

Exhibit No.: _____
Issues: 3, 41, 7, 13, 14, 29, 33 and 39
Witness: James D. Webber
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Charter Fiberlink-Missouri, LLC
Case No.: TO-2009-0037
Date Testimony Prepared: October 21, 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 Agreement) Case No. TO-2009-0037
Between CenturyTel of Missouri, LLC)
And Charter Fiberlink-Missouri, LLC.)

REBUTTAL TESTIMONY

OF

James D. Webber

On behalf of

CHARTER FIBERLINK-MISSOURI, LLC.

October 21, 2008

Company 4 Exhibit No. 4
Case No(s). TO-2009-0037
Date 10-28-08 Rptr PF

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.)

AFFIDAVIT OF JAMES D. WEBBER

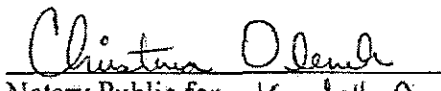
STATE OF ILLINOIS)
) ss.
COUNTY OF WILL)

James D. Webber, being first duly sworn on his oath, states:

1. My name is James D. Webber. I am presently Senior Vice President for QSI Consulting, Inc.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony on behalf of Charter Fiberlink-Missouri, LLC.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my personal knowledge, information and belief.


James D. Webber

Subscribed and sworn before me this 21st day of October, 2008.


Notary Public for Kendall County IL
My Commission expires: 9/24/11

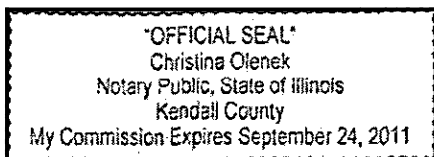




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INTRODUCTION

1

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.**3 A. My name is James D. Webber. My business address is: QSI Consulting, Inc. 4515 Barr
4 Creek Lane, Naperville, Illinois 60564.5 **Q. ARE YOU THE SAME JAMES D. WEBBER WHO FILED DIRECT**
6 **TESTIMONY IN THIS PROCEEDING?**

7 A. Yes, I am.

8 **Q. ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?**

9 A. This Testimony was prepared on behalf of Charter Fiberlink-Missouri, LLC ("Charter").

10 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS**
11 **PROCEEDING?**12 A. My purpose is to provide responsive Testimony with regard to Issues 3, 7, 13, 14, 29, 33,
13 39, and 41.**ISSUES 3 and 41:**

14

15

16 **Q. DOES CENTURYTEL ADDRESS ISSUES 3 AND 41 TOGETHER AS YOU HAD**
17 **IN YOUR DIRECT TESTIMONY?**

18

19 A. Yes. Mr. Miller addresses these issues together in his Testimony beginning at page 18.

20 He also addresses Issue No. 14 at the same time. While I address Issues 3 and 41

21 together, I treat Issue 14 separately in this Rebuttal Testimony.

22

23

ISSUE 3(A):**HOW SHOULD THE AGREEMENT DEFINE THE TERM "TARIFF"?**

Q. HOW DOES CENTURYTEL'S DIRECT TESTIMONY ADDRESS THIS ISSUE?

A. Mr. Miller states that the parties have no material dispute with the definition of the term "Tariff" in Article II, Section 2.140 but suggests that Charter proposes to add language that "goes well beyond a definition, and is inaccurate."¹

Q. OTHER THAN STATING THAT CHARTER'S LANGUAGE IS INACCURATE, DOES MR. MILLER – OR ANY OTHER WITNESS TESTIFYING ON BEHALF OF CENTURYTEL – PROVIDE ANY SUPPORT FOR THE ASSERTION THAT CHARTER'S LANGUAGE AS TO ISSUE 3(A) SHOULD BE REJECTED?

A. No. Mr. Miller states that the real issue lies within Issue 3(B) and he, therefore, addresses 3(A) within that context.

Q. PLEASE EXPLAIN CHARTER'S POSITION WITH RESPECT TO ISSUES 3(A), 3(B), AND 41.

A. Clearly, Issues 3(A), 3(B), and 41 are interrelated, and I addressed those issues together in my Direct Testimony. With respect to 3(A), in particular, Charter's position is that the term "Tariff" should be defined in such a manner that makes clear the parties intend to incorporate only those tariff provisions that are identified in the agreement with specificity, rather than by a vague reference to the complete tariff(s) of either party. Charter specifically proposes to ensure the definition of the term "Tariff" at Article II, Section 2.140 includes the following:²

¹See Direct Testimony of G. Miller, p. 19 ("Miller Direct").

²Charter's proposed addition to this language is indicated by the **bolded text** in the cited paragraph.

1 Any applicable filed and effective Federal or state tariff (and/or
2 State Price List) of a Party, as amended from time-to-time, **that**
3 **the Parties have specifically and expressly identified in this**
4 **Agreement for the purpose of incorporating specific rates or**
5 **terms set forth in such document by mutual agreement.**

6
7 With respect to Issue 3(B), Charter's position is that only the specific tariff provisions
8 that the parties intend to be bound by should be incorporated into the agreement. In
9 contrast, CenturyTel proposes that the agreement incorporate additional, superfluous
10 tariff language. But adopting that approach would likely only add additional ambiguity
11 to the obligations of the parties under the interconnection agreement. Further,
12 CenturyTel's approach would also provide opportunities for CenturyTel to assess charges
13 not identified within the agreement (or its Pricing Article) when the parties have not
14 specifically agreed upon such charges. In addition, if the Commission permits
15 CenturyTel to incorporate their entire tariff, CenturyTel may try to argue that the most
16 favorable provisions of the tariffs are applicable if the parties get into a subsequent
17 dispute. For example, CenturyTel would likely argue for the application of the one-sided
18 indemnification and limitation of liability provisions in the tariff (rather than the
19 arbitrated provisions of the agreement). Finally, under CenturyTel's proposal, it would
20 also be in a position to modify its tariff terms in an attempt to alter the contractual
21 obligations of the parties under the agreement. That result is clearly not reasonable or
22 just result; nor is it consistent with the principles of Sections 251 and 252. The
23 Commission can ensure that these potential problems do not arise, simply by adopting
24 Charter's proposed language.
25

1 In an effort to avoid those potential outcomes, in addition to the bolded language
2 indicated above, Charter has also proposed the following language (shown in bold) at

3 Article 1, Section 3:

4 Unless otherwise specifically determined by the Commission, in
5 case of conflict between the Agreement and either Party's Tariffs
6 relating to ILEC and CLEC's rights or obligations under this
7 Agreement, then the rates, terms and conditions of this Agreement
8 shall prevail. In no event shall a Tariff alter, curtail, or expand the
9 rights or obligations of either Party under this Agreement, except
10 by mutual consent. Either Party's Tariffs and/or State Price Lists
11 shall not apply to the other Party except to the extent that this
12 Agreement expressly incorporates **specific rates or terms set**
13 **forth in** such Tariffs by reference or to the extent that the other
14 Party expressly orders services pursuant to such Tariffs and/or
15 State Price Lists.
16

17 This language underscores that the tariffs are not applicable under the agreement except,
18 *and only to the extent that*, the agreement incorporates specific rates or terms from either
19 party's tariff.

20

21 Within the context of Issue 41, Charter identifies particular provisions within the
22 agreement where specific tariff provisions would be incorporated into the agreement.

23

24

25

ISSUE 3(B) AND ISSUE 41:

26

27 **ISSUE 3(B) - HOW SHOULD SPECIFIC TARIFFS BE INCORPORATED INTO THE**
28 **AGREEMENT?**

29

30

31 **Q. PLEASE PROVIDE YOUR UNDERSTANDING OF CENTURYTEL'S SUPPORT**
32 **FOR ITS POSITION AS IT RELATES TO ISSUE 3(B).**
33

1 **A.** First, CenturyTel argues that Charter's language is "unworkable and inappropriate,"
2 claiming that the language does not consider any eventual "Charter purchase of a service
3 in a tariff that was not 'specifically and expressly identified in the agreement for purposes
4 of incorporating specific rates or terms.'" ³ Second, Mr. Miller argues that Charter's
5 position – that only the specific tariff provisions that the parties intend to adopt should be
6 incorporated into the agreement – conflicts with the filed rate doctrine and cannot be
7 accepted as a matter of law. ⁴ Third, Mr. Miller argues that Charter's proposal creates
8 ambiguity and the potential for disputes. ⁵ Fourth, Mr. Miller argues that CenturyTel's
9 proposal is the "most efficient way to incorporate and reference tariff terms in the
10 Agreement." ⁶ Finally, he argues that there is Commission precedent regarding this very
11 specific issue and that such precedent supports CenturyTel's proposal.

