

Exhibit 1
CenturyTel Decision Point List (“DPL”) – Case No. TO-2009-0037
August 25, 2008

<u>Issue No.</u>	<u>Issues</u>	<u>§</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>CenturyTel’s Language</u>	<u>CenturyTel’s Position¹</u>
ART. II, DEFINITIONS						
1.	<p>Should the parties’ Agreement use the definition of Interconnected VoIP Service traffic as defined, and codified in federal regulations?</p> <p><u>Should the proposed Agreement cover all IP-enabled Traffic”?</u></p>	Art. II, § 2.80	<p><u>Interconnected VoIP Service Traffic</u></p> <p>Interconnected VoIP Service Traffic is traffic that is provisioned via a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user’s location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.</p>	<p>The parties should utilize the FCC definition of the term “interconnected VoIP” service to define certain traffic that may be exchanged between the Parties. The FCC has formally adopted the term “interconnected VoIP” for purposes of establishing certain regulations, and has codified the term, and its definition, at 47 C.F.R. § 9.3. This Commission should utilize the FCC’s definition because it accurately describes the nature and characteristics of traffic that is provisioned over the Charter network. Moreover, using a definition that is codified under federal law, and used by the federal expert agency, will ensure that the term that can be interpreted more clearly and consistently.</p>	<p>2.80 <u>IP-Enabled Voice Traffic</u></p> <p><u>IP-Enabled Voice Traffic means any IP-enabled, real-time, multi-directional voice call, including, but not limited to, service that mimics traditional telephony. IP-Enabled Voice Traffic includes: voice traffic originating on Internet Protocol Connection (IPC), and which terminates on the Public Switched Telephone Network (PSTN); and voice traffic originated on the PSTN, and which terminates on IPC, and voice traffic originating on the PSTN, which is transported through an IPC, and which ultimately, terminates on the PSTN.</u></p>	<p>In addition to its inclusion in Article II, Sec. 2.80, this disputed definition appears in Article II, Sec. 2.89 (definition of “Local Traffic”) and in Article V, Sections 4.2.1, 4.2.1.3 and 4.2.6.</p> <p>Charter’s proposed definition for “IP-enabled traffic” is too narrow and only addresses one form of traffic that may be delivered for termination on the Public Switched Telephone Network (“PSTN”). As a result, Charter’s proposed definition creates uncertainty as to the proper intercarrier compensation treatment of the undefined forms of IP-enabled traffic that may arise resulting in unnecessary disputes between the parties regarding the intercarrier treatment of these undefined forms of traffic. These issues are avoided by CenturyTel’s proposed definition of “IP-Enabled Voice Traffic.” Thus, the Commission should adopt CenturyTel’s proposed definition of</p>

¹ The summaries of CenturyTel’s positions regarding the issues presented in this proceeding will be subject to more complete discussion and development in the testimonies of the CenturyTel witnesses, in the legal briefs of CenturyTel and in any subsequently filed DPL submitted by CenturyTel in this docket. At such times that CenturyTel’s final DPL and legal briefs are filed, to the extent that any conflicts exist between the summaries of CenturyTel’s positions as set forth in this DPL and such final DPL, testimonies or briefs, it is CenturyTel’s intent that the final DPL, testimonies and briefs shall be controlling.

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						<p>“IP-Enabled Voice Traffic.”</p> <p>CenturyTel’s definition is intentionally broader than Charter’s proposed definition of “Interconnected VoIP Service Traffic.” CenturyTel did so to ensure that the entirety of traffic that utilizes Internet Protocol (“IP”) is addressed in the Agreement. CenturyTel notes that “IP” is nothing more than a form of transport that is different from Time Division Multiplexed (“TDM”) used today for the exchange of traffic over the PSTN.</p> <p>Charter’s proposed definition is too limited in scope. It is derived from 47 C.F.R. § 9.3 of the Federal Communications Commission (“FCC”) rules which was promulgated specifically for the purpose of identifying those Voice over Internet Protocol (“VoIP”) service providers to whom the FCC’s E911 service requirements apply. <i>See</i> 47 C.F.R. §§ 9.1 and 9.5(a). While the FCC has concluded that this requirement is appropriate for its intended purpose under the E911 regulations, it does not follow that the scope of the FCC’s definition is appropriate for this Agreement. Rather, the scope of the FCC’s definition actually</p>

