

Exhibit No.: \_\_\_\_\_  
Issue: 4(a), 4(b), 6, 8 and 13  
Witness: Peggy Giaminetti  
Type of Exhibit: Direct Testimony  
Sponsoring Party: Charter Fiberlink-Missouri, LLC  
Case No.: TO-2009-0037  
Date Testimony Prepared: September 30, 2008

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the Petition of Charter Fiberlink- )  
Missouri, LLC for Arbitration of an Interconnection ) Case No. TO-2009-0037  
Agreement Between CenturyTel of Missouri, LLC )  
And Charter Fiberlink-Missouri, LLC. )

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DIRECT TESTIMONY OF PEGGY GIAMINETTI  
ON BEHALF OF CHARTER FIBERLINK-MISSOURI, LLC

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September 26, 2008

Company Exhibit No. 11  
Case No(s) TO-2009-0037  
Date 10-28-08 Rptr PF

**In the Matter of the Petition of Charter Fiberlink-  
Missouri, LLC for Arbitration of an Interconnection  
Agreement Between CenturyTel of Missouri, LLC  
And Charter Fiberlink-Missouri, LLC.**

Affidavit for Giaminetti Direct Testimony (TO-2009-0037).DOC

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**I. INTRODUCTION**

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**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Peggy Giaminetti. My business address is 12405 Powerscourt Drive,  
St. Louis, Missouri, 63131. I am filing this testimony on behalf of Charter.

**Q. BY WHOM ARE YOU EMPLOYED, AND WHAT IS YOUR POSITION  
WITHIN THE COMPANY?**

A. I am a Vice President, and I am responsible for fiscal operations and financial  
planning at Charter Communications, Inc., and its subsidiary Charter Fiberlink,  
LLC, the petitioner in this case (collectively "Charter").

**Q. WHAT ARE YOUR DUTIES AT CHARTER?**

A. I am responsible for operational reporting and financial analysis of Charter's  
voice service line of business. In that role various aspects of my responsibilities  
include the preparation of annual budgets and projections and participation in  
decision-making on the day-to-day aspects of Charter's voice service operations,  
in particular as it relates to voice services cost of sales and capital planning.  
Additionally, I am directly responsible for the audit and validation of all voice  
service cost of sales invoices and the generation of monthly carrier access  
billings. I have held this position since November of 2005 and have been fully  
involved in Charter's voice services deployment. I therefore have a basis to  
testify to the facts surrounding the disputed issues between Charter and  
CenturyTel.

1   **Q.   PLEASE DISCUSS YOUR RELEVANT WORK EXPERIENCE AND**  
2   **EDUCATION.**

3  
4   **A.**   Prior to my employment with Charter, I was employed by NuVox  
5   Communications, a Missouri CLEC with operations in 16 states, where I held the  
6   position of Vice President of Revenue and Cost Assurance. Before joining  
7   NuVox, I was the founding financial officer for CoreExpress, an extranet service  
8   provider where I was responsible for all of the financial aspects of the start-up  
9   organization. In addition to these positions, my career has included various  
10   diverse financial roles for several telecommunications ventures including Savvis  
11   Communications and Access America Telemanagement. I have a Bachelor of  
12   Science degree in Accounting and also a Masters of Business Administration  
13   Degree from Maryville University in St. Louis. Additionally, I am a Certified  
14   Public Accountant within the State of Missouri.

15

16   **Q.   HAVE YOU PREVIOUSLY TESTIFIED BEFORE ANY STATE**  
17   **REGULATORY COMMISSION?**  
18

19   **A.**   Yes. I testified before the Missouri Public Service Commission earlier this year  
20   in Case No. LC-2008-0049, a proceeding concerning certain contract and billing  
21   disputes between Charter and an incumbent local exchange carrier in Missouri. In  
22   addition, I recently submitted testimony on behalf of Charter in an arbitration with  
23   Solarus (f/k/a Wood County Telephone) before the Wisconsin Public Service  
24   Commission, in Docket No. 05-MA-147. I also intend to submit similar  
25   testimony in other, concurrent arbitrations between Charter and CenturyTel in  
26   Missouri and Wisconsin.

**II. PURPOSE AND SUMMARY OF TESTIMONY**

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. This testimony is offered to explain Charter's position on disputed issues numbered 4(a), 4(b), 6, 8 and 13 of this arbitration.

**Q. DO YOU OFFER TESTIMONY ON OTHER DISPUTED ISSUES?**

A. No. My colleagues and experts from QSI Consulting will be submitting separate testimony on other issues.

**Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

A. In my testimony, I will explain under what limited circumstances a party should be permitted to terminate the interconnection agreement (the "Agreement"), and why neither party should be able to terminate, as to a specific operating area unless the new LEC that acquires operations assumes the terms of the Agreement. This testimony will also address the conditions upon which a party may reasonably require the other party to provide a deposit, or other assurance of payment. Moreover, I will explain why bill payment terms, and refunds, should be equitable, and how bill disputes should be resolved through the dispute resolution process. Lastly, I will illustrate the history of problems that Charter has with CenturyTel's invoices.

**III. ISSUE 4(A):**

**SHOULD THE AGREEMENT INCLUDE TERMS THAT ALLOW ONE  
PARTY TO TERMINATE THE AGREEMENT WITHOUT ANY  
OVERSIGHT, REVIEW, OR APPROVAL OF SUCH ACTION, BY THE  
COMMISSION?**

**Q. PLEASE EXPLAIN CHARTER'S POSITION ON THIS ISSUE.**

**A.** Charter's position is that the Agreement should include language that allows for the potential termination of the Agreement only under certain circumstances. Specifically, termination should occur only after this Commission has reviewed the terms of the potential termination, and its impact on subscribers, and thereafter orders, or approves, the termination.

**Q. PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE ON THIS ISSUE.**

**A.** Charter's proposed language is as follows:

**2.6 Suspension or Termination Upon Default.** Either Party may suspend or terminate this Agreement, in whole or in part, in the event of a Default (defined below) by the other Party; *provided, however*, that the non-defaulting Party has complied with the dispute resolution provisions of this Agreement, including Section 20.

"Default" is defined to include:

- (a) A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or
- (b) The **final** revocation by the Commission of a Party's Certificate of Operating Authority and transition of End Users to another carrier, or
- (c) A decision pursuant to the Formal Dispute Resolution provisions of Section 20 of this Agreement that a Party has materially breached any of the terms or conditions hereof, except that in no event should termination occur unless so ordered by the Commission, or
- (d) Failure of a Party to pay undisputed amounts or to properly dispute unpaid amounts in accordance with Section 9, and subject to either Party invoking its rights under Section 20, Dispute Resolution, except that in no event should termination occur unless so ordered by the Commission.

1  
2 **Q. PLEASE PROVIDE CENTURYTEL'S LANGUAGE ON THIS ISSUE.**

3  
4 **A.** CenturyTel's proposed language is as follows:

5           2.6 Suspension or Termination Upon Default. Either Party may suspend or  
6 terminate this Agreement, in whole or in part, in the event of a Default (defined  
7 below) by the other Party; *provided, however*, that the non-defaulting Party  
8 notifies the defaulting Party in writing of the Default and the defaulting Party  
9 does not cure the Default within thirty (30) calendar days of receipt of written  
10 notice thereof. Following CenturyTel's notice to \*\*CLEC of its Default,  
11 CenturyTel shall not be required to process new service orders until the Default  
12 is timely cured.