12

13 **Q. HOW DO YOU RESPOND TO CENTURYTEL'S ARGUMENT THAT**
14 **CHARTER'S PROPOSAL IS "UNWORKABLE AND INAPPROPRIATE"?**

15

16 **A.** Mr. Miller's claim that Charter's proposal is "unworkable and inappropriate" is not
17 persuasive because his arguments are premised upon an inaccurate construction of
18 Charter's proposed language.

19

20 As a reminder, recall that this issue arises because CenturyTel has proposed to
21 incorporate portions of its existing tariffs into the agreement as a basis for satisfying
22 certain obligations it has under the agreement, or for other more mundane purposes (like
23 defining a local calling area). Charter does not object, in principle, to the concept of

³ See Miller Direct at p.20.

⁴ See *id.* at p.22.

⁵ See *id.* at p.22.

⁶ See *id.* at p.24.

1 incorporating an outside document (in this case, CenturyTel's tariff) to fulfill a certain
2 contractual obligation. However, Charter insists that in doing so the parties incorporate
3 that external document with precision, by identifying only those specific rates, terms and
4 conditions of the external document that are incorporated into this agreement. The fact is
5 that it is simply not reasonable to expect Charter to agree that hundreds of additional
6 pages of CenturyTel's tariffs are automatically incorporated into the parties'
7 interconnection agreement. This is fundamentally unfair to Charter and unreasonably
8 favors CenturyTel.

9
10 As to Mr. Miller's claims, he incorrectly suggests that Charter's purchase of a "new
11 service" could not take place "after the incorporated tariffs are agreed to."⁷ That
12 assertion is simply wrong. Any new "services" that Charter may seek to purchase out of
13 CenturyTel's tariffs would likely be separate from the "services" CenturyTel provides
14 under this agreement. There is no reason that the parties could not have obligations to
15 one another under this agreement, and **separate** obligations to one another under a tariff.

16
17 **Q. PLEASE EXPLAIN.**

18
19 **A.** As this Commission knows, CenturyTel maintains a "wholesale services" tariff in
20 Missouri, through which CenturyTel offers certain wholesale 911 service. That tariff sets
21 forth certain "wholesale" services that Charter could purchase from CenturyTel.
22 Presumably, any CLEC can acquire the services out of that tariff, whether or not the
23 CLEC has an interconnection agreement with CenturyTel. In other words, the services
24 purchased out of that tariff are independent of any services provided under an

⁷ *Id.* at p.20.

1 interconnection agreement. And there is no reason, either practically or legally, that I
2 know of which would preclude a CLEC from having obligations under both an
3 interconnection agreement, and a wholesale tariff. Therefore, Charter is free to purchase
4 those services, and any new services that may be added to CenturyTel tariffs, from the
5 tariff without first needing to incorporate that tariff into the agreement.

6

7 **Q. IS THAT THE ONLY WAY THAT CHARTER COULD AVAIL ITSELF OF NEW**
8 **TARIFFED "SERVICES" OFFERED BY CENTURYTEL?**

9

10 **A.** No, I think there are several ways that Charter could acquire new services. Specifically,
11 if, after this agreement is executed, CenturyTel offers a new service that is added to their
12 tariff, I would expect that Charter would be able to obtain that service under one of two
13 methods. First, if the service is not a service, or function, that is mandated by Section
14 251 of the Act, Charter could simply purchase the service pursuant to the terms of the
15 CenturyTel tariff. The principles I just described with respect to acquiring services under
16 the wholesale tariff would apply, and the parties would have obligations to one another
17 under both the agreement, and the tariff. Second, if the service is a core service, or
18 function, mandated by Section 251 of the Act, then the parties could amend the terms of
19 the agreement to include terms in the agreement for Charter to obtain that service, or
20 function. Note, that in doing so the parties may wish to amend the agreement, and
21 include in that amendment, language that incorporates specific provisions of a tariff. In
22 other words, if the parties chose to do so, they could simply update the agreement to
23 include the "new service," pursuant to either the change of law or the amendment
24 provisions already included in the agreement, depending upon the circumstances.

25

1 **Q. DO YOU HAVE OTHER CONCERNS ABOUT MR. MILLER'S ASSERTION**
2 **THAT CHARTER'S PROPOSAL IS "UNWORKABLE"?**

3
4 **A.** Yes. Mr. Miller also opines that Charter's proposal would preclude Charter from
5 purchasing a service that is in the tariff but not specifically incorporated into the
6 agreement, because Charter overlooked that service when negotiating/arbitrating the
7 agreement. Mr. Miller's assertion simply isn't true. First, assuming this service would
8 be offered through the tariff, Charter would be free to avail itself of that service through
9 the tariff itself regardless of whether the tariff was specifically incorporated into the
10 agreement. Second, to the extent Charter wanted to incorporate that tariff service into the
11 agreement for whatever reason, it could use the amendment provisions already included
12 in the agreement.

13 Finally, Mr. Miller implies that either: (a) Charter would be precluded from obtaining a
14 service from the tariff or, (b) that it would be confusing if Charter decided to obtain a
15 service not identified in the agreement but offered in the tariff. As I discuss below, this
16 Commission supports CLEC's rights to purchase out of the ILEC's tariff, even if the
17 CLEC also has an interconnection agreement. Given that CenturyTel has wholesale tariff
18 offerings for CLECs, Mr. Miller's claims of "confusion" are suspect. Charter's proposal
19 does not give rise to confusion and is, in fact, consistent with how CenturyTel has
20 structured its service obligations to CLECs in Missouri.

21
22 None of these situations give rise to an "unworkable or inappropriate" situation. Mr.
23 Miller's arguments in this regard do not warrant the rejection of Charter's proposal.
24 Contrary to CenturyTel's assertions, Charter's proposal is both reasonable and workable
25 because it would make clear that no material contractual obligations of either party can be

1 increased or reduced through the inappropriate application of the tariff in an overbroad
2 manner.

3

4 **Q. MR. MILLER ALSO ARGUES THAT THE FILED RATE DOCTRINE**
5 **PRECLUDES CHARTER'S PROPOSAL. DO YOU AGREE?**

6

7 **A.** No. At page 22 of his Direct Testimony, Mr. Miller argues that Charter's proposal is
8 unlawful because the filed rate doctrine prohibits CenturyTel from offering Charter
9 services at rates, terms or conditions that vary from the rates, terms and conditions
10 available in the company's tariff. This is largely a legal question, which Charter will
11 address in its post hearing briefs. That having been said, it is my opinion that Mr.
12 Miller's assertion is off the mark and that he fundamentally misconstrues the filed rate
13 doctrine.

14 Specifically, in order to make his argument "work," Mr. Miller presupposes that
15 Charter's proposal requires CenturyTel to provide services to Charter at rates, terms or
16 conditions that vary from the company's tariff. That is not correct. Rather, Charter's
17 proposal will not lead to a violation of the filed rate doctrine because it proposes to
18 reference **specific provisions** of a tariff for incorporation. Doing so will lead to greater
19 clarity on the question of which tariff terms do, and do not, apply to Charter. Moreover,
20 Charter's proposal will avoid unnecessarily incorporating an entire tariff simply because
21 certain sections are incorporated into the agreement. Charter does not seek to change the
22 meaning of the tariff; it does not seek to exercise control over the tariff; and it does not
23 seek to obtain services contained in the tariff at different rates or based on terms and/or
24 conditions that vary from those offered in the tariff, provided that Charter agrees that
25 such provisions should be part of the interconnection agreement. Although I am not an

1 attorney, it is my opinion that Mr. Miller's remarks in this regard are off base, and
2 incorrect.

3

4 **Q. MR. MILLER ALSO ASSERTS THAT IF CHARTER'S PROPOSAL IS**
5 **ADOPTED THE OUTCOME COULD LEAD TO CLAIMS BY CHARTER THAT**
6 **IT IS NOT OBLIGATED TO PAY FOR SERVICES (MILLER DIRECT AT**
7 **PAGE 22, LINES 3-9). IS THAT ACCURATE?**

8

9 **A.** No, that is not accurate. Mr. Miller claims that his "experience in dealing with Charter's
10 multiple disputes" leads him to believe that Charter may claim that "because a tariff is
11 not specifically referenced in the agreement,"⁸ Charter should not have to pay for that
12 service or function. Mr. Miller claims that Charter's position is consistent with claims
13 that Charter has made in the past, even though that position sounds "ludicrous." Based
14 upon my understanding of a dispute proceeding in Missouri, I can tell you that Charter
15 has asserted that it should not be required to pay for a number porting function when that
16 there are no terms of the agreement that require payment for such functions.