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						serves to limit the definition in a way that renders it inappropriate for use in this Agreement. The FCC’s E911 service definition of VoIP only includes VoIP traffic that requires a broadband connection from the user’s location. This Agreement will cover other forms of IP-enabled traffic; therefore, the intercarrier treatment of these additional forms of IP-enabled traffic must be addressed.
2.	How should the Agreement define the term Network Interface Device or “NID”?	Art. II, § 2.103	<p>2.103 <u>Network Interface Device (NID)</u></p> <p>A means of interconnecting Inside Wiring to CenturyTel’s distribution plant, such as a cross-connect device used for that purpose. The NID houses the protector.</p>	<p>The definition of Network Interface Device (NID) should be consistent with FCC rules, in that it should not: alter or modify the location of the demarcation point; imply that CenturyTel always owns and maintains control over inside wire; or imply that end users do not own inside wire on the customer side of the NID. CenturyTel’s proposed definition contravenes FCC definitions in several ways, and attempts to establish new substantive rights and obligations for Century Tel under the Agreement that do not exist under federal law. The definitions should not be used as a means to impose new substantive rights and</p>	<p>2.103 <u>Network Interface Device (NID)</u></p> <p>A means of interconnecting Inside Wiring to CenturyTel’s distribution plant, such as a cross-connect device used for that purpose. The NID houses the protector, <u>the point from which the Point of Demarcation is determined between the loop (inclusive of the NID) and the End User Customer’s Inside Wire pursuant to 47 CFR 68.105.</u></p>	<p>This definition is directly related to the proper resolution of the other unresolved, NID-related issue (Issue 24). Thus, Issue 2 and Issue 24 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel.</p> <p>Charter’s suggestion that CenturyTel’s definition “contravenes FCC definitions in several ways” is simply wrong. The Commission should adopt CenturyTel’s proposed definition of Network Interface Device or “NID” because it is consistent with applicable law and FCC regulations.</p> <p>The terms NID, Inside Wire and Point of Demarcation are all related. The Parties have resolved the definitions of “Inside Wire” (Art. II,</p>

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				obligations, but instead should be used simply to define terms consistent with FCC rulings.		<p>Sec. 2.71) and “Point of Demarcation” (Art. II, Sec. 2.114), but not the definition of the “NID.” However, unlike Charter’s proposed definition that simply states that “[t]he NID houses the protector,” CenturyTel’s proposed definition establishes the interplay between these three critical definitions in a manner consistent with applicable requirements. In contrast, Charter’s definition creates ambiguity as it avoids describing the relationship between the NID, the Point of Demarcation and the customer’s Inside Wire.</p> <p>The relationship between these elements – NID, Inside Wiring and Point of Demarcation – is critical as they define where CenturyTel’s local distribution network ends and the customer’s Inside Wiring begins. The absence of a clear statement of that relationship will only lead to additional disputes between the Parties regarding Charter’s access to CenturyTel’s NID. Charter’s unauthorized use of CenturyTel’s NIDs has already led to litigation under Charter’s existing interconnection agreements with CenturyTel in Wisconsin. In a recent AAA arbitration, Charter was found to be liable for CenturyTel’s UNE charges for NID usage under</p>

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						<p>the parties’ “non-rural” agreement. AAA Case No. 51 494 Y 00524-07 (Aug. 24, 2007). The arbitrator’s decision was confirmed by State of Wisconsin Circuit Court for Dane County in January 2008 (Case No. 07CV4085). Last month, CenturyTel brought suit against Charter in the State of Wisconsin Circuit Court for LaCrosse County (Case No. 08-CV-4085) for unjust enrichment and conversion in connection with Charter’s unauthorized use of CenturyTel’s NIDs in CenturyTel’s rural exchanges in Wisconsin.</p> <p>It is essential that this Agreement not only clearly define, consistent with applicable law, what constitutes the Point of Demarcation between CenturyTel’s facilities and the end user’s Inside Wire, but also what the Network Interface is not. CenturyTel’s proposed definition does so and explicitly cross-references the FCC’s rule, 47 C.F.R § 68.105.</p>
3.	There are two separate issues presented in Issue 3: (a) How should the	Art. II, § 2.140 and Art. 1, § 3	Art. II, Section 2.140: Any applicable filed and effective Federal or state tariff (and/or State Price List) of a Party, as amended from time-	<u>Issue 3(a):</u> The definition of a tariff should establish that the Parties intend	Art. II, Section 2.140: Any applicable filed and effective Federal or state tariff (and/or State Price List) of a Party, as amended from time-to-time. <u>Either Party’s Tariffs shall not</u>	CenturyTel notes that Issue 3 and Issue 42 are related. <u>Issue 3(a):</u> The Parties have no material dispute