13 "Default" is defined to include:

- 14 (a) A Party's insolvency or the initiation of bankruptcy or receivership  
15 proceedings by or against the Party; or  
16 (b) The revocation by the Commission of a Party's Certificate of Operating  
17 Authority, or  
18 (c) A Party's violation of any material term or condition of the Agreement; or  
19 (d) A Party's refusal or failure in any material respect properly to perform its  
20 obligations under this Agreement, including but not limited to its refusal or  
21 failure to pay undisputed charges (pursuant to Section 9) within thirty (30)  
22 calendar days after the bill date.

23  
24  
25 **Q. HOW DOES CHARTER'S POSITION DIFFER FROM CENTURYTEL'S**  
26 **POSITION?**

27  
28 **A.** CenturyTel proposes that the Agreement allow for termination upon one of  
29 several pre-defined events of default, including where one party has "materially  
30 breached" any term or condition, or where a bill dispute has arisen. Under this  
31 proposal either party could unilaterally terminate the Agreement if that party  
32 believed the other party had "materially breached" any term or condition. Thus,  
33 CenturyTel does not believe that this Commission should be involved in any  
34 event concerning the termination of this Agreement. That is the primary dispute  
35 between the parties: whether the Agreement should include language that would  
36 allow for unilateral termination, as CenturyTel proposes; or, whether it should  
37 include terms that ensures the Commission can play a role in any termination



1 process to so that no actions taken by either party will adversely affect  
2 subscribers, as Charter proposes.

3

4 **Q. WHAT IS CHARTER'S CONCERN WITH CENTURYTEL'S POSITION?**

5 A. Charter's concern with CenturyTel's proposal is that the Agreement could be  
6 unilaterally terminated in a manner that could adversely affect subscribers of one,  
7 or both, parties. If the Agreement were terminated while subscribers were still  
8 relying upon the physical connections used to send and receive calls between the  
9 parties' networks, it would be possible that subscribers could lose service  
10 altogether, or that some calls would fail because of the termination.

11

12 **Q. PLEASE EXPLAIN.**

13 A. To understand Charter's position one must recognize that interconnection  
14 agreements are not standard commercial contracts. Instead, these agreements are  
15 unique, in that they establish the basis for two carriers to interconnect their  
16 respective networks for the express purpose of exchanging voice communications  
17 traffic (i.e. voice calls). In addition, these agreements are not the product of  
18 typical arms-length negotiations, as is true with commercial negotiations. Instead,  
19 interconnection agreements are mandated by Section 251 of the Act.

20

21 **Q. CAN YOU EXPLAIN THE BASIC PURPOSE OF THESE**  
22 **AGREEMENTS?**

23

24 A. Interconnection entails the connectivity of two parties' communications networks  
25 for the purpose of exchanging traffic. Generally speaking, that connectivity

1 entails the physical connection of networks, and the establishment of call paths  
2 between the parties' respective switches and related equipment. Once  
3 connectivity of the networks is established, the two carriers will begin exchanging  
4 traffic. In other words, voice calls will be sent from one carrier's subscribers to  
5 the other carrier's subscribers. Practically speaking, this means that CenturyTel  
6 subscribers will be calling Charter subscribers, and vice versa.

7  
8 **Q. WHY IS THIS INTERCONNECTION IMPORTANT?**

9 A. Because once the networks are interconnected, each party's subscribers rely upon  
10 the physical connection, and call paths, to send calls to and from one another.  
11 This basic functionality, the ability to pick up your handset and place a voice call  
12 to any other person on the public switched telephone network (PSTN), is one of  
13 the most important aspects of physical interconnection mandated by Section 251  
14 of the Act.

15  
16 **Q. WHY IS IT IMPORTANT THAT THIS AGREEMENT INCLUDE A**  
17 **TERMINATION PROCESS THAT IS DIFFERENT FROM THE**  
18 **PROCESS ONE MIGHT EXPECT TO SEE IN OTHER COMMERCIAL**  
19 **CONTRACTS?**

20  
21 A. Because unilateral termination of an interconnection agreement, without  
22 intermediary steps to ensure subscribers are protected, would create serious  
23 problems for both parties' subscribers.

24  
25 **Q. PLEASE EXPLAIN.**

1     A.     Remember, these agreements establish the framework, and fundamental  
2           obligations, that provide both parties' subscribers the ability to send calls to, and  
3           receive calls from, the PSTN. The parties work hard to ensure that this critical  
4           functionality remains in place at all times. That is why this Agreement can not be  
5           unilaterally terminated, like most commercial contracts, without some process to  
6           ensure calls are not "dropped." Under most commercial contracts, the contracting  
7           parties recognize that there may be circumstances where one party should be able  
8           to unilaterally terminate the agreement, and be excused from any further  
9           obligation to perform. So, for instance, if a supplier of widgets contracted with a  
10          manufacturing firm, the contract may include a clause that allows the widget  
11          supplier to discontinue delivery of its products, and unilaterally terminate the  
12          agreement, if the manufacturing company failed to fulfill its terms of the bargain.  
13          If that happened, then it would not be unreasonable for the widget supplier to  
14          cease delivery of its goods, and unilaterally terminate the contract. The result  
15          would likely have an impact on the manufacturer, and maybe its customers, in  
16          that delivery of the product may be delayed, or prices may increase.

17  
18     **Q.     BUT THERE WOULD BE A DIFFERENT RESULT IF THIS**  
19           **INTERCONNECTION AGREEMENT WERE TERMINATED?**

20  
21     A.     Yes, if the same events occurred between two carriers who have *interconnected*  
22           their networks, the non-breaching party could not simply unilaterally terminate  
23           the agreement and "walk away" – precisely because of the essential PSTN access  
24           that is afforded by that interconnection. The reason is clear, if the non-breaching  
25           party unilaterally terminated an interconnection agreement, or simply "walked

1 away” from its obligations under an interconnection agreement, then both parties’  
2 subscribers could be affected in a negative manner. In that circumstance, the  
3 breaching party’s subscribers would lose all access to the PSTN, and the non-  
4 breaching party’s subscribers would not be able to call the other party’s  
5 subscribers. Thus, in this way, subscribers would be harmed, as a result of the  
6 actions of one party. That result is precisely what Charter’s proposal is intended  
7 to avoid.

8  
9 **Q. HOW DOES CHARTER’S PROPOSAL ENSURE THAT SUBSCRIBERS**  
10 **WILL NOT BE HARMED IF THE AGREEMENT WERE TERMINATED?**

11  
12 **A.** Charter’s proposal on this issue would ensure that each party’s subscribers are not  
13 harmed, and therefore ensure that in the unlikely event of termination, Missouri  
14 consumers are not adversely affected. Under Charter’s proposal, any finding of a  
15 default by one party would be predicated on the other party’s ability to invoke the  
16 dispute resolution processes of the Agreement. That would trigger a process  
17 whereby the parties meet to discuss, and try to resolve, disputes that could lead to  
18 service-affecting termination of the Agreement. Moreover, Charter’s proposal  
19 also includes, in certain circumstances, the concept that potential termination of  
20 the Agreement will not occur unless, or until, the Commission specifically  
21 approved such action.