17

18 **Q. DID ANY OTHER NEUTRAL THIRD-PARTY EVER CHARACTERIZE**
19 **CHARTER'S POSITION AS "LUDICROUS"?**

20

21 **A.** No, not at all. Note that in footnote 12, Mr. Miller cites the pending dispute between the
22 companies before this Commission. That dispute is instructive because it involves the
23 question of whether a CenturyTel tariff is incorporated into an interconnection agreement
24 between Charter and CenturyTel. In fact, as Charter witness, Ms. Giaminetti, explains in
25 her Rebuttal Testimony, the Missouri PSC Staff found that Charter's position was
26 reasonable, and logical.

27

⁸ *Id.* at p.22, line 5.

1 In contrast, the Staff of the Missouri PSC filed Testimony concluding that "CenturyTel
2 has *improperly billed* Charter for telephone number porting" and that "the Parties
3 *Interconnection Agreement does not authorize* either Party to bill the other for telephone
4 number porting."⁹(emphasis added). A copy of Mr. Voight's Testimony is attached to
5 Ms. Giaminetti's Direct Testimony as Schedule PG-3. On the question of whether
6 CenturyTel's tariff provided a contractual basis for CenturyTel to assess charges upon
7 Charter, the Staff witness rejected CenturyTel's attempts to incorporate tariff charges as a
8 basis for assessing charges Charter.¹⁰

9
10 Given the Staff's Testimony on this question, Mr. Miller's claim that Charter's position is
11 "ludicrous" doesn't hold much water. I believe that this Commission would find the
12 Staff's Testimony much more compelling than Mr. Miller's Direct Testimony.
13

14 **Q. DOES CENTURYTEL'S PROPOSAL INJECT AMBIGUITY INTO THE**
15 **AGREEMENT OR THE PARTIES' RELATIONSHIP ON A GOING FORWARD**
16 **BASIS?**

17
18 **A.** Yes, it does. By refusing to place into the agreement specific references to tariff
19 language that clearly state the rights and obligations of the parties, CenturyTel's proposal
20 creates ambiguity. For example, under Issue No. 41, Charter has proposed the following
21 revisions (in addition to others shown in Charter's petition filing):

22
23
24 **ARTICLE XII: DIRECTORY SERVICES**
25

⁹ See Rebuttal Testimony of William L. Voight, MO PSC Staff Witness at 15-16, Case No. LC-2008-0049, filed Feb. 15, 2008

¹⁰ *Id.* at 7-11.

1 2.1.2.2 Non-Primary or Additional Listings. Where a **CLEC retail End User
2 Customer requires enhanced, foreign or other listings in addition to the Primary
3 Listings to appear in the CenturyTel Directories, CenturyTel will provide such
4 listings pursuant to CenturyTel's tariffed **rates found in Section 5.7 of**
5 CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff on
6 file with the Public Service Commission of Missouri.
7

8 CenturyTel seeks to exclude the bolded language, which only provides clarity. By doing
9 so, CenturyTel proposes to make the agreement less clear, more ambiguous, and more
10 prone to future disputes that will need to be resolved by this Commission.
11

12 **Q. WILL CENTURYTEL'S LANGUAGE LEAD TO EFFICIENCIES IN**
13 **ADMINISTERING THE CONTRACT?**
14

15 **A.** No. By stripping clear and unambiguous references to specific provisions in the tariff,
16 where it is appropriate, CenturyTel has proposed to create an agreement which is more
17 ambiguous and which will make the agreement more difficult to manage on a going-
18 forward basis. In addition, CenturyTel's proposed solution will only create more potential
19 for disputes between the parties, not less
20

21 **Q. PLEASE ADDRESS MR. MILLER'S ARGUMENT THAT THE TEXAS PUBLIC**
22 **UTILITY COMMISSION'S ORDER IN DOCKET NO. 28821 SUPPORTS**
23 **CENTURYTEL'S POSITION.**
24

25 **A.** Mr. Miller implies, at page 25 of his Direct Testimony that the Texas Commission has
26 approved CenturyTel's proposed solution to this issue. That is not the case, for the
27 reasons discussed below. Mr. Miller also improperly asserts, at page 22, line 3, that
28 Charter is trying to mix "applicable rates, terms, and/or conditions between the tariff and
29 the Agreement," on a service by service basis. That is not an accurate characterization of
30 Charter's proposal. It is not Charter's intent to mix applicable rates, terms and/or

1 conditions between the tariff and the agreement on a service by service basis. Notably,
2 Mr. Miller has not identified any specific language, or circumstances, to support his
3 assertion. Again, Charter's intent is to clarify the application, and incorporation, of
4 specific tariff provisions into this agreement.

5

6 **Q. WHAT PRINCIPLES DID THE TEXAS PUBLIC UTILITY COMMISSION**
7 **DECIDE WITH RESPECT TO A RELATED TARIFF INCORPORATION**
8 **QUESTION IN DOCKET NO. 28821?**

9

10 **A.** First, I disagree with Mr. Miller's assertion that the Texas decision is binding, or
11 instructive, for this Commission. That was a proceeding between SBC and several resale
12 and UNE-based CLECs. Neither CenturyTel nor Charter were parties to that proceeding,
13 and the contract language adopted by the Texas Commission is markedly different from
14 what CenturyTel has proposed in this proceeding. Notably, in that decision the
15 Commission adopted contract language that incorporates the following principles:

16

- 17 1. The Commission finds that a CLEC may order service from the SBC-Texas
18 Tariffs and reference such tariff in this agreement. (28821 General Terms
19 and Conditions –Jt. DPL-Final, Issue 13)
- 20 2. If the CLEC chooses to have a pointer to the tariff inserted in the ICA,
21 when a change regarding such tariff is filed with the Commission, that
22 change shall be incorporated in this agreement. (*Id.*, at Issue 13)
- 23 3. The Commission also finds that SBC Texas shall give notice of tariff
24 changes affecting the subject matter of this ICA. (*Id.*, at Issue 13)
- 25
- 26
- 27

28 Charter's proposed language is consistent with all of these principles. As I explained
29 above, Charter's proposal would permit it to order service from a CenturyTel tariff, and
30 include a reference to the tariff in this agreement. Moreover, Charter does not object to

1 revisions to the specific tariff terms incorporated into the agreement taking effect when
2 the tariff is amended (as long as this concept is limited to the specific tariff terms).

3
4 **Q. WHAT LANGUAGE DO YOU RECOMMEND THE COMMISSION ADOPT?**

5
6 **A.** With respect to Issues 3(A) and 3(B), I recommend the Commission adopt the following
7 language.

8 First, as to the definition of the term "Tariff" at Article II, Section 2.140, the
9 Commission should adopt the following language:¹¹

10 Any applicable filed and effective Federal or state tariff (and/or
11 State Price List) of a Party, as amended from time-to-time, **that**
12 **the Parties have specifically and expressly identified in this**
13 **Agreement for the purpose of incorporating specific rates or**
14 **terms set forth in such document by mutual agreement.**

15
16 Second, with respect to Issue 3(B), the following bolded language at Article 1, Section 3
17 should be adopted:

18 Unless otherwise specifically determined by the Commission, in
19 case of conflict between the Agreement and either Party's Tariffs
20 relating to ILEC and CLEC's rights or obligations under this
21 Agreement, then the rates, terms and conditions of this Agreement
22 shall prevail. In no event shall a Tariff alter, curtail, or expand the
23 rights or obligations of either Party under this Agreement, except
24 by mutual consent. Either Party's Tariffs and/or State Price Lists
25 shall not apply to the other Party except to the extent that this
26 Agreement expressly incorporates **specific rates or terms set**
27 **forth in** such Tariffs by reference or to the extent that the other
28 Party expressly orders services pursuant to such Tariffs and/or
29 State Price Lists.
30

31

¹¹ Charter's proposed addition to this language is indicated by the **bolded text** in the cited paragraph.

ISSUE 41:
HOW SHOULD SPECIFIC TARIFFS BE INCORPORATED INTO THE AGREEMENT?

Q. DOES CENTURYTEL SEPARATELY ADDRESS ISSUE 41 IN ITS DIRECT TESTIMONY?

A. No. Hence, the discussion above regarding Issues 3(A) and 3(B) is equally applicable, to Issue 41.

Q. WHAT LANGUAGE DO YOU RECOMMEND THE COMMISSION ADOPT?

A. With respect to Issue 41, I recommend the commission adopt the language set forth in the table below:

Articles I-III – General Terms and Conditions

2.79 IntraLATA Toll Traffic

Telecommunications traffic between two locations within one LATA where one of the locations lies outside of the CenturyTel Local Calling Area as defined in **Section(s) 3 and 4 of CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff**, on file with the Commission. Optional EAS Traffic is included in IntraLATA Toll Traffic.