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	<p>Agreement define the term “Tariff”?</p> <p>(b) How should specific Tariffs be incorporated into the Agreement?</p>		<p>to-time, that the Parties have specifically and expressly identified in this Agreement for the purpose of incorporating specific rates or terms set forth in such document by mutual agreement.</p> <p>Article I, Section 3:</p> <p>Unless otherwise specifically determined by the Commission, in case of conflict between the Agreement and either Party’s Tariffs relating to ILEC and CLEC’s rights or obligations under this Agreement, then the rates, terms and conditions of this Agreement shall prevail. In no event shall a Tariff alter, curtail, or expand the rights or obligations of either Party under this Agreement, except by mutual consent. Either Party’s Tariffs and/or State Price Lists shall not apply to the other Party except to the extent that this Agreement expressly incorporates specific rates or terms set forth in such Tariffs by reference or to the extent that the other Party expressly orders services</p>	<p>to incorporate only those provisions that are specifically and expressly identified in the Agreement. Without a specific, and express, statement by both Parties of their mutual intent to incorporate provisions from either parties’ tariffs, the Agreement may not be construed as incorporating such provisions. Therefore, where the Parties intend to incorporate specific provisions from an external document, including a specific tariff, then the statement of incorporation should be clear and unequivocal.</p> <p><u>Issue 3(b):</u></p> <p>Furthermore, the Parties should incorporate only those specific tariff provisions that they intend to be operative under this Agreement. The Commission should not approve an Agreement that simply purports to incorporate any “applicable” tariff. Doing so will inevitably lead to interpretive disputes as to which tariffs are in fact “applicable” in any given circumstance, and lead to potential conflicts that can be resolved only with burdensome</p>	<p><u>apply to the other Party except to the extent that this Agreement expressly incorporates such Tariffs by reference or to the extent that the other Party expressly orders services pursuant to such Tariffs.</u></p> <p>Article I, Section 3:</p> <p>Unless otherwise specifically determined by the Commission, in case of conflict between the Agreement and either Party’s Tariffs relating to ILEC and CLEC’s rights or obligations under this Agreement, then the rates, terms and conditions of this Agreement shall prevail. In no event shall a Tariff alter, curtail, or expand the rights or obligations of either Party under this Agreement, except by mutual consent. Either Party’s Tariffs and/or State Price Lists shall not apply to the other Party except to the extent that this Agreement expressly incorporates such Tariffs by reference or to the extent that the other Party expressly orders services pursuant to such Tariffs and/or State Price Lists.</p>	<p>regarding the actual definition of the term “Tariff” as evidenced by the agreed upon language in Art. II, Sec. 2.140: “Any applicable filed and effective Federal or state tariff (and/or State Price List) of a Party, as amended from time-to-time.” However, Charter’s proposed additional language goes well beyond a definition, and is inaccurate. CenturyTel has addressed this in issue 3(b) below.</p> <p><u>Issue 3(b):</u></p> <p>The real dispute between the Parties is how Tariffs should be referenced and incorporated into the Agreement. From a drafting standpoint, this is a substantive issue that does not belong in the definition of a term. Rather, how a particular Tariff is referenced and incorporated with respect to a particular service should be established as a part of the other terms and conditions regarding that service.</p> <p>As to the merits, CenturyTel’s proposed language in Art. II, Sec. 1.40 is clear and direct. While Charter did not include this language as agreed-upon in its DPL, Charter did agree to this language during negotiations. The Commission should adopt it as it</p>