1   **Q.   HOW DOES COMMISSION OVERSIGHT ENSURE THAT**  
2   **SUBSCRIBERS WILL NOT BE HARMED?**

3  
4   **A.**   Charter's proposal would require either party to escalate the most significant  
5   disputes to the Commission. If the Commission determined that one party had  
6   breached the agreement, and that termination of the Agreement was appropriate, it  
7   could so direct the parties to terminate the Agreement in a manner that would not  
8   harm subscribers. For example, the Commission might order the breaching party  
9   to provide notice to its subscribers, so that they could move to a new provider.  
10   Or, the Commission might direct the parties to conduct certain pre-termination  
11   coordinated activities to ensure that all phone numbers are ported off of the  
12   breaching party's network. These are just two examples of the type of action that  
13   this Commission might take if the Agreement were terminated. Also, I  
14   understand that there is a process under existing state law which establishes a  
15   process to resolve disputes arising out of interconnection agreements. Our  
16   counsel has explained to me that the Commission's regulations (Rule 4 C.S.R.  
17   240-2.070) establish procedures for the Commission to resolve disputes arising  
18   under, or pertaining to, interconnection agreements approved by the Commission.  
19   As I understand it, this rule provides for dispute resolution concerning the  
20   interpretation of terms and conditions, implementation of activities contemplated  
21   in the interconnection agreement (including rates), and enforcement of terms and  
22   conditions in such interconnection agreements.

23

24

1    **Q.    WHAT ARE THE BENEFITS OF CHARTER'S PROPOSAL?**

2    A.    The benefits are obvious. First, if the Commission is involved in any termination  
3           process, it would certainly consider the potential impact on Missouri consumers  
4           (including each party's subscribers), and order any necessary intermediary steps  
5           to ensure that those consumers were not adversely affected.

6           Second, Charter's proposal allows for termination of the Agreement (which  
7           CenturyTel demands), but at the same time ensures that Missouri consumers will  
8           not be harmed by disputes between the parties to the Agreement (which Charter  
9           insists upon). In this way, Charter's proposal accommodates CenturyTel's  
10          demands, while at the same time ensuring that consumers, especially the parties'  
11          subscribers, are not harmed.

12          Third, Charter's proposal is consistent with the practice in the industry, and the  
13          actual experience of both parties. With respect to the experience of both parties,  
14          Charter has never terminated any of its interconnection agreements with another  
15          carrier. Nor has any other carrier terminated their interconnection agreements  
16          with Charter.

17

18   **Q.    WHAT RESULT DOES CHARTER SEEK ON THIS ISSUE?**

19  
20   A.    Charter seeks the Commission's assent to the principle that it must oversee any  
21          potentially subscriber-affecting issues that arise out of the termination of the  
22          interconnection agreement between CenturyTel and Charter. Further, to achieve  
23          that result, the Commission should order the parties to adopt Charter's proposed  
24          contract language for this disputed issue.

**IV. ISSUE 4(B):**

**SHOULD THE AGREEMENT INCLUDE TERMS THAT ALLOW ONE PARTY TO TERMINATE THE AGREEMENT AS TO A "SPECIFIC OPERATING AREA" WITHOUT ANY ASSURANCE TO THE OTHER PARTY THAT THE TERMS OF THE AGREEMENT WILL CONTINUE UNINTERRUPTED WITH THE NEW LEC THAT ACQUIRES THE OPERATING AREA?**

**Q. PLEASE EXPLAIN CHARTER'S POSITION ON THIS ISSUE.**

A. Charter's position is that neither party should be able to terminate the interconnection agreement, as to a specific operating area, or service area, unless the third-party entity that is acquiring operations in that area assumes the terms of the Agreement. In addition, that process should also be subject to a notice process, so that the party that is not involved in the transaction would receive notice of the planned transaction.

**Q. PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE ON THIS ISSUE.**

A. Charter's proposed language is as follows:

**2.7 Termination Upon Sale.**

Notwithstanding anything to the contrary contained herein, a Party may terminate this Agreement as to a specific operating area or portion thereof if such Party sells or otherwise transfers the area or portion thereof to a non-affiliate. **The right of termination provided herein is expressly conditioned upon, and subject to, unconditional and prompt acceptance of the terms of this Agreement by the non-affiliated Party.** The selling or transferring Party shall provide the other Party with at least ninety (90) calendar days' prior written notice of such termination, which shall be effective on the date the non-Affiliated Party provides formal, written notice of its acceptance and assumption of the rights, obligations, and duties of the Party selling or transferring the area, and the other Party being reasonably satisfied that the Party acquiring the area is able to fulfill the obligations hereunder. Such acceptance and assumption shall be memorialized in a form mutually agreed upon by both Parties. Notwithstanding termination of this Agreement as to a specific operating area, this Agreement shall remain in full force and effect in the remaining operating areas.

1   **Q.   PLEASE PROVIDE CENTURYTEL'S LANGUAGE ON THIS ISSUE.**

2  
3   **A.   CenturyTel's proposed language is as follows:**

4  
5           2.7 Termination Upon Sale.

6  
7           Notwithstanding anything to the contrary contained herein, a Party may terminate  
8           this Agreement as to a specific operating area or portion thereof if such Party  
9           sells or otherwise transfers the area or portion thereof to a non-affiliate. The  
10          selling or transferring Party shall provide the other Party with at least ninety (90)  
11          calendar days' prior written notice of such termination, which shall be effective  
12          on the date specified in the notice. Notwithstanding termination of this  
13          Agreement as to a specific operating area, this Agreement shall remain in full  
14          force and effect in the remaining operating areas. The Parties agree to abide by  
15          any applicable Commission Order regarding such sale or transfer.  
16

17   **Q.   WHAT IS CENTURYTEL'S POSITION ON THIS ISSUE?**

18   **A.   CenturyTel believes that it should be permitted to "terminate" the agreement "as**  
19           **to a specific operating area, or portion thereof, if it intends to sell off or transfer**  
20           **its operations to a non-affiliate. The only protections (if you can call them that)**  
21           **which CenturyTel would provide is that the selling party must provide 90 days**  
22           **notice of the termination.**

23  
24   **Q.   WHAT IS THE CONCERN WITH CENTURYTEL'S PROPOSAL?**

25   **A.   Charter's concern is that CenturyTel could use this provision to terminate the**  
26           **contract and discontinue interconnection arrangements in certain locations.**  
27           **CenturyTel clearly wants this language in the agreement to allow it to sell certain**  
28           **subsidiaries (or exchanges) to other entities. If this language were accepted, that**  
29           **would mean that CenturyTel could do so, and then simply terminate the**  
30           **agreement with Charter for that particular area.**

31



1   **Q.   IF CENTURYTEL'S PROPOSAL IS ADOPTED, WHAT POTENTIAL**  
2   **PROBLEMS COULD CHARTER FACE?**

3  
4   A.   If CenturyTel's language is adopted, and CenturyTel did sell one of its  
5       subsidiaries, there are several very problematic potential outcomes. First, if  
6       CenturyTel relied upon this language to sell the subsidiary, it could terminate the  
7       Agreement with Charter. That, in turn, would leave Charter without any  
8       connection to the public switched telephone network, and without any means of  
9       ensuring that its subscribers' phone calls can be delivered to, or received from,  
10      other carriers. Second, once the Agreement was terminated, that would also force  
11      Charter to have to negotiate a new agreement with the entity that acquired the  
12      CenturyTel subsidiary. So, Charter would therefore be forced to negotiate an  
13      entirely new agreement, even though it had already committed significant  
14      resources negotiating and arbitrating *this* Agreement.

15

16   **Q.   HOW DOES CHARTER'S PROPOSAL PROTECT AGAINST THE**  
17   **POTENTIAL PROBLEMS YOU HAVE JUST DESCRIBED?**

18  
19   A.   Charter's proposal would not lead to these problems because it reasonably  
20      conditions CenturyTel's right to sell its subsidiary. The condition that Charter  
21      proposes is that the subsidiary must accept the terms of the Agreement (the rights,  
22      obligations, and duties of the selling party) as a condition of the sale. In other  
23      words, if an entity acquires a CenturyTel subsidiary operating in a specific service  
24      area, then that entity would have to agree to continue interconnection  
25      arrangements with Charter, under the terms of the Agreement between Charter  
26      and CenturyTel.