2.86 Local Calling Area (LCA)

Local Calling Area (LCA) traffic is traffic originates and terminates in the local exchange area, and any mandatory Extended Area Service (EAS) exchanges, as defined in **Section(s) 3 and 4 of CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff**, on file with the Missouri Public Service Commission.

2.89 Local Traffic

For purposes of Article V of this Agreement, Local Traffic is traffic (excluding CMRS traffic) that is originated and terminated within the CenturyTel Local Calling Area, or mandatory Extended Area Service (EAS) area, as defined in **Section(s) 3 and 4 of CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff**, on file with the Missouri Public Service Commission. Local Traffic does not include optional local calling (i.e., optional rate packages that permit the end-user to choose a Local Calling Area beyond the basic exchange serving area for an additional fee), referred to hereafter as “optional EAS”. Local Traffic includes **Information Access**

1 **Traffic** to the extent that the end user and the ISP are physically located in the
2 same CenturyTel Local Calling Area. Local Traffic includes **Interconnected**
3 **VoIP Service Traffic** to the extent that the originating end user and the
4 terminating end user are physically located in the same CenturyTel Local Calling
5 Area.

6
7 2.97 **"Meet Point Billing (MPB)" or "Meet Point Billing Arrangement"**

8
9 Refers to an arrangement whereby two LECs jointly provide the transport
10 element of a Switched Access Service to one of the LEC's End Office
11 Switches, with each LEC receiving an appropriate share of the transport
12 element revenues as defined in **Section(s) 2.7 of CenturyTel of Missouri,**
13 **LLC, PSC No. 2, Facilities for Intrastate Access,** on file with the Missouri Public
14 Service Commission, and in **Section 5.2 of CenturyTel Operating Companies**
15 **Interstate Access Tariff FCC No. 3.**

16
17 2.113(A)
18 **Percentage Local Use (PLU)**

19
20 A percentage calculated by dividing the number of minutes of Local
21 Traffic by the total number of minutes. The resulting factor is used to
22 determine the portion of Local Traffic minutes exchanged via Local
23 Interconnection Trunks. PLU is developed from the measurement of calls in
24 which the calling and called parties are located within a given Local Calling
25 Area or mandatory EAS area as defined in **Section(s) 3 and 4 of CenturyTel of**
26 **Missouri, LLC, PSC No. 1, General and Local Exchange Tariff,** on file with the
27 Missouri Public Service Commission.

28
29
30 30.3.3.8 Liability arising under any applicable Tariff **specifically identified**
31 **herein;**

32
33 30.3.3.9 Liability arising under any indemnification provision contained in this
34 Agreement or any separate agreement or in **Section(s) (I) of the 911**
35 **portion of CenturyTel of Missouri, LLC, PSC No. 10, Wholesale Tariff,** on file
36 with the Missouri Public Service Commission related to provisioning of 911/E911
37 services;

38
39 30.3.3.13 Liability arising under any indemnification provision contained in **this**
40 **Agreement,** a separate agreement or in **Section(s) (G) of the Directory Services**
41 **portion of the CenturyTel of Missouri, LLC, PSC No. 10, Wholesale Tariff,** on
42 file with the Missouri Public Service Commission related to provisioning of
43 Directory Listing or Directory Assistance Services.

44
45 **Article V - Interconnection**

46
47
48 4.2.1.1 "Local Traffic," for purposes of intercarrier compensation, is
49 Telecommunications traffic originated by a End User Customer of one Party in an
50 exchange on that Party's network and terminated to a End User Customer of the
51 other Party on that other Party's network located within the same exchange or

1 other non-optional extended local calling area associated with the originating
2 customer's exchange as defined by **Sections 3 and 4 CenturyTel of Missouri,**
3 **LLC, PSC No. 2, General and Local Exchange Tariff.** Local Traffic does not
4 include: (1) any ISP-Bound Traffic; (2) traffic that does not originate and terminate
5 within the same CenturyTel local calling area as such local calling area is defined
6 by CenturyTel's applicable local exchange tariff; (3) Toll Traffic, including, but
7 not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed
8 (10XXX/101XXX) basis; (4) optional extended local calling area traffic; (5)
9 special access, private line, Frame Relay, ATM, or any other traffic that is not
10 switched by the terminating Party; or, (6) Tandem Transit Traffic.
11
12

13 **4.2.1.3 Interconnected VoIP Service Traffic** originated by a End User
14 Customer of one Party in an exchange on that Party's network and terminated to a
15 End User Customer of the other Party on that other Party's network located within
16 the same exchange or other non-optional extended local calling area associated
17 with the originating customer's exchange as defined by **Sections 3 and 4**
18 **CenturyTel of Missouri, LLC, PSC No. 2, General and Local Exchange**
19 **Tariff** CenturyTel's applicable local exchange tariff shall be included in Local
20 Traffic. IP-Enabled Voice Traffic directed to a terminating End User physically
21 located outside the originating End User's local calling area will be considered toll
22 traffic and subject to access charges.
23

24 **4.6.4.4.2 Transit of IntraLATA Toll Traffic:** A per-minute-of-use rate will be
25 charged to the originating Party, as contained in **Section 4.6 of CenturyTel of**
26 **Missouri, LLC, PSC No. 2, Facilities for Intrastate Access.**
27
28

29 **Article XI Pricing**

30

31 **B. 911 Facilities from the Provider's owned or leased network to CenturyTel's**
32 **Selective Router (if provided by CenturyTel)**
33

34 **911 Facilities from Provider network to CenturyTel Selective Router**
35

36 **Special Access Circuits**
37

38 **Monthly Recurring**
39

40 **Per Facilities For Intrastate Access Tariff, PSC No.2 Section 5.7**
41

42 **Nonrecurring**
43

44 **For Facilities For Intrastate Access Tariff, PSC No. 2 Section 5.7**
45
46
47

ISSUE 7:

SHOULD CHARTER BE REQUIRED TO "REPRESENT AND WARRANT" TO CENTURYTEL, OR SIMPLY PROVIDE PROOF OF CERTIFICATION, THAT IT IS A CERTIFIED LOCAL PROVIDER OF TELEPHONE EXCHANGE SERVICE IN THE STATE?

Q. HAVE YOU READ THE TESTIMONY OF MR. MILLER REGARDING ISSUE 7?

A. Yes, I have.

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

A. Mr. Miller claims that it would be insufficient for Charter to simply provide proof of certification in Missouri. He argues on page 38, lines 12-14, that providing such proof does not address the broader issue of whether Charter's obligation to remain certificated should run for the entire term of the interconnection agreement. Without this ongoing proof of certification, he believes that CenturyTel would otherwise be improperly forced to extend Section 251 obligations to Charter.

Q. DO YOU HAVE A RESPONSE?

A. Yes, I do. I see a number of problems with Mr. Miller's testimony on this issue.

Q. IS CHARTER WILLING TO "REPRESENT" THAT IT IS A CERTIFIED LOCAL PROVIDER OF TELEPHONE EXCHANGE SERVICE IN MISSOURI?

A. Yes. Charter is willing to "represent" in the interconnection agreement that it is a "Certified Local Provider of Telephone Exchange Service in Missouri." Contrary to Mr. Miller's unfounded claims that Charter has a history of "unique and aggressive penchant for novel interpretation of interconnection agreement terms" (page 38, line 23, page 39, line 1), Charter is not trying to "hide the ball" here or avoid its obligations under

1 applicable law. Indeed, the parties have clearly agreed in Section 8.4 that Charter will
2 provide proof of its certification in Missouri upon request.

3
4 **Q. DOES CHARTER'S WILLINGNESS TO "REPRESENT" ITS CERTIFICATE OF**
5 **CONVENIENCE AND NECESSITY ("CCN") STATUS RESOLVE THE**
6 **PARTIES' DISPUTE ON THIS ISSUE?**

7
8 A. Apparently, not. Although Charter has made it quite clear to CenturyTel that it is willing
9 to represent that it maintains a valid CCN, CenturyTel is unwilling to accept a
10 representation in lieu of a warranty. Instead, CenturyTel believes that Charter should
11 "represent" and "warrant" its status as a local provider of telephone exchange service in
12 Missouri.

13
14 **Q. WHAT IS YOUR UNDERSTANDING OF MR. MILLER'S USE OF THE TERM**
15 **"WARRANTY"?**

16
17 A. I am not a lawyer, but it is my understanding that when Mr. Miller claims that Charter
18 should warrant its CCN status, this is analogous to stating that Charter should be required
19 to guarantee to CenturyTel that it will maintain a valid CCN status throughout the term of
20 the agreement. Indeed, Black's Law Dictionary defines the term "warranty," in the
21 contractual context, as "express or implied promise that something in furtherance of the
22 contract is guaranteed by one of the contracting parties ..."

