consider the issue of the regulatory classification of Voice over Internet Protocol (VoIP)," the basis on which the Commission abated Docket No. 26381. See Order Abating Proceeding (June 22, 2006), Docket No. 26381.

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equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. See Joint DPL, Issue I (Charter's proposed language for Article II, Sec. 2.80)

<sup>2</sup> CenturyTel's proposed definition for "IP-Enabled Voice Traffic" reads as follows:

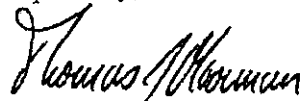
IP-Enabled Voice Traffic means any IP-enabled, real-time, multi-directional voice call, including, but not limited to, service that mimics traditional telephony. IP-Enabled Voice Traffic includes: voice traffic originating on Internet Protocol Connection (IPC), and which terminates on the Public Switched Telephone Network (PSTN); and voice traffic originated on the PSTN, and which terminates on IPC, and voice traffic originating on the PSTN, which is transported through an IPC, and which ultimately, terminates on the PSTN.

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Turning to the Arbitrator's request regarding the impact of the ruling from the United States Court of Appeals for the D.C. Circuit (the "Court") issued in *In Re: Core Communications, Inc.*, Case No. 07-1446 (July 8, 2008) (the "*Ruling*"), CenturyTel does not believe that the response of the Federal Communications Commission ("FCC") to the *Ruling* should have any impact on this proceeding. In Case No. 07-1446, the Court is addressing the compensation structure that the FCC had established for dial-up terminating traffic to Internet Service Providers ("ISPs") or what is commonly referred to as "ISP-bound traffic." In its *Ruling*, the Court ordered the FCC to explain the legal basis for its *ISP-bound traffic* compensation rules and to do so by November 5, 2008. More specifically, the Court ordered the FCC to explain the legal authority for the Commission's interim intercarrier compensation rules that exclude *ISP-bound traffic* from the reciprocal compensation requirement found in 47 U.S.C. § 251(b)(5).

Given that compensation for ISP-bound traffic under the parties' proposed agreement is not in dispute in this proceeding, CenturyTel does not believe that the FCC's action in response to the *Ruling* should impact any determinations the Commission is being asked to make in this proceeding, and therefore there is no need to extend or abate the schedule. To the extent the FCC's responsive ruling is more expansive than ordered by the Court and speaks directly to VoIP issues, CenturyTel and Charter can negotiate appropriate revisions, if necessary, during the course of the arbitration proceeding. Moreover, and to the extent the Commission deems necessary, the Commission could direct the parties to address within the briefing schedule established in this proceeding what, if any, impact the FCC's action in response to the *Ruling* has on the issues that are the subject of this arbitration, and if so, what steps are necessary to address any such action.

Respectfully,



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