1   **Q.   WHAT RESULT DOES CHARTER SEEK ON THIS ISSUE?**

2  
3   A.   Charter requests that the Commission adopt Charter's proposed language  
4       requiring that any sale of a subsidiary operating in a specific operating, or service,  
5       area would be conditioned on the acquiring entity's assumption of the terms of the  
6       current agreement between Charter and CenturyTel in that area. That will ensure  
7       that CenturyTel can not simply walk away from its contract obligations with  
8       Charter such that Charter is unable to interconnect with the PSTN. It will also  
9       ensure that Charter is not put in the position of being forced to negotiate a new  
10      agreement with the acquiring entity prior to the expiration of this agreement.

11

12                                   **V.    ISSUE 6:**

13                   **UNDER WHAT CONDITIONS MAY ONE PARTY DEMAND THAT THE**  
14                   **OTHER PARTY PROVIDE DEPOSITS, OR ASSURANCE OF**  
15                   **PAYMENTS?**

16

17   **Q.   PLEASE EXPLAIN CHARTER'S POSITION ON THIS ISSUE.**

18

19   A.   Charter's position is that the deposit provisions of this agreement should be  
20       reasonable, and should include specific criteria that will be used to determine  
21       when Charter will be required to provide a deposit or assurance of payment, rather  
22       than simply leaving those decisions to CenturyTel's discretion. For example,  
23       Charter should only be required to provide a deposit upon a specific, pre-defined  
24       event, not simply when CenturyTel deems it necessary.

25

26   **Q.   PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE ON THIS**  
27       **ISSUE.**

28

29   A.   Charter's proposed language is as follows:

6. ASSURANCE OF PAYMENT

6.1 To the extent Charter may not have already established and maintained satisfactory credit with CenturyTel affiliates, CenturyTel may request Charter to provide to CenturyTel a deposit for or an adequate assurance of payment of amounts due (or to become due) to CenturyTel hereunder.

6.1.1 When a Deposit/Assurance of Payment Is Requested. Such deposit or assurance of payment of charges may be requested by CenturyTel **when Charter fails to timely pay (as defined by Section 9 of this Agreement, an undisputed invoice rendered by CenturyTel) or if Charter has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization, winding-up composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.** Upon the conclusion of this review, if CenturyTel continues to require an additional security deposit, at Charter's request, CenturyTel will provide a written explanation to Charter.

6.1.2 The Parties will work together to determine the need for or amount of a reasonable initial or increase in deposit. If the Parties are unable to agree, then **either Party may initiate dispute resolution proceedings pursuant to Section 20 of this Agreement.** The Parties agree that any decision ordered by the Commission will be binding for the state covered by this Agreement. In the case of a disputed initial deposit, the Parties acknowledge that CenturyTel will be required to accept any orders for service **during the time in which the deposit dispute is ongoing.** CenturyTel may **not** terminate service to Charter **on the basis of any dispute arising between the Parties concerning any security deposits that may be required of Charter.**

6.2 Calculating the Amount of Deposit/Assurance of Payment. Unless otherwise agreed by the Parties, such deposit will be calculated based on the total of two (2) months of CenturyTel's charges to Charter (including, but not limited to, both recurring and non-recurring charges), from the previous six (6) month period.

6.3 Modifying the Amount of Deposit/Assurance of Payment. CenturyTel reserves the right to request an additional amount of the deposit or assurance of payment required of Charter if Charter is repeatedly delinquent in making its payments, or Charter is being reconnected after a disconnection of service or discontinuance of the processing of orders by CenturyTel due to Charter's previous non-payment. "Repeatedly delinquent" means any non-disputed payment received thirty (30) calendar days or more after the bill due date, three (3) or more times during a twelve (12) month period.

Q. PLEASE PROVIDE CENTURYTEL'S LANGUAGE ON THIS ISSUE.

A. CenturyTel's proposed language is as follows:

6. ASSURANCE OF PAYMENT

6.1 To the extent Charter may not have already established and maintained satisfactory credit with CenturyTel affiliates, CenturyTel may request Charter to provide to CenturyTel a deposit for or an adequate assurance of payment of amounts due (or to become due) to CenturyTel hereunder.

6.1.1 When a Deposit/Assurance of Payment Is Requested. Such deposit or assurance of payment of charges may be requested by CenturyTel based on CenturyTel's analysis of the CenturyTel Credit Application ("Credit Application") and other relevant information regarding Charter's credit and financial condition. In determining whether an additional security deposit is required, CenturyTel may request an updated Credit Application and will review Charter's credit rating and report details, any documentation relative to bankruptcy, insolvency or similar proceeding, Charter's payment history with CenturyTel affiliates, and to the extent available, Charter's financial information. Upon the conclusion of this review, if CenturyTel continues to require an additional security deposit, at Charter's request, CenturyTel will provide a written explanation to Charter.

6.1.2 The Parties will work together to determine the need for or amount of a reasonable initial or increase in deposit. If the Parties are unable to agree, then Charter must file a petition for resolution of the dispute. Such petition shall be filed with the Commission. The Parties agree that any decision ordered by the Commission will be binding for the state covered by this Agreement. In the case of a disputed initial deposit, the Parties acknowledge that CenturyTel will not be required to accept any orders for service until such time as the requested deposit is paid or the dispute is settled. In the event Charter fails to file a petition with the Commission or pay the disputed deposit within 30 days of the request for an additional deposit, then CenturyTel may terminate service to Charter in accordance with Sec. 2 and any security deposits will be applied to Charter's account.

6.2 Calculating the Amount of Deposit/Assurance of Payment. Unless otherwise agreed by the Parties, such deposit will be calculated based on the greater of (1) CenturyTel's estimated two-month charges to Charter (including, but not limited to, both recurring and non-recurring charges) using Charter's forecast of interconnection facilities and any other facilities or services to be ordered from CenturyTel, or (2) \$5,000. If Charter does not provide a forecast of its facility or service demand under this Agreement, Charter shall provide, upon CenturyTel's request, a deposit or assurance of payment of charges in an amount of \$5000.

6.3 Modifying the Amount of Deposit/Assurance of Payment. CenturyTel reserves the right to request an additional amount of the deposit or assurance of payment required of Charter if Charter is repeatedly delinquent in making its payments, or Charter is being reconnected after a disconnection of service or discontinuance of the processing of orders by CenturyTel due to Charter's previous non-payment, or when conditions otherwise justify such action based on actual billing history and/or the credit rating of Charter. "Repeatedly delinquent"

means any non-disputed payment received thirty (30) calendar days or more after the bill due date, three (3) or more times during a twelve (12) month period.

**Q. WHAT IS CENTURYTEL'S POSITION ON THIS ISSUE?**

A. In contrast to Charter's proposal, CenturyTel has proposed language that would give CenturyTel the unilateral right to decide, and demand: when Charter must provide a deposit; the amount of the deposit; and when the deposit should be modified, or adjusted.

**Q. PLEASE IDENTIFY THOSE SPECIFIC PROVISIONS THAT RAISE THESE CONCERNS.**

A. There are various subsections in Section 6 where CenturyTel has proposed language which raises these concerns, specifically Sections 6.1.1, 6.1.2, 6.2, and 6.3.