23
24 **Q. ARE YOU AWARE OF ANY DIFFERENCES BETWEEN PROVIDING A**
25 **"WARRANTY" AND MAKING A "REPRESENTATION"?**

26
27 A. I'll leave that to Charter's attorney's to address in the briefs, if necessary. But, it is
28 interesting to note that the parties were able to close this issue in Texas and Charter
29 believes that the parties should be able to do the same here in Missouri.

1
2 **Q. HOW DO YOU RESPOND THEN TO MR. MILLER'S ASSERTIONS THAT**
3 **CHARTER SHOULD WARRANT THAT IT IS A CERTIFIED LOCAL**
4 **PROVIDER OF TELEPHONE EXCHANGE SERVICE IN MISSOURI (PAGE 39,**
5 **LINES 10-15)?**

6
7 **A.** As I understand it, Mr. Miller's assertions are problematic because CenturyTel's
8 proposed language would effectively require Charter to guarantee, for the life of the
9 interconnection agreement, something that is beyond Charter's exclusive control. If
10 anything ever happened to put Charter's state certificate in question, CenturyTel could
11 move to void the interconnection agreement from the beginning, with the potential for
12 adversely affecting thousands of Charter's customers in Missouri. Charter takes the more
13 reasonable approach to represent to CenturyTel (and provide a copy if necessary) that it
14 does, in fact, have a valid CLEC certification issued by this Commission. If there is ever
15 any question about the validity of Charter's state certification, CenturyTel can petition
16 the Commission to stop providing services to Charter. That way, a neutral third-party can
17 decide the issue rather than an interested competitor taking self-help action to stop all
18 interactions with Charter based upon its assessment that there is some concern with
19 Charter's CLEC certification

20
21 **Q. MR. MILLER ASSERTS THAT CENTURYTEL SHOULD NOT BE FORCED TO**
22 **PROVIDE SECTION 251 OBLIGATIONS TO CHARTER UNLESS CHARTER**
23 **CONTINUES TO MEET THE STATE CERTIFICATION REQUIREMENTS**
24 **(PAGE 38, LINES 14-16). HOW DO YOU RESPOND?**

25
26 **A.** Charter's proposal would not force CenturyTel to provide Section 251 obligations if
27 Charter were violating applicable state law requirements. In fact, Charter's proposal
28 would not prejudice either party's right to seek an appropriate remedy in an appropriate

1 forum if federal laws or regulations change with respect to certification for local
2 exchange carriers.
3

4 **ISSUE 13:**

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

9
10
11 **Q. WHAT RATIONALE DOES MR. MILLER ATTEMPT TO USE IN**
12 **SUPPORTING HIS REQUEST THAT THE COMMISSION REQUIRE THE**
13 **BILLED PARTY TO SEEK RESOLUTION OF BILLING DISPUTES THROUGH**
14 **THE COMMISSION OR GIVE UP ITS CLAIM?**
15

16 **A.** At pages 47-50 of his Direct Testimony, Mr. Miller attempts to portray Charter as an
17 unscrupulous entity that disputes invoices for the sole purpose of creating a delay related
18 to the proper payment of charges under the Agreement and/or an effort to ensure the
19 unnecessary resources are expended by CenturyTel. Moreover, he alleges that his
20 experience with Charter is that the company unreasonably disputes charges without intent
21 to seek Commission resolution. Based on his impressions, he recommends that the
22 Commission adopt language in the Agreement that basically (1) presumes CenturyTel's
23 invoices to be accurate in all cases; (2) assigns CenturyTel the sole right to accept or
24 reject billing disputes; and, (3) forces Charter to bring actions before the Commission in
25 cases where CenturyTel refuses to accept Charter's disputes as legitimate. Specifically,
26 under CenturyTel's proposal, if the parties are unable to resolve a billing dispute through
27 the established billing dispute procedures, within 180 days of providing written notice of
28 the disputed amounts to the billing party, the *billed* party would be required to file a
29 petition for formal dispute resolution within one year of providing notice of such dispute

1 or otherwise waive the billed party's right to withhold the disputed amount. CenturyTel
2 claims that this approach is logical because it prevents Charter from improper delay of
3 legitimate invoices.

4

5 **Q. IS MR. MILLER'S VIEW SUPPORTED BY FACT?**

6

7 **A.** No, it is not. In fact, as described in Ms. Giaminetti's Direct and Rebuttal Testimonies,
8 the fact is that CenturyTel's invoicing is not accurate, and CenturyTel refuses to resolve
9 billing disputes in favor of Charter when it is required to do so. In fact, Ms. Giaminetti
10 discusses the Commission's October 21, 2008 Order in Case No. LC-2008-0049 in which
11 the Commission found that CenturyTel was not entitled to assess porting charges. It
12 ordered CenturyTel to refund Charter nearly \$70,000 is properly disputed charges.
13 Hence, if anything, past experience shows that CenturyTel's invoices are not always
14 accurate and should not be presumed accurate. It's also clear that Charter's dispute
15 practices are proper and that it does not use disputes to unreasonably withhold payment
16 as has been suggested by CenturyTel. Indeed, CenturyTel should not be in a position
17 where it can, by denying a legitimate claim, force Charter to either give up its claim or
18 bring an action wherein it will have the burden of proof.

19

20 **Q. AT PAGE 50 OF HIS DIRECT TESTIMONY, MR. MILLER STATES THAT**
21 **CHARTER'S PROPOSED LANGUAGE AT SECTION 20.4 WOULD LIMIT THE**
22 **PARTIES FROM BRINGING CLAIMS "FOR DISPUTES ARISING MORE**
23 **THAN 24 MONTHS FROM THE DATE OF THE OCCURRENCE." IS THAT**
24 **CORRECT?**

25

26 **A.** Yes. But Mr. Miller's concerns are unfounded when considering the Agreement in its
27 entirety. First, with respect to Charter's alleged motive to cut off liability for unpaid

1 charges, it stands to reason that if invoices remain unpaid – and undisputed – for a period
2 exceeding 24 months, CenturyTel would have already taken action to recover those
3 charges. CenturyTel would be entitled to act pursuant to the dispute resolution provisions
4 of the Agreement (Section 20 – DISPUTE RESOLUTION) or, other applicable
5 provisions.¹² Second, to the extent Charter had not paid and not disputed unpaid charges
6 for a period of 24 months, CenturyTel would have certainly availed itself of the options
7 available to it in the case of unpaid charges. Finally, as to unbilled charges by Charter,
8 I'm surprised that Century Tel seeks more than 24 months when – as to billing disputes –
9 it wants to force Charter into taking action within 12 months. On the one hand,
10 CenturyTel wants to preserve its ability to invoice Charter for services more than 24
11 month after the fact, which would very likely be an unreasonable practice under federal
12 law. Yet, as to billing disputes, it wants to force Charter into bringing an action before the
13 Commission in 12 months if disputes are not resolved. The Commission should ignore
14 Mr. Miller's arguments in this regard and adopt Charter's more reasonable dispute
15 resolution limitations with regard to backbilling, bill disputes and limitations period.

16
17 **Q. MR. MILLER ALSO IMPLIES THAT CHARTER'S PRIMARY MOTIVE IS TO**
18 **CUT OFF ITS LIABILITY FOR UNPAID AND UNDISPUTED CHARGES.**
19 **PLEASE RESPOND.**

20
21 **A.** That assertion is incorrect. As I explained in my Direct Testimony, the purpose of
22 Charter's proposed limitation on claims proposal is to eliminate the need for reserves, and
23 accruals, with longstanding disputes that are unresolved between the parties. This is
24 important because it ensures that the parties can operate under an environment of
25 certainty, so that there are not a number of unresolved disputes pending for an

¹² Issues pertaining to suspension and termination are currently before the Commission in this proceeding.

1 unreasonable period of time (i.e. no longer than two years). Charter's proposed language
2 would also provide the business and operations units of each party with greater assurance
3 in the resolution of intercompany disputes. Charter needs certainty and reliability to plan
4 and manage its business so that it can effectively compete.

5

6 **Q. WHY IS CHARTER'S PROPOSAL REASONABLE?**

7

8 A. Charter's proposed language would establish a framework for both parties to seek redress
9 of any alleged actions of default, breach, or other actions taken by the other party under
10 the agreement (i.e. "claims"). Charter's proposal is reasonable, and supported by both
11 the law and industry practice. As to the law, Mr. Miller himself acknowledges that
12 statutes of limitations in many jurisdictions routinely limit the period of time by which a
13 party may initiate an action, or claim, for recovery of damages or other relief. Charter's
14 proposal simply adopts that concept, and incorporates it in to the draft agreement.