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			pursuant to such Tariffs and/or State Price Lists.	litigation. Consistent with its position concerning the definition of a tariff (above), the Parties Agreement should include specific language to reflect their intent to incorporate only those tariff provisions that are specifically and expressly identified in the Agreement.		<p>makes clear that a Tariff will apply to a Party only to the extent that (1) it is specifically incorporated by reference into the Agreement or (2) a Party expressly orders a service pursuant to such Tariff, as opposed to this Agreement.</p> <p>Charter’s proposal that in all cases Tariffs apply only to the extent “that the Parties have specifically and expressly identified in this Agreement for the purpose of incorporating specific rates or terms set forth in such document by mutual agreement” is unworkable and inappropriate. The Parties have discussed various ways in which Tariffs may be referenced and incorporated with respect to specific services. In some cases, only the rates from a Tariff are intended to be incorporated with respect to a service to be provided under the Agreement, with the intent that the rates change when the Tariff changes. In other cases, a Tariff is referenced for a specific purpose, such as the definition of Local Calling Area in Article II, Section 2.86.</p> <p>In other cases, a service is intended to be ordered and provided under a Tariff. In these latter cases, Charter has insisted that “specific rates and</p>

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						<p>terms” be “specifically and expressly identified,” with the result apparently that any other applicable rates and terms of the Tariff would not apply. Charter’s approach is unlawful. When a service is ordered and provided from a Tariff, all of the terms, conditions and rates applicable to that service apply. The filed rate doctrine prohibits CenturyTel from providing a tariffed service under a different set of terms, conditions and rates. <i>See, AT&T Co. v. Cent. Office Tel., Inc.</i>, 524 U.S. 214 (1998).</p> <p>Moreover, Charter’s insistence on parsing Tariff terms and conditions creates unnecessary complexity and potential disputes with what should be a straightforward proposition. If, for example, Charter orders additional directory listings out of CenturyTel’s applicable directory listing Tariff, it should take those listings under all of the terms and conditions of the Tariff, not just the particular section or two that Charter would cite within the Agreement. Charter cannot pick and choose only those sections of the Tariff with which it wants to comply. And, it would be a waste of CenturyTel’s and the Commission’s time to develop a new set of terms and conditions for a tariffed service</p>

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						<p>when the Tariff already contains a complete set of filed and effective terms and conditions.</p> <p>Finally, if only specific terms and conditions of a Tariff service are incorporated into the Agreement, ambiguity is created if needed terms and conditions, such as general ordering and provisioning terms from the Tariff, are not cited. Charter would apparently claim that it need not comply with CenturyTel’s ordering and provisioning terms, leaving the parties’ implementation of Charter’s request without a set of requirements to follow. Ambiguity would also be created because it would not be clear as to whether changes to the parts of the Tariff “specifically and expressly identified” would apply to the Agreement, or whether the Agreement would need to be amended in order to incorporate the changes.</p> <p>This issue affects many sections of the Agreement, including the general reference to Charter’s own Tariff in Art. II, Section 30.4.2.</p>
ART. III, GENERAL TERMS AND CONDITIONS						
4.	Termination of Agreement (Sub-Issues 4(A) and (B))					