**Q. WHAT IS THE CONCERN WITH SECTION 6.1.1?**

A. The concern with Section 6.1.1, is that it gives CenturyTel the right to demand a deposit "based on CenturyTel's analysis of the CenturyTel Credit Application and **other relevant information** regarding Charter's financial condition." Our concern with this language is that it gives CenturyTel undue discretion to determine when a deposit would be required. Although we understand what a credit application entails, CenturyTel gives no additional information concerning what it believes to be "other relevant information." The phrase is so ambiguous, and open-ended, that it could be construed as giving CenturyTel the right to demand any type of additional information which may, or may not, be relevant to

1 the assessment of a deposit. Charter's proposal, in contrast, is that the deposit  
2 requirement is triggered by specific events which suggest the need for greater  
3 assurance. Specifically, Charter proposes that the deposit be keyed to a failure to  
4 timely pay, or a bankruptcy event. Both circumstances are concrete, verifiable  
5 facts, which are the appropriate criteria for requiring a deposit.  
6

7 **Q. WHAT IS THE CONCERN WITH SECTION 6.1.2?**

8  
9 A. This provision raises the question of how the parties should resolve disputes about  
10 the amount of any necessary deposit. Charter's view is that disputes concerning  
11 deposits should be resolved through the dispute resolution processes in the  
12 agreement. CenturyTel, however, proposes that if the parties are unable to agree  
13 upon the proper deposit amount, then "Charter must file a petition for resolution  
14 of the dispute... with the Commission." This language, in a subtle manner, shifts  
15 the burden of proof from CenturyTel to Charter. Normally, a company  
16 demanding a deposit would be required to explain why the deposit is necessary,  
17 and whether the amount is reasonable. However, in this instance, CenturyTel  
18 effectively shifts that burden by forcing Charter to prove that a deposit is *not*  
19 required, and that the amount is *not* reasonable. This language creates an implicit  
20 presumption that CenturyTel's deposit amount is reasonable, and forces Charter  
21 to disprove that presumption.  
22

23 **Q. ARE THERE OTHER CONCERNS WITH SECTION 6.1.2?**

24  
25 A. Yes, the most significant concern we have with this section is the language at the

1 end of that section offered by CenturyTel. Specifically, CenturyTel proposes the  
2 following language:

3 In the event Charter fails to file a petition with the Commission or  
4 pay the disputed deposit within 30 days of the request for an  
5 additional deposit, then *CenturyTel may terminate service* to  
6 Charter in accordance with Section 2 and any security deposits will  
7 be applied to Charter's account.<sup>1</sup>  
8

9 Thus, CenturyTel would have the right to simply stop porting numbers, or  
10 including directory listing requests, until Charter pays the deposit (or petitions the  
11 Commission). In this way, CenturyTel will have built in to the contract pre-  
12 established "leverage" because they may simply decline to perform their  
13 contractual obligations until Charter provides the deposit, or petitions the  
14 Commission. It is not reasonable to allow one party to obtain that kind of  
15 leverage over these matters. If a dispute did arise, and CenturyTel declined to  
16 provide number porting, or some other service to Charter, end users could be  
17 adversely affected, and competition thwarted.  
18

19 **Q. WHAT IS THE CONCERN WITH SECTION 6.2?**

20  
21 **A.** The concern here is that CenturyTel is demanding an unnecessarily complicated  
22 formula for determining the deposit amount. In contrast, Charter's proposal  
23 clearly establishes that the deposit amount will be based on the total of two (2)  
24 months of previous billings to Charter, and that those previous two months should  
25 be drawn from the last six month period. That formula is simple, easily  
26 administered, and represents a fair approximation of the potential quantity of

---

<sup>1</sup> See Joint DPL, Issue 6 (proposed language of CenturyTel).

1 service requests that Charter may submit to CenturyTel.

2

3 **Q. DO YOU HAVE ANY CONCERNS WITH SECTION 6.3?**

4

5 A. Yes. Our primary concern with CenturyTel's language in that section is that it  
6 would give CenturyTel the unilateral right to modify the amount of deposits that  
7 may be required. CenturyTel's language would give it the right to unilaterally  
8 modify the deposit amount "when conditions otherwise justify such actions..."  
9 That raises the obvious question of what "conditions" would CenturyTel rely  
10 upon? As I explained above, giving one party unilateral rights to modify the  
11 deposit obligations of the other party is not a reasonable or equitable practice.

12

13 **Q. HAS CHARTER EVER DEFAULTED ON ANY OBLIGATION TO**  
14 **CENTURYTEL?**

15

16 A. No. Charter has never defaulted on any obligation to CenturyTel or any other  
17 carrier. Despite that fact, CenturyTel proposes that it can require a deposit is  
18 necessary rests solely within CenturyTel's discretion. This process, or lack of  
19 process, leaves open the possibility of abuse and arbitrary demands by  
20 CenturyTel. Further, such an undefined, open-ended liability does not permit  
21 Charter business certainty in dealing with CenturyTel. Consequently, the  
22 Commission should adopt Charter's proposal that seeks to identify those specific  
23 instances for which a deposit may be required.

24

25

26



**III. ISSUES 8(a) AND 8(b):**

**ISSUE 8 (A): SHOULD THE BILL PAYMENT TERMS RELATED TO INTEREST ON OVERPAID AMOUNTS BE EQUITABLE?**

**ISSUE 8 (B): SHOULD THE BILL DISPUTE PROVISIONS ENSURE THAT NEITHER PARTY CAN IMPROPERLY TERMINATE THE AGREEMENT IN A MANNER THAT COULD IMPAIR SERVICE TO THE PUBLIC?**

**Q. PLEASE EXPLAIN CHARTER'S POSITION ON THESE ISSUES.**

**A.** Charter's position is that terms for bill payment, and refunds, should be equitable.

With respect to Issue 8(a), Charter only seeks the same opportunity for refunds of overpayments, at the same interest rate, that CenturyTel seeks for underpayments.

Further, with respect to Issue 8(b), bill disputes should be resolved through the dispute resolution processes built into the interconnection agreement, not via unilateral suspension of service, or termination of the agreement, as CenturyTel proposes.

**Q. PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE ON THIS ISSUE.**

**A.** Charter's proposed language is as follows:

**9.4.2 Billing Disputes Related to Paid Amounts** If any portion of an amount paid to a Party under this Agreement is subject to a bona fide dispute between the Parties ("Disputed Paid Amount"), the billed Party may provide written notice to the billing Party of the Disputed Paid Amount, and seek a refund of such amount already paid, at any time prior to the date that is one (1) year after the date of the invoice containing the disputed amount that has been paid by the billed Party ("Notice Period"). If the billed Party fails to provide written notice of a Disputed Paid Amount within the Notice Period, the billed party waives its rights to dispute its obligation to pay such amount, and to seek refund of such amount. **At the billed Party's request, the billing Party will refund the entire portion of any Disputed Paid Amounts resolved in favor of the billed Party, subject to a rate of interest equal to one and one half (1 ½%) per month or the highest rate of interest that may be charged under Applicable Law, compounded**

1 daily, for the number of days from the Bill Date until the date on which such  
2 payment is made.

3  
4 9.5 Effect of Non-Payment.

5  
6 9.5.1 If the billed Party does not remit payment of all undisputed charges on a  
7 bill by the Bill Due Date, the billing Party may **initiate dispute resolution**  
8 **procedures under Section 20 of this Agreement.**

9  
10 9.5.2 [INTENTIONALLY LEFT BLANK].  
11

12  
13 **Q. PLEASE PROVIDE CENTURYTEL'S LANGUAGE ON THIS ISSUE.**

14  
15 **A. CenturyTel's proposed language is as follows:**

16  
17 9.4.2 Billing Disputes Related to Paid Amounts

18 If any portion of an amount paid to a Party under this Agreement is subject to a  
19 bona fide dispute between the Parties ("Disputed Paid Amount"), the billed Party  
20 may provide written notice to the billing Party of the Disputed Paid Amount, and  
21 seek a refund of such amount already paid, at any time prior to the date that is  
22 one (1) year after the date of the invoice containing the disputed amount that has  
23 been paid by the billed Party ("Notice Period"). If the billed Party fails to  
24 provide written notice of a Disputed Paid Amount within the Notice Period, the  
25 billed party waives its rights to dispute its obligation to pay such amount, and to  
26 seek refund of such amount.