15 I know that Mr. Miller has also suggested that Charter's proposal may conflict with
16 applicable statutes of limitation, which could impose lesser or greater periods. That fact,
17 in and of itself, is not a bar to adopting this language. Although I am not an attorney, I
18 understand that parties to contracts routinely compromise certain rights they may
19 otherwise have under the law. Therefore, it is not unusual for Charter to seek a contract
20 term that may, or may not, be identical with all applicable statutes of limitation.

21 As to Mr. Miller's second point, that a court order may be contrary to the 24 month
22 period, the answer need not be complex. While I am not an attorney, and I suspect this
23 issue will be fully addressed in post-hearing briefs, issues pertaining to court orders that
24 retroactively apply billing changes that go beyond 24 months from the order date –

1 however rare they may be – could potentially be addressed through the change of law, or
2 other similar, provisions.

3

4 **Q. WHAT LANGUAGE DO YOU RECOMMEND THE COMMISSION ADOPT?**

5

6 **A. I recommend that the Commission adopt the language set forth below:**

7 9.4 Disputed Amounts. The following shall apply where a
8 Party disputes, in good faith, any portion of an amount billed under
9 this Agreement (“Disputed Amounts”). Both **CLEC and
10 CenturyTel agree to expedite the investigation of any Disputed
11 Amounts, promptly provide all documentation regarding the
12 amount disputed that is reasonably requested by the other Party,
13 and work in good faith in an effort to resolve and settle the dispute
14 through informal means prior to initiating formal dispute
15 resolution.

16

17 20.4 Except as otherwise specifically provided in this
18 Agreement, no Claims will be brought for disputes arising
19 from this Agreement more than twenty-four (24) months from
20 the date of the occurrence which gives rise to the dispute.
21 Notwithstanding the foregoing, Claims for indemnification
22 will be governed by the applicable statutory limitation period.

23

24

25

ISSUE 14:

26

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**Q. MR. MILLER OPINES THAT THE FUNDAMENTAL DISPUTE HERE IS THAT
CHARTER EXPECTS ANY SERVICE OR FACILITY OFFERED UNDER THE
AGREEMENT WITHOUT A SPECIFIC, CORRESPONDING RATE ELEMENT
IN THE PRICING ARTICLE, TO BE PROVIDED WITHOUT CHARGE.
(MILLER DIRECT TESTIMONY AT PAGE 26). DO YOU AGREE?**

**A. No, I do not. Mr. Miller erroneously makes it sound as though Charter is looking for a
free ride, which is not the case. As stated in my Direct Testimony, Charter does not**

1 dispute the concept that CenturyTel could be entitled to compensation for performing
2 certain functions that are not currently set forth in the agreement. So Mr. Miller is
3 (again) trying to mischaracterize Charter's position.
4

5 **Q. UNDER CHARTER'S PROPOSAL, WHAT WOULD HAPPEN IF**
6 **CENTURYTEL IDENTIFIED A SERVICE OR FUNCTION THAT HAS BEEN**
7 **REQUESTED BY CHARTER BUT THAT IS NOT ALREADY PROVIDED FOR**
8 **UNDER THE AGREEMENT?**
9

10 **A.** In the event that CenturyTel agrees to perform such functions under the obligations
11 imposed on it by the Communications Act, or this Commission's rules and regulations,
12 Charter believes that the contract amendment process set forth in Sections 4 and 12 of the
13 agreement provides a means by which the parties can amend the agreement to include the
14 charges for the service provided by CenturyTel and requested by Charter. The
15 amendment can specifically detail the functions that the parties agree are not already
16 provided for – and priced – in the agreement; the costs and expenses that the parties agree
17 are justified for performing those functions; and the basis for requiring Charter to
18 compensate CenturyTel for performing such functions. If the function identified by
19 CenturyTel is not already addressed by the agreement, and terms of such amendment are
20 reasonable, the parties should be able to reach an agreement and then implement the
21 amendment with the Commission's approval. Furthermore, to the extent that any dispute
22 did arise between the parties with regard to an amendment, CenturyTel would have the
23 right to use the Section 252 arbitration process to arbitrate the disputed terms.
24

25 **Q. MR. MILLER IMPLIES (MILLER DIRECT TESTIMONY AT PAGE 26, LINE**
26 **13) THAT CHARTER EXPECTS CENTURYTEL TO SUBSIDIZE CHARTER. IS**
27 **THAT CORRECT?**

1
2 A. No, and frankly Mr. Miller's assertions are unfounded. As I have previously stated,
3 Charter does not dispute the notion that CenturyTel may be entitled to compensation for
4 performing certain functions that are not currently addressed by the agreement and are
5 requested by Charter. Should that situation arise, the agreement can be amended to
6 incorporate the appropriate charges. There is nothing unreasonable about that approach,
7 and it certainly does not create any potential for CenturyTel to "subsidize" Charter.

8
9 **Q. CENTURYTEL CLAIMS THE PARTIES ATTEMPTED TO CAPTURE ALL**
10 **RATES BY MAKING THE PRICING ARTICLE AS COMPREHENSIVE AS**
11 **POSSIBLE BUT THAT ITS PROPOSED LANGUAGE IS NECESSARY TO**
12 **ADDRESS THE POSSIBILITY THAT SOMETHING IS MISSING. DO YOU**
13 **AGREE?**

14
15 A. No, I do not agree with Mr. Miller's statement at page 27, lines 14-18 of his Direct
16 Testimony, that anything "missing" from the Pricing Article is the result of an "oversight
17 by both parties." The fact is, the parties spent more than six months negotiating the terms
18 of these agreements. Charter's negotiators tell me that this issue was raised early in the
19 negotiations, and that CenturyTel clearly knew that Charter expected all necessary
20 pricing terms to be included in the agreement (and the Pricing Article specifically). It
21 strains credibility to say that after six months of attempting to develop contract terms the
22 parties may have left something out by a simple "oversight."

23
24 It appears that CenturyTel seeks this language because it wants to preserve its ability to
25 force Charter into paying for certain actions in the future, despite the fact that the
26 agreement does not authorize such charges. That is precisely what happened between the
27 parties. As Ms. Giaminetti testified, in both Missouri and Wisconsin, CenturyTel

1 attempted to charge for number porting even though there was no language in the parties'
2 then-current agreements to support such charges. Charter initiated complaints in both
3 states to prove that CenturyTel's charges were unfounded.

4

5 Here, the Missouri PSC Staff filed testimony, and briefs, in support of Charter, and
6 recommending that the Commission find that CenturyTel had breached its agreement
7 with Charter by assessing charges that were not supported by the interconnection
8 agreement. Specifically, the PSC Staff recommended that the PSC "prohibit and enjoin
9 CenturyTel from asserting that Charter is in default of the Parties' agreement for non-
10 payment of telephone number porting charges."¹³ These cases demonstrate that
11 CenturyTel has a specific (and very recent) history of attempting to charge Charter for
12 certain actions, even though there is no basis for such charges under the contract.

13

14 **Q. COULD THE COMMISSION REDUCE THE PROBABILITY THAT SUCH**
15 **PROBLEMS WILL ARISE IN THE FUTURE BY ADOPTING CHARTER'S**
16 **PROPOSAL?**

17

18 **A.** Yes. The Commission cannot absolutely ensure any result, but adoption of Charter's
19 proposal will help to significantly reduce the possibility that CenturyTel would engage in
20 such action here in Missouri. Moreover, Charter's proposed language would still provide
21 a basis for CenturyTel to seek to assess new charges in the future, as a result of changes
22 in law under Section 12 or requests for such new services by Charter under Section 4.
23 Hence, the agreement already has the language needed to address the situation
24 CenturyTel has contemplated. Therefore, CenturyTel's proposal is not necessary.

¹³ See Rebuttal Testimony of William L. Voight, MO PSC Staff Witness at 15-16, Case No. LC-2008-0049, filed Feb. 15, 2008 (emphasis added).

1
2 Moreover, CenturyTel's proposed language at Section 22.1, Article III is unclear and
3 unreasonable in that it requires the reimbursement of "costs" and "expenses" without
4 regard to how they would be determined or approved or the standard (e.g. TELRIC,
5 LRSIC, just and reasonable, etc.) by which they would be judged. To the extent
6 CenturyTel claims a service or function sought by Charter is not addressed by the
7 existing agreement and Pricing Article, it is only reasonable that CenturyTel propose an
8 amendment to address the situation and that it demonstrate its proposed cost recovery is
9 consistent with the FCC's and this Commission's rules. This is what Charter's proposal
10 would do.