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4(a)	<p>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.</p> <p><u>Should a Party be allowed to suspend performance under or terminate the Agreement when the other Party is in default, and the defaulting Party refuses to cure such default within thirty (30) days after receiving notice of such default? How should “default” be defined in the Agreement?</u></p>	2.6	<p><u>Suspension or Termination Upon Default.</u> 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; <i>provided, however</i>, that the non-defaulting Party has complied with the dispute resolution provisions of this Agreement, including Section 20.</p> <p>“Default” is defined to include:</p> <p>(a) A Party’s insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or</p> <p>(b) The final revocation by the Commission of a Party’s Certificate of Operating Authority and transition of End Users to another carrier, or</p> <p>(c) A decision pursuant</p>	<p>Termination of the agreement should be subject to either Party’s right to invoke dispute resolution procedures of the agreement, and only after this Commission specifically authorizes such action. Because termination of the agreement could have severe potential ramifications to end user subscribers of both parties, such action should only occur under the direct supervision and oversight of this Commission.</p> <p>For that reason, Charter’s proposed language would establish that any potential action deemed to constitute a default of the Agreement would be defined as both the action constituting the failure to perform, and the resolution of a dispute proceeding arising out of such alleged failure to perform. This approach will ensure that neither Party could use these provisions to threaten termination of the Agreement on mere <i>allegations</i> of default. Where the Commission finds that a Party has in fact failed to perform, following an adjudicative proceeding, it can deem such Party in default of the Agreement and approve the</p>	<p>2.6 <u>Suspension or Termination Upon Default.</u> 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; <i>provided, however</i>, that the non-defaulting Party <u>notifies the defaulting Party in writing of the Default and the defaulting Party does not cure the Default within thirty (30) calendar days of receipt of written notice thereof.</u> <u>Following CenturyTel’s notice to **CLEC of its Default, CenturyTel shall not be required to process new service orders until the Default is timely cured.</u></p> <p>“Default” is defined to include:</p> <p>(a) A Party’s insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or</p> <p>(b) The revocation by the Commission of a Party’s Certificate of Operating Authority, or</p> <p>(c) <u>A Party’s violation of any material term or condition of the Agreement;</u> or</p>	<p>The language at issue is a standard and commercially reasonable contract term that provides the Party that is experiencing the negative effects of the other Party’s default a means to ameliorate those negative effects. This “stick,” therefore, creates an incentive for both Parties (or any other party adopting the terms of this Agreement) to live up to their respective obligations under the Agreement, without unnecessary Commission intervention.</p> <p>For example, if CenturyTel’s language was not included and Charter failed to pay “undisputed” billed amounts, CenturyTel would be obligated to go to the Commission, commence a dispute proceeding and await a determination before it could suspend processing Charter’s orders for Charter’s failure or refusal to pay <i>undisputed</i> charges. Charter has not and cannot explain why such a result is appropriate or necessary, let alone required under the Act or state law.</p> <p>CenturyTel’s proposed language provides a reasonable incentive for <i>the offending</i> Party to comply with the terms of the Agreement. CenturyTel’s notice requirement gives Charter the opportunity to cure a default or to seek an injunction if</p>

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			<p>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,</p> <p>or</p> <p>(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.</p>	<p>other Party’s right to terminate the Agreement. That approach provides sufficient contractual protections for both Parties, while at the same time ensuring that neither Party will be able to improperly use the default/termination provisions of the Agreement to gain an improper advantage. Furthermore, Commission oversight and involvement will ensure that subscribers’ interests are properly protected in the event that the Agreement is terminated.</p>	<p>(d) <u>A Party’s refusal or failure in any material respect properly to perform its obligations under this Agreement, including but not limited to its refusal or failure to pay undisputed charges (pursuant to Section 9) within thirty (30) calendar days after the bill date.</u></p>	<p>Charter really does not believe it is in default. Thus, <i>neither</i> Party would be required to take disputes to the Commission unless there was legitimate need to do so. In contrast, Charter’s language creates an incentive for the offending Party to violate the terms of the Agreement by placing the burden of initiating and undertaking formal Commission proceedings on the non-offending Party in order to obtain payment. This perverse incentive violates elementary notions of contract law and sound public policy.</p> <p>Finally, even in those instances where the Parties are in agreement that there is a failure to pay, Charter’s proposed language still requires a Commission finding of default prior to any action by the non-defaulting Party. Such a requirement is not necessary. Charter’s requirement simply adds expense and time to a billing issue that eliminates any incentive for proper conduct under the Agreement.</p> <p>With respect to what should constitute a “default” under the Agreement, CenturyTel notes that both Parties agree that “insolvency” is a default and thus subsection</p>

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						<p>2.6(a) is not in dispute. With respect to subsection (b) regarding the “revocation of a Certificate of Operating Authority [COA],” CenturyTel submits that this is a standard ICA term. Moreover, from a practical perspective, it is also self-evident whether an entity’s COA is or is not revoked. In this instance, the Commission would have to act and that action is a matter of public record. Charter’s proposed insertion of “final” with this section simply creates ambiguity as to what is a “final” revocation.</p> <p>At the same time, issues regarding the transition of end users is within the control of the entity whose COA is being revoked, including how best that transition should occur. However, end user transition issues are within the Commission’s province to decide and should be left to the Commission in the first instance.</p> <p>With respect to CenturyTel’s proposed language in subsections (c) and (d) of Section 2.6 (“violation of material term of Agreement” and “failure to perform, including failure to pay undisputed amounts”, respectively), such provisions are also standard, commercially</p>