27 9.5 Effect of Non-Payment.

28 9.5.1 If the billed Party does not remit payment of all undisputed charges on a  
29 bill by the Bill Due Date, the billing Party may discontinue processing orders for  
30 relevant or like services provided under this Agreement on or after the tenth  
31 (10th) calendar day following the Bill Due Date. The billing Party will notify  
32 the other Party in writing, via email or certified mail, at least five (5) Calendar  
33 Days prior to discontinuing the processing of orders for the relevant services. If  
34 the billing Party does not refuse to accept additional orders for service(s) on the  
35 date specified in such notice, and the billed Party's non-compliance continues,  
36 nothing contained herein shall preclude the billing Party from refusing to accept  
37 any or all additional orders for service(s) from the non-complying Party without  
38 further notice or from billing and collecting the appropriate charges from the  
39 billed Party. For order processing to resume, the billed Party will be required to  
40 make full payment of all past and current undisputed charges under this  
41 Agreement for the relevant services. Additionally, the billing Party may require  
42 a deposit or assurance of payment (or additional deposit or assurance of payment)  
43 from the billed Party, pursuant to Section 6. In addition to other remedies that  
44 may be available at law or equity, the billed Party reserves the right to seek  
45 equitable relief, including injunctive relief and specific performance.

1           9.5.2   Notwithstanding 9.5.1 above, if the billed Party does not remit payment  
2           of all undisputed charges on a bill by the Bill Due Date, the billing Party may at  
3           its option disconnect any and all relevant or related services provided under this  
4           Agreement following written notification to the billed Party at least seven (7)  
5           Business Days prior to disconnection of the unpaid service(s). Such notification  
6           may be included in a notification to refuse to accept additional orders so long as  
7           the appropriate dates for each consequence are listed therein. If the billed Party  
8           subsequently pays all of such undisputed charges and desires to reconnect any  
9           such disconnected services, the billed Party shall pay the applicable charge set  
10           forth in this Agreement or in the applicable Tariff for reconnecting each service  
11           disconnected pursuant to this paragraph. In case of such disconnection, all  
12           applicable undisputed charges, including termination charges, shall become due  
13           and payable. If the billing Party does not disconnect the billed Party's service(s)  
14           on the date specified in such notice, and the billed Party's non-compliance  
15           continues, nothing contained herein shall preclude the billing Party from  
16           disconnecting all service(s) of the non-complying Party without further notice or  
17           from billing and collecting the appropriate charges from the billed Party. For  
18           reconnection of the non-paid service to occur, the billed Party will be required to  
19           make full payment of all past and current undisputed charges under this  
20           Agreement for the relevant services. Additionally, the billing Party may require  
21           a deposit or assurance of payment (or additional deposit or assurance of payment)  
22           from the billed Party, pursuant to Section 6. In addition to other remedies that  
23           may be available at law or equity, the billing Party reserves the right to seek  
24           equitable relief, including injunctive relief and specific performance.  
25

26    **Q.    HOW DOES CHARTER'S POSITION DIFFER FROM CENTURYTEL'S**  
27    **POSITION?**

28  
29    **A.**    CenturyTel asserts that, with respect to Issue 8(a), Charter is going to "game" the  
30           dispute process within the agreement as an investment strategy. According to its  
31           position statement in the parties' Joint DPL, CenturyTel alleges that Charter will  
32           pay all invoices, and a year later lodge a dispute and demand full repayment plus  
33           accrued interest. They apparently believe that we would do so as a means of  
34           using CenturyTel as an "investment bank" (their words, not ours), in order to earn  
35           interests on money that we would have paid to CenturyTel (for charges that we  
36           were not required to pay). With respect to Issue 8(b), CenturyTel believes that it  
37           should have the right to discontinue processing *all* service orders or other

1 activities the moment Charter fails to pay an undisputed bill, no matter the amount  
2 of the bill or other circumstances between the parties.

3

4 **Q. WHAT IS CHARTER'S CONCERN WITH CENTURYTEL'S POSITIONS**  
5 **ON ISSUE 8(a)?**

6

7 A. With respect to Issue 8(a), Charter's concern with CenturyTel's proposal is that it  
8 is one-sided and unfair. Under Section 9.3 of the Agreement CenturyTel is  
9 entitled (as Charter has agreed) to assess interest on *underpayments*. And  
10 CenturyTel may do so at an interest rate of "one and one-half (1.5%) per month or  
11 the highest rate of interest that may be charged under Applicable Law." *See*  
12 Section 9.3. Charter has simply taken the same approach to any *overpayments* it  
13 might make during the term of the Agreement under Section 9.4.2. If Charter  
14 overpays (including in the circumstance where Charter prevails in a billing  
15 dispute), Charter proposes to assess the *identical* interest rate to which CenturyTel  
16 is entitled for underpayments. Specifically, Charter has proposed that any  
17 overpayments would be subject to an interest rate of "one and one-half (1.5%) per  
18 month or the highest rate of interest that may be charged under Applicable Law."  
19 *See* Section 9.4.2. CenturyTel's response to this proposal is that this language  
20 would require CenturyTel to act as Charter's "investment bank." That is simply  
21 not accurate.

22

23 **Q. IS CENTURYTEL'S "INVESTMENT BANK" CONCERN BASED ON**  
24 **LIKELY ECONOMIC BEHAVIOR BY CHARTER?**

25

1   A.   No. CenturyTel's argument seems to be that Charter may choose to tie up its  
2       capital, here cash, for up to one year in the hopes that the company will prevail in  
3       a dispute process, and thereby achieve a guaranteed (and implicitly unwarranted)  
4       return on that capital. CenturyTel's perspective does not reflect economic reality.  
5

6   **Q.   PLEASE EXPLAIN.**  
7

8   A.   First, CenturyTel presumes that Charter has otherwise non-working cash assets to  
9       dedicate to the scheme CenturyTel imagines. While Charter has more than  
10      sufficient cash assets to run its business, the company is not in the mode of  
11      restricting the use of such assets for several months in the hopes of "making  
12      money" from a competitor. Charter has never engaged in the activity CenturyTel  
13      has dreamed up, and will not under the Agreement. Second, the dispute  
14      resolution process under the Agreement simply does not provide the level of  
15      assurance that any rational economic actor would seek in order to tie up cash for a  
16      year in the manner CenturyTel predicts. How any given dispute will be resolved  
17      depends entirely on the on the facts of that dispute, and thus the dispute resolution  
18      process does not lend itself to a predictive model that would entice any rational  
19      company to risk its capital in the way CenturyTel forecasts. Third, it is in  
20      Charter's interest to resolve billing disputes within a reasonable period of time. In  
21      general, businesses seek operational certainty so that they can concentrate on  
22      delivering goods and services to their customers. Charter's core business is  
23      to sell services to existing and new customers, and Charter works hard every day  
24      to manage uncertainties in its business so it can maximize its core business.

1 Charter will not introduce operational uncertainty on the off chance that it can  
2 achieve a return on its capital at CenturyTel's expense. Fourth, CenturyTel  
3 overlooks entirely that if Charter prevails in a particular dispute, *Charter should*  
4 *not have paid the amount in dispute in the first place*, meaning that CenturyTel  
5 has had free use of Charter's payment (capital). For all these reasons,  
6 CenturyTel's concerns are not based on rational economic behavior and the  
7 Commission can safely disregard them.