11
12 After having reviewed CenturyTel's Direct Testimony on this issue, I continue to
13 recommend Charter's position be approved. CenturyTel's language is both unnecessary
14 and unreasonable. The Commission should adopt the following language:

15 **22.1 [INTENTIONALLY LEFT BLANK]**

16
17 **Article I, § 3:**

18
19 Art. I, § 3 Notwithstanding any other provision of this Agreement, neither
20 Party will assess a charge, fee, rate or any other assessment (collectively,
21 for purposes of this provision, "charge") upon the other Party except where
22 such charge is specifically authorized and identified in this Agreement, and
23 is (i) specifically identified and set forth in the Pricing Article, or (ii)
24 specifically identified in the Pricing Article as a "TBD" charge. Where this
25 Agreement references a Tariff rate or provides that a specific service or
26 facility shall be provided pursuant to a Tariff, the Tariff rates associated
27 with such specifically referenced service or facility shall be deemed a
28 charge that has been specifically authorized under this provision. **The**
29 **Parties do not intend for this provision to be construed to create any**
30 **obligation upon CenturyTel to provide, or for **CLEC to pay, for a**
31 **service that is not otherwise identified in this Agreement.**
32

ISSUE 29:

SHOULD THE AGREEMENT PRESERVE CENTURYTEL'S RIGHTS TO RECOVER FROM CHARTER CERTAIN UNSPECIFIED COSTS OF PROVIDING ACCESS TO "NEW, UPGRADED, OR ENHANCED" OSS?

Q. AT PAGE 14 OF HIS DIRECT TESTIMONY, CENTURYTEL WITNESS REYNOLDS STATES THAT CHARTER REQUESTS THE COMMISSION TO "APPROVE AN APPROACH WHERE CENTURYTEL MUST INCUR THE COSTS FOR OSS RELATED ENHANCEMENTS BUT NOT BE ABLE TO RECOVER THOSE COSTS." DOES THAT ACCURATELY REFLECT CHARTER'S POSITION ON ISSUE 29?

A. No, it does not. In fact, Mr. Reynolds' Testimony completely misconstrues Charter's position on this issue, and the Commission should not be persuaded by his claims in this regard.

Q. DOES CHARTER'S PROPOSAL PRECLUDE CENTURYTEL FROM RECOVERING COSTS ASSOCIATED WITH NEW, UPGRADED OR ENHANCED OSS?

A. No. Charter's proposal is that CenturyTel should be required to address new, upgraded or enhanced OSS – and the recovery of any associated costs – through the contract amendment processes set forth in Sections 4 (AMENDMENTS) and/or 12 (CHANGES IN LAW) of the agreement. Those provisions provide a means by which CenturyTel could propose an amendment that specifically identifies the enhancements or upgrades it proposes, or that it has been required to implement as a result of a change in law; the costs that it seeks to recover; and the rates and/or rate elements it intends to use to recover such costs. If the terms of CenturyTel's proposed amendment are reasonable, and the basis of its proposed amendment consistent with applicable laws and regulations, the parties should be able to reach an agreement and then implement an amendment to address the situation, with this Commission's approval. Furthermore, to the extent that a

1 dispute arises between the parties, CenturyTel would have the right to use the Section
2 252 arbitration process to arbitrate its proposed terms, conditions and prices. Hence,
3 Charter's proposal provides that CenturyTel use the existing and agreed-upon contract
4 amendment and/or change of law provisions to seek to recover any future OSS related
5 costs it believes it is entitled to recover.

6

7 **Q. MR. REYNOLDS CLAIMS CHARTER'S POSITION IS UNREASONABLE. DO**
8 **YOU AGREE?**

9

10 **A.** No. Again, Mr. Reynolds's opinion seems to be based upon his impression that Charter's
11 position precludes the recovery of costs, which it clearly does not. As I have previously
12 stated, Charter's proposal provides that CenturyTel would use existing, agreed-upon
13 processes to propose an amendment that specifically identifies the enhancements or
14 upgrades it proposes; the reasons for such enhancement or upgrades; the costs it seeks to
15 recover; and the rates and/or rate elements it intends to use to recover such costs.
16 Clearly, the parties could agree to such a proposal if it is reasonable. Otherwise, the
17 Commission could be asked to resolve any disputes as to the new or enhanced OSS and
18 the applicability of pricing to recover such costs.

19

20 **Q. DOES MR. REYNOLDS (OR ANY OTHER CENTURYTEL WITNESS)**
21 **DESCRIBE THE TYPES OF ENHANCEMENTS AND, THEREFORE, COSTS**
22 **THE COMPANY MAY SEEK TO RECOVER, THE METHOD BY WHICH IT**
23 **MAY SEEK TO RECOVER SUCH COSTS, OR THE EXTENT TO WHICH**
24 **SUCH COSTS WOULD COMPORT WITH THE FCC'S OR THIS**
25 **COMMISSION'S COST STANDARDS?**

26

27 **A.** No. The company's proposed language basically asks Charter to agree, in advance, that
28 any costs related to new, upgraded or enhanced OSS would be recovered regardless of

1 the circumstances surrounding such changes and regardless of the costs. CenturyTel has
2 not described with any specificity why it would incur such costs; whether Charter would
3 benefit from the costs having been incurred; the extent to which other costs would be
4 offset; how it would proposed to determine such costs; under what standard its costs
5 would be reviewed; and whether the costs would be recovered only from Charter. In
6 light of the utterly ambiguous nature of CenturyTel's proposal, requiring Charter to
7 accept such costs up front is unreasonable and unfair.

8

9 **Q. TO THE EXTENT THAT CENTURYTEL WAS REQUIRED BY A CHANGE OF**
10 **LAW TO ADD TO, UPDATE OR ENHANCE ITS OSS, WOULD THE**
11 **AGREEMENT, AS IT EXISTS WITHOUT CENTURYTEL'S PROPOSED**
12 **LANGUAGE, ALLOW FOR THE REQUIRED CHANGES TO OSS AND**
13 **RECOVERY OF COSTS CONSISTENT WITH APPLICABLE LAW?**

14

15 **A.** Yes. The most likely circumstance giving rise to a change in CenturyTel's OSS, a
16 change in applicable law, is covered by Charter's proposed language. Specifically, under
17 Charter's proposal, CenturyTel would address new, upgraded or enhanced OSS – and the
18 recovery of any associated costs – required by a change in law through the contract
19 amendment provisions set forth in Section 12 (CHANGES IN LAW). Those provisions
20 provide a means by which CenturyTel could propose to identify, as a result of a change in
21 law, the costs it seeks to recover, and the rates and/or rate elements it intends to use to
22 recover such costs. If the terms of CenturyTel's proposed amendment are reasonable,
23 and the basis of its proposed amendment is consistent with applicable laws and
24 regulations, the parties should be able to reach an agreement and then implementing an
25 amendment to address the situation, with this Commission's approval. Otherwise, the
26 Commission could be asked to resolve any dispute that arises between the parties.

1
2 In short, CenturyTel's proposed language is unnecessary, unreasonable and unfair.
3 Charter's position as it pertains to Issue 29 is reasonable, particularly in light of the fact
4 that it relies upon existing, agreed-up contract language. I recommend the Commission
5 reject CenturyTel's proposed language in its entirety.

6 **ISSUES 33:**

7
8 **SHOULD CENTURYTEL BE REQUIRED TO MAKE 911 FACILITIES AVAILABLE**
9 **TO CHARTER AT COST-BASED RATES PURSUANT TO SECTION 251(C)?**

10
11 **Q. CENTURYTEL WITNESS WATKINS DESCRIBES THAT HE ADDRESSES**
12 **ISSUES 33 AND 39 TOGETHER IN HIS TESTIMONY AND THE CHARTER**
13 **HAS NOT CHARACTERIZED THESE ISSUES CORRECTLY. WHAT DID**
14 **CHARTER PROPOSE AS TO ISSUE NO. 33?**

15
16 **A. Charter's proposed language for Issue 33 is indicated by the bold text in the following:**

17
18 CenturyTel shall provide and maintain sufficient dedicated E911
19 circuits/trunks from each applicable Selective Router to the
20 PSAP(s) of the E911 PSAP Operator, according to provisions of
21 the applicable State authority, applicable NENA standards and
22 documented specifications of the E911 PSAP Operator.
23 CenturyTel will permit **CLEC to lease 911 facilities from
24 **CLEC's network to CenturyTel's Selective Router(s) at the rates
25 set forth in Article XI (Pricing). **The rates for 911 facilities set**
26 **forth in Section IV. B of Article XI (Pricing) are TELRIC-**
27 **based rates as required under Section 251(c). **CLEC has the**
28 **option to secure alternative 911 facilities from another Provider to**
29 **provide its own facilities.**
30

31 Charter asks the Commission to adopt its contract language, which makes clear that
32 facilities used to deliver 911 traffic should be made available to Charter at TELRIC-based
33 rates under Section 251(c) of the Telecommunications Act of 1996.