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						reasonable terms. CenturyTel’s wording incorporates the more narrowed events that Charter proposes, and thus ensures that both Parties’ rights are protected where the other Party refuses or fails to properly perform its obligations “in any material respect” under the Agreement.
4(b)	What terms should govern the right of a Party to terminate this Agreement upon the sale of a specific operating area?	2.7	<p>2.7 <u>Termination Upon Sale.</u> 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</p>	<p>Neither Party should be authorized to terminate the Agreement in conjunction with the sale of an exchange or portion of the service area, unless the acquiring entity assumes the terms of the Agreement, and sufficient notice is provided to the other Party.</p> <p>Charter seeks a fair and equitable process to ensure that if CenturyTel sells operations with respect to a specific operating area to another entity the Parties’ interconnection arrangements would continue in effect once the acquiring entity assumes operations in that area. Without such a process it is possible that the acquiring entity could simply refuse to interconnect and exchange traffic with Charter. Should</p>	<p>2.7 <u>Termination Upon Sale.</u> 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 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 <u>specified in the notice.</u> 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. <u>The Parties agree to abide by any applicable Commission Order regarding such sale or transfer.</u></p>	<p>CenturyTel submits that the Commission should reject Charter’s inappropriate attempt to bind unidentified third party transferees, to constrain CenturyTel’s rights to freely contract and to reduce the value of CenturyTel’s assets and operations. The Commission has the authority necessary to protect the interests of end users and ensure service continuity in the event of any transfer of CenturyTel assets. Therefore, it is not necessary for Charter’s proposed language to be added into the Agreement in order to protect these interests.</p> <p>CenturyTel notes that Charter’s position in this regard is directly at odds with its position in Issue 5. In Issue 5, Charter states: “There is no reason for either Party to have the right to withhold consent to the assignment of this Agreement in a manner <i>that will have the effect of</i></p>

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			<p>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.</p> <p>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.</p>	<p>that occur, Charter’s subscribers would be unable to send and receive calls to the public switched telephone network. That result would be contrary to the public interest, and inequitable. Accordingly, the Commission should require that the Parties engage in a fair process to ensure that any acquiring entity assumes the terms of this Agreement, or agrees to some other equitable process.</p>		<p><i>undermining the other Party’s ability to freely contract with third parties . . .</i>” Charter’s “free to contract” position in Issue 5 undermines its position here in Issue 4(b). Indeed, the language that Charter proposes here restricts CenturyTel’s right to freely contract, while the language CenturyTel properly proposes advances that right.</p> <p>The imposition of an existing agreement upon a purchasing party cannot be an absolute. For example, the purchasing party may have different systems/processes/service offerings and, therefore, the purchasing party must be provided a period of time to review the selling party’s Interconnection Agreements (“ICAs”) to determine which terms, if any, are compatible with the purchasing party’s capabilities. Charter’s proposed language <i>does not</i> account for this possibility nor does its proposed language address the possibility that a purchasing party’s systems, capabilities, or offerings may not be compatible with some terms of CenturyTel’s ICAs. Charter’s proposal to contractually require that any purchasing party “unconditionally and promptly” accept and assume terms of this Agreement is therefore</p>

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						<p>unreasonable.</p> <p>Charter’s proposal appears based on a presumption of “absolutes” with respect to carrier operations that is inconsistent with the myriad operational systems and issues that may exist and, thus, may make wholesale adoption of an agreement impractical. Additionally, Section 51.715 of the FCC’s rules affords Charter all necessary protections with respect to interim interconnection service arrangements.</p> <p>Charter has also failed to demonstrate why its proposed language in Section 2.7 is proper. Specifically, Charter’s proposed revisions provide the non-selling Party with an effective “veto” over any sale. That result is unreasonable. In addition, by virtue of the fact that any acceptance must be “memorialized” in a form mutually agreed upon by both Parties,” Charter has effectively afforded itself the opportunity to trigger Section 20 dispute resolution if it withholds its approval, irrespective of whether such withholding is reasonable or unreasonable. Such an arrangement impermissibly restricts the fundamental right of free</p>