8  
9 **Q. PLEASE EXPLAIN.**

10  
11 **A.** Once a bill dispute process is resolved, the party that prevailed in that dispute  
12 should be "made whole." In other words, if at the end of a bill dispute process it  
13 is determined that Charter has underpaid CenturyTel for certain invoices, Charter  
14 should be required to pay the remaining amounts to CenturyTel. Moreover,  
15 Charter is willing to pay interest on any amounts that were underpaid. We have  
16 agreed to that approach, which is set forth in Section 9.3 of the agreement. By  
17 those same principles, if Charter prevails in a bill dispute, and is found to have  
18 overpaid CenturyTel, then Charter should be entitled to request a refund of  
19 amounts that were overpaid. In addition, the amounts overpaid should be subject  
20 to the same rate of interest that is fair and equitable. That rate should be equal to  
21 the rate of interest that would be assessed by the billing Party for any late  
22 payment charges (as CenturyTel has proposed, and as Charter has agreed).

23  
24 **Q. WHAT IS CHARTER'S CONCERN WITH CENTURYTEL'S POSITIONS**  
25 **ON ISSUE 8(b)?**

1  
2 A. As to Issue 8(b), CenturyTel also proposes to *terminate* the Agreement if Charter  
3 fails to pay any undisputed amounts. As I noted in my testimony on termination,  
4 under Issue 4, given the public interest ramifications of unilateral termination, the  
5 Commission, not the parties, should have the final say as to when the Agreement  
6 terminates. That includes circumstances where a party allegedly does not pay an  
7 undisputed amount. I anticipate that CenturyTel will argue that Charter has  
8 improperly disputed charges in the past, and that it has not paid all of its invoices.  
9 It is true that our companies do have a history of billing disputes. But the fact is  
10 that Charter has always, and continues to, honor its obligations under  
11 interconnection agreements. Where we have disputed charges, and/or withheld  
12 payments to CenturyTel, it has been based upon a good faith position that the  
13 charges were not authorized by the agreement, or where otherwise improper.

14

15 Q. PLEASE EXPLAIN.

16

17 A. Charter's position in this proceeding is informed by our experience with  
18 CenturyTel in prior bill disputes. In some of those prior disputes CenturyTel  
19 attempted to unilaterally discontinue operations under the existing interconnection  
20 agreement between the parties because Charter had disputed certain invoices.  
21 Essentially, CenturyTel used the threat of discontinuing number porting to Charter  
22 as a means of gaining leverage over Charter, to try and force Charter to pay  
23 invoices that Charter had previously disputed. Not surprisingly, CenturyTel's  
24 threats led to further disputes, and ultimately, litigation between the two parties.

25

1   **Q.   HOW DOES CHARTER'S PROPOSAL ACHIEVE THAT RESULT?**

2  
3   **A.**   Our proposal here represents an attempt to avoid the types of disputes that the  
4       parties have had in the past. What we have offered is simple, and direct, contract  
5       language that will ensure that when a bill dispute arises either Party can seek a  
6       resolution of the dispute to avoid litigation. As proposed, Charter believes that  
7       the parties should engage in the dispute resolution process set forth in Section 20  
8       of the agreement, which includes alternatives to litigation, including informal  
9       resolution thru negotiations, and/or business discussions. In addition, that process  
10      also allows either party to initiate a formal proceeding that it believes may be  
11      necessary for any alleged failures to pay. That process seems like a fair way to  
12      adequately protect both parties' interests, and our subscribers from unnecessary  
13      service interruptions. I would note that under Charter's proposed language for  
14      Section 9.4 would also work in conjunction with Section 20.4. As I have  
15      explained in a separate part of my testimony, with respect to Issue 13, Charter  
16      proposes that the parties agree to include contract language that limits the time  
17      period by which either Party can bring a claim arising under the Agreement.  
18      Under Charter's proposal, that period of time would be established as two years  
19      from the date of the occurrence of the action that gives rise to the dispute.

20

21   **Q.   HOW DOES THAT CONTRAST WITH CENTURYTEL'S PROPOSAL?**

22  
23   **A.**   In contrast, CenturyTel's proposal simply seeks to impose a process which is  
24       inequitable and one-sided (in CenturyTel's favor). For example, under  
25       CenturyTel's proposal it would have the right to discontinue processing orders,



1 and disconnect services and circuits unilaterally, and without Commission  
2 authorization. That result could have serious consequences for end user  
3 subscribers, as well as for Charter's reputation as a service provider, and is thus  
4 contrary to the public interest in stimulating competition.

5  
6 **VII. ISSUE 13:**  
7 **SHOULD THE PARTIES AGREE TO A REASONABLE LIMITATION AS**  
8 **TO THE PERIOD OF TIME BY WHICH CLAIMS ARISING UNDER**  
9 **THE AGREEMENT CAN BE BROUGHT?**

10  
11 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY ON THIS ISSUE?**

12  
13 **A.** I am testifying on this issue to provide some context to the Commission  
14 concerning the history of problems that Charter has with invoices submitted by  
15 CenturyTel.

16  
17 **Q. WHY IS THAT RELEVANT THIS ISSUE?**

18  
19 **A.** The history of CenturyTel's billing problems is relevant because this issue  
20 requires that the Commission decide who bears the burden of proof in bill  
21 disputes that arise between the parties. Charter's position is that where an invoice  
22 is first disputed by Charter, and the dispute is not resolved through the dispute  
23 resolution procedures of the agreement, then CenturyTel should ultimately be  
24 responsible for proving that its invoice is accurate. CenturyTel, on the other hand,  
25 proposes just the opposite approach: they believe that their invoices should be  
26 treated as presumptively accurate. And, if Charter challenges that presumption,  
27 then it must bear the burden of proving that the invoice is not accurate.

1   **Q.   WHY WOULD IT BE A MISTAKE TO PRESUME THAT**  
2   **CENTURYTEL'S INVOICES ARE ALWAYS ACCURATE?**  
3

4   **A.**   Because our experience is that CenturyTel's invoices are not always accurate. In  
5   fact, CenturyTel's invoices are very frequently *inaccurate*. For example, Charter  
6   and CenturyTel are currently litigating a number of billing invoice mistakes in a  
7   proceeding before the Missouri Public Service Commission. In that case Charter  
8   has put into evidence a variety of problems with CenturyTel's invoices, including  
9   the fact that CenturyTel has billed Charter for "services" that are not specifically  
10   set forth in the interconnection agreement.

11   In addition, Charter has received invoices from CenturyTel in another state  
12   whereby CenturyTel has assessed a variety of miscellaneous billing charges  
13   which do not have anything to do with Charter's operations in Missouri.  
14   Specifically, every month CenturyTel continues to bill miscellaneous charges that  
15   should be applied to end users (not a co-carrier like Charter) such as: telephone  
16   toll (or long distance) charges, directory assistance charges, taxes and surcharges  
17   (of varying kinds), caller ID and call forwarding charges, federal universal service  
18   fund charges, Yellow Pages advertising, and *even* local telephone service charges.  
19   These are clearly charges that CenturyTel intended to assess against its own  
20   subscribers, but which were improperly attributed (and billed) to Charter.