34
35 **Q. PLEASE PROVIDE CENTURYTEL'S PROPOSED LANGUAGE FOR ISSUE 33.**

1 A. CenturyTel's proposed language for Issue 33 is as follows:

2
3 CenturyTel shall provide and maintain sufficient dedicated E911
4 circuits/trunks from each applicable Selective Router to the PSAP(s) of the
5 E911 PSAP Operator, according to provisions of the applicable State
6 authority, applicable NENA standards and documented specifications of
7 the E911 PSAP Operator. CenturyTel will permit **CLEC to lease 911
8 facilities from **CLEC's network to CenturyTel's Selective Router(s) at
9 the rates set forth in Article XI (Pricing). **CLEC has the option to
10 secure alternative 911 facilities from another Provider to provide its own
11 facilities.

12
13 CenturyTel maintains the access to 911 facilities at TELRIC based rates is not required
14 under the Telecommunications Act and requests that Commission reject any language
15 requiring that facilities used to deliver 911 traffic be made available to Charter at
16 TELRIC-based rates.

17
18 **Q. HOW DOES MR. WATKINS SUPPORT CENTURYTEL'S POSITION?**

19
20 A. After spending five or so pages implying that Charter does not play by the rules as it
21 pertains to 911 surcharges in Missouri and that if it did play by the rules, the question of
22 cost based rates would be irrelevant because "Charter would not incur any net cost
23 regardless of what rates are established," (P.100, lines 17-18). Mr. Watkins expresses his
24 opinion that neither 251(a) nor 251(c) impose an obligation on CenturyTel to provide
25 access to facilities necessary to support 911 traffic at TELRIC based rates.¹⁴ While this is
26 largely a legal issue that will be addressed in post-hearing briefs, it seems that
27 CenturyTel's arguments are off the mark. Mr. Watkins implies that Charter has
28 requested interconnection and/or entrance facilities and that it wants such interconnection

¹⁴ Watkins Direct Testimony at pp.100-103.

1 and entrance facilities at TELRIC rates. This is not Charter's position.¹⁵ Rather,
2 Charter's position is that CenturyTel is generally required to provide to Charter access to
3 trunks and facilities for the provision of 911 services at TELRIC-based rates at Charter's
4 request -- a requirement made clear by the FCC. The FCC has stated:

5 We note that the Commission currently requires LECs to provide access to
6 911 databases and interconnection to 911 facilities to all
7 telecommunications carriers, pursuant to sections 251(a) and (c) and
8 section 271(c)(2)(B)(vii) of the Act. We expect that this would include all
9 the elements necessary for telecommunications carriers to provide
10 911/E911 solutions that are consistent with the requirements of this Order,
11 including NENA's I2 or wireless E911-like solutions.¹⁶

12 The reference to Section 251(c) of the Act in the quote from the FCC's order is key
13 because Section 251(c) of the Act requires all ILECs to provide interconnection facilities
14 at rates in accordance with section 252 of the Act. The pricing standard in Section 252(d)
15 of the Act that applies to interconnection and unbundled network elements is TELRIC.¹⁷
16 Accordingly, CenturyTel's obligation to provide 911/E911 facilities to Charter at
17 TELRIC-based rates is unambiguous and CenturyTel should not be allowed to ignore that
18 obligation in the parties' ICA.

19 **Q. MR. WATKINS ARGUES¹⁸ THAT SECTION 271 OF THE**
20 **TELECOMMUNICATION ACT DOES NOT APPLY TO CENTURYTEL.**
21 **PLEASE RESPOND?**
22

¹⁵ See, for example, *id.* at p.102, line 6 and line 22.

¹⁶ *In the Matters of IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, at para. 38 (2005).

¹⁷ Section 252(d) states: "Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section ...shall be...based on cost..." The cost standard adopted by the FCC and upheld by the Supreme Court for pricing interconnection facilities and UNEs pursuant to this section is TELRIC.

¹⁸ Watkins Direct Testimony at p.101, Lines 8-15.

1 A. Charter hasn't argued that Section 271 of the Telecommunications Act applies to
2 CenturyTel. Rather, as noted above, CenturyTel has separate obligations pursuant to
3 sections 251(a) and (c) regarding the 911 facilities at issue here.
4

5 **ISSUES 39:**

6
7 **SHOULD CENTURYTEL BE ENTITLED TO ASSESS CERTAIN**
8 **ADDITIONAL 911-RELATED FEES AND ASSESSMENTS UPON**
9 **CHARTER?**
10

11 **Q. PLEASE EXPLAIN THE PARTIES' DISPUTE ON THIS ISSUE.**

12 A. The dispute on this issue centers on the potential applicability of certain charges that
13 CenturyTel has proposed in the price list, Article XI (Pricing Attachment). Despite that
14 CenturyTel only identifies two sets of charges that may be applicable to Charter, it
15 proposes an entire pricing section related to 911 that is not applicable to Charter.

16
17 **Q. AT PAGES 98 AND 99 OF HIS DIRECT TESTIMONY, MR. WATKINS STATES**
18 **THAT CHARTER SHOULD BE BILLED FOR (1) FACILITY CHARGES AND,**
19 **PERHAPS, (2) A CHARGE FOR ADDITIONAL COPIES OF THE MSAG.**
20 **PLEASE COMMENT.**

21
22 A. Curiously, in reference to (1) facility charges for connection of Charter's network to the
23 selective router and, possible, charges for extra copies of the MSAG, Mr. Watkins
24 confirms that these "are the only charges that would apply to Charter."¹⁹ Yet, the
25 company proposes to include an entire section on rates that are not applicable. By their
26 own admission, CenturyTel proposes these charges in this arbitration with Charter just in
27 case, under Section 252(i) of the Act, some other party at some unspecified date requests

¹⁹ *Id.* at p.98, line 22.

1 to adopt the agreement resulting from this arbitrated in this proceeding.²⁰ Clearly, this
2 has nothing to do with Charter and should not be apart of Charter's agreement with
3 CenturyTel. I recommend the Commission adopt the following at Art. XI, § IV, Pricing:

4

5 **A. Intentionally Left Blank.**

6

7 B. 911 Facilities from the Provider's owned or leased network to CenturyTel's
8 Selective Router (if provided by CenturyTel)

9

10 911 Facilities from Provider network to CenturyTel Selective Router

11

12 Special Access Circuits

13

14 Cost based rates / (MRC) and (NRC)

15

16 **C. Intentionally Left Blank.**

17

18

19

20 **Q. ON PAGE 99, LINES 21-23 AND PAGE 100, LINES 1-8, MR. WATKINS**
21 **QUESTIONS WHETHER CHARTER HAS "ESTABLISHED THE**
22 **FRAMEWORK TO BILL THE PSAP JURISDICTION." DOES CHARTER**
23 **BELIEVE THAT IT HAS THE SAME RIGHTS AS CENTURYTEL TO**
24 **RECOVER FROM THE PSAP JURISDICTIONS THE COSTS OF PROVIDING**
25 **911 SERVICE?**

26

27 **A.** The answer depends on the type of 911 costs that Mr. Watkins is talking about. If he is
28 referring to being reimbursed for part of the administrative costs to collect 911 surcharges
29 from Charter's end users and remit them to the proper PSAPs, then yes. However, I
30 don't think those are the costs that Mr. Watkins had in mind. If Mr. Watkins is referring
31 to being reimbursed for Charter's 911 facilities costs, which is what I think he means,
32 then no.

33 **Q. PLEASE EXPLAIN.**

²⁰ *Id.* at p.99.

1 It is my understanding that Charter does comply with all 911 requirements in Missouri as
2 identified in the Missouri 911 Statutes, 4 CSR 240, Chapter 34-Emergency Telephone
3 Service Standards, or in the Missouri Revised Statutes, Chapter 190, Emergency
4 Services. For example, Charter does bill the permissible 911 surcharges to its end users
5 and remits all appropriate amounts to the proper PSAPs.

6 Mr. Watkins' testimony, if I understand it correctly, is that Charter could receive
7 reimbursement for 911 facilities between Charter's network and CenturyTel's 911
8 selective router. However, my understanding of the Missouri statutes is that a carrier,
9 such as Charter, cannot seek reimbursement for the facilities used for 911 transport
10 between its network and the ILEC selective router. Reimbursement for 911 facilities
11 only applies to ILECs, such as CenturyTel, who own the selective router and the facilities
12 between the selective router and the PSAP. In short, Charter is not eligible for such
13 reimbursement.

14 My only other comment is that even if Charter were eligible for such facility
15 reimbursement, it wouldn't change the FCC's affirmation in the 911 Interconnected VoIP
16 Order that a CLEC has a right to purchase 911 interconnection facilities from the ILEC at
17 cost-based rates.²¹

18
19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20
21 **A. Yes, it does.**

²¹ *In the Matters of IP-Enabled Services 911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 para. 38 (2005).