21  
22   **Q.   ARE THERE OTHER EXAMPLES OF BILLING OR INVOICE**  
23   **PROBLEMS WITH CENTURYTEL?**  
24

25   **A.**   Yes, CenturyTel has a practice of crediting Charter for payments made by  
26   CenturyTel's own end users. The concern here is that CenturyTel is applying  
27   "credits" to Charter's account which are the result of payments made by

1 CenturyTel's own telephone customer end users. In other words, when their own  
2 customers make a payment to CenturyTel (presumably for their monthly  
3 telephone service), CenturyTel inexplicably applies those payments to Charter's  
4 account. I do not know the reason for it, other than a billing system error. We  
5 have certainly never asked them to do so; and, in fact, we have repeatedly told  
6 them that they are doing so in error and have asked them to stop this practice.

7  
8 **Q. HOW SIGNIFICANT IS THIS PROBLEM?**

9  
10 **A.** Very significant. By our calculations, CenturyTel has committed this type of  
11 billing error on 263 separate occasions. Although they have reversed 232 of those  
12 billing errors on the Charter invoices, some of these billing errors have apparently  
13 never been corrected. These recurring billing errors suggest that there are serious  
14 problems with CenturyTel's billing systems. And, more importantly, it raises the  
15 very troubling question of whether CenturyTel's telephone subscribers have not  
16 received proper credit for payments they have made to CenturyTel.

17  
18 **Q. PLEASE PROVIDE EXAMPLES OF OTHER PROBLEMS THAT**  
19 **CHARTER HAS FACED WITH CENTURYTEL INVOICES.**

20  
21 **A.** Another problem that Charter has encountered with CenturyTel invoices is that  
22 CenturyTel has, on several occasions, actually billed Charter *two* different rates  
23 for the same functionality. Thus, in another state, when CenturyTel first assessed  
24 a charge for a functionality it believed it was entitled to payment (and which  
25 Charter disputed), CenturyTel did so because it took the position that a \$19.78  
26 charge for an unbundled network element ("UNE") switch port applied to Charter.

1 Charter does not purchase any UNEs from CenturyTel, because we have our own  
2 network and switches. For that reason, we have never leased UNE switch ports  
3 from CenturyTel. Despite that fact (which CenturyTel does not dispute), for the  
4 last three and a half years CenturyTel has billed Charter the rate for an unbundled  
5 network element that Charter has never ordered, and does not use. Then, after  
6 repeated bill dispute notices from Charter, CenturyTel modified its rationale for  
7 applying the rate to Charter, and then began billing Charter for the very same  
8 functionality at a completely *different* rate of \$23.44. This is yet another example  
9 of the types of problems Charter has experienced with CenturyTel's invoices and  
10 billings.

11

12 **Q. DO YOU HAVE ANY OTHER NOTABLE EXAMPLES OF ISSUES THAT**  
13 **CHARTER HAS FACED WITH CENTURYTEL INVOICES?**

14

15 **A.** Yes, there have been issues associated with the LNP invoices. In Missouri, where  
16 CenturyTel has billed Charter for an Initial Service Order Charge for LNP (which  
17 Charter disputed), CenturyTel has, on numerous occasions, unintentionally billed  
18 Charter the following categories of charges (for various amounts) instead of the  
19 Initial Service Order Charge for LNP:

- 20 • Central Office Line Connection – Residence
- 21 • Call Restriction – Install
- 22 • Initial Service Order - Unbundled
- 23 • Initial Order
- 24 • Primary Service Order – Residence
- 25 • Additional Trip Charge – Residence

- 1           • Additional trip Charge – Business
- 2           • Subsequent Service Order Charge

3           When Charter questioned CenturyTel as to why Charter was being billed for these  
4           various non-recurring charges, which were clearly inappropriate, Charter was told  
5           that the billing of these charges was due to manual clerical errors when “the  
6           CenturyTel Service Representative selected the wrong charges to bill Charter.”

7  
8       **Q.   WHAT DOES CHARTER DO WHEN IT RECEIVES INVOICES WITH**  
9       **THESE TYPES OF PROBLEMS?**

10  
11      **A.**   Every month Charter sends CenturyTel a notice of its dispute of these charges,  
12           and its intentions not to pay charges which clearly are supposed to be assessed  
13           against end users (not a co-carrier like Charter).

14           Notably, when Charter disputes these charges, CenturyTel often does credit the  
15           charges on future bills to acknowledge its billing errors. However, because the  
16           adjustments do not indicate the type of charge being adjusted, and the amounts  
17           adjusted do not match amounts disputed, Charter’s billing personnel can not  
18           determine if full credit has been given for disputes in this category. More  
19           troubling, though, is the fact that when CenturyTel makes these adjustments it  
20           frequently applies payments made by CenturyTel subscribers to the Charter bill.  
21           In other words, CenturyTel is using payments made by its own telephone  
22           subscribers to credit Charter’s account (when it should be crediting those  
23           subscribers’ account). Some of these payments have been removed from the  
24           Charter account, but others have not. Therefore, it is not possible to calculate and

1 balance precisely the actual amounts due against those amounts billed, and later  
2 credited or adjusted.

3

4 **Q. WHAT IS THE FISCAL IMPACT TO CHARTER OF HAVING TO**  
5 **REVIEW AND DISPUTE SO MANY OF CENTURYTEL'S INACCURATE**  
6 **INVOICES?**

7

8 **A.** Charter incurs varied, and widespread, costs associated with responding to  
9 CenturyTel's inaccurate invoices. Those costs include the time and expense  
10 associated with Charter employees reviewing and disputing all of the inaccurate  
11 CenturyTel invoices, communications related to these disputes, and other  
12 resources spent in an attempt to demonstrate that CenturyTel has no right to  
13 assess these charges. One can appreciate the volume of work associated with  
14 disputing these charges when considering all of the dispute statements submitted  
15 electronically and manually by Charter to CenturyTel. Suffice it to say, the time  
16 and expense, is significant.

17

18 **Q. HOW DOES CHARTER'S PROPOSAL ON THIS ISSUE ADDRESS**  
19 **THESE PROBLEMS?**

20

21 **A.** Charter proposes that the parties agree to include contract language that limits the  
22 time period by which either Party can bring a claim arising under the Agreement.  
23 Under Charter's proposal, that period of time would be established as two years  
24 from the date of the occurrence of the action that gives rise to the dispute. In  
25 other words, if Charter submits a bill dispute that CenturyTel believes is  
26 improper, or unfounded, CenturyTel would have two years to initiate an action to  
27 recover those monies from Charter. If CenturyTel did not do so in that two year

1 period, it would have waived its opportunity to receive payment. The same  
2 principle would apply to claims that Charter may have against CenturyTel, i.e.  
3 claims for payment of monies or the provision of certain services. We would  
4 have two years to pursue the claim, and if not initiated within that time period, it  
5 would no longer be available.

6  
7 **Q. WHY SHOULD THE COMMISSION ADOPT THIS PROPOSAL?**

8  
9 **A.** This proposal has two primary benefits. First, it provides certainty under the  
10 agreement because it establishes a specific time frame by which either party can  
11 make a claim against the other. Upon the expiration of that time period, all  
12 potential claims that arose prior to that time would be waived. This will provide  
13 both Parties certainty as to when, or if, claims will be brought. Second, greater  
14 certainty as to the period in which initiate claims can be brought will, in turn,  
15 create a better environment for the business and operations units of each company  
16 to plan for operations, roll out new services, and improve and differentiate their  
17 service offerings. In other words, because this proposal reasonably limits the  
18 potential for legal actions between the parties it will afford both parties greater  
19 leeway to offer their services, and compete against one another. That result is  
20 certainly a benefit to each company, and ultimately end user customers.

21  
22 **VIII. CONCLUSION**  
23

24 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

25 **A.** Yes.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by facsimile, hand-delivery, or electronic mail, on the 30<sup>th</sup> day of September, 2008, on the following:

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\_\_\_\_\_/s/\_\_\_\_\_  
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