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						transferability of property and will, very likely, result in devaluation of the property to be transferred.
5.	<p>Should the Agreement allow either Party to assign the Agreement to a third-party in connection with a sale, without having to first obtain the other Party’s consent?</p> <p><u>Should a Party’s right to assign its rights and obligations under the Agreement, without consent, to a subsidiary or Affiliate be restricted to only those assignments made in conjunction with the sale of all or substantially all of the Party’s assets?</u></p>	5	<p>5. ASSIGNMENT</p> <p>Any assignment, in whole or in part, by either Party of any right, obligation, duty or interest arising under the Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, shall be null and void, except that either Party may assign, in conjunction with the sale of all or substantially all assets, and to the extent consistent with Applicable Law, all of its rights, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a subsidiary or Affiliate of that Party without consent, upon ninety (90) calendar days’ written notification. The effectiveness of an assignment shall be conditioned upon the assignee’s written assumption</p>	<p>Assignment upon sale of all or substantially all assets shall not be unreasonably withheld, conditioned or delayed. Either Party should be permitted to assign all of its rights, and delegate its obligations, liabilities and duties under this Agreement, to a third party without being required to seek the consent of the other Party. There is no reason for either Party to have the right to withhold consent to the assignment of this Agreement in a manner that will have the effect of undermining the other Party’s ability to freely contract with third Parties for the purposes of the sale or all, or substantially all, assets.</p>	<p>5. ASSIGNMENT</p> <p>Any assignment, in whole or in part, by either Party of any right, obligation, duty or interest arising under the Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, shall be null and void, except that either Party may assign, to the extent consistent with Applicable Law, all of its rights, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a subsidiary or Affiliate of that Party without consent, upon ninety (90) calendar days’ written notification. The effectiveness of an assignment shall be conditioned upon the assignee’s written assumption of the rights, obligations, and duties of the assigning Party, and the other Party being reasonably satisfied that the assignee is able to fulfill the assignor’s obligations hereunder. Any attempt to make an assignment or delegation in violation of this section shall constitute a default of this Agreement.</p>	<p>CenturyTel’s language is proper and the insertion of Charter’s language is confusing and otherwise unnecessary. Charter claims that its language would allow it to assign the Parties’ agreement without consent to a third party that may purchase “all or substantially all” of one of the Parties’ assets. Charter’s language does not accomplish that result.</p> <p>Rather, Charter’s language limits the ability of one of the Parties to assign the agreement to one of that Parties’ Affiliates or subsidiaries. There is no basis to limit the assignment to an Affiliate or subsidiary <i>only</i> in the event that the transaction involves a sale of assets to that Affiliate. As proposed by CenturyTel’s language, the general exception is both a common provision and is otherwise reasonable in commercial agreements. Indeed, each Party may desire to assign its rights and obligations to a subsidiary or Affiliate in the normal course of business, regardless of whether such Party sells all or substantially all of its assets to such subsidiary or</p>

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			of the rights, obligations, and duties of the assigning Party, and the other Party being reasonably satisfied that the assignee is able to fulfill the assignor’s obligations hereunder. Any attempt to make an assignment or delegation in violation of this section shall constitute a default of this Agreement.			Affiliate. Thus, Charter’s proposed language in Issue 5 should be rejected.
6.	Under what conditions should CenturyTel be permitted to require a deposit or assurance of payment from Charter?	6.1-6.3	<p>6. ASSURANCE OF PAYMENT</p> <p>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.</p> <p>6.1.1 <u>When a Deposit/Assurance of Payment Is Requested.</u> Such deposit or assurance of payment of charges may be requested by CenturyTel when Charter fails to timely pay (as</p>	Charter should only be required to provide a deposit upon a specific, pre-defined event, not simply when CenturyTel deems it necessary. CenturyTel should not be allowed to draw upon the deposit at will, but may only do so after pre-defined events have occurred. Under CenturyTel’s proposal there is no apparent standard by which a deposit could be required of Charter. Instead, whether a deposit is necessary rests solely within CenturyTel’s discretion. That process leaves open the possibility of potential abuse, or arbitrary demands, by CenturyTel. Instead, the Commission should adopt Charter’s proposal that seeks to identify those specific instances upon which a deposit may be	<p>6. ASSURANCE OF PAYMENT</p> <p>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.</p> <p>6.1.1 <u>When a Deposit/Assurance of Payment Is Requested.</u> Such deposit or assurance of payment of charges may be requested by CenturyTel <u>based on CenturyTel’s analysis of the CenturyTel Credit Application (“Credit Application”) and other relevant</u></p>	<p>CenturyTel’s response will address each subsection of Section 6 separately.</p> <p>CenturyTel’s proposed terms for each subsection are standard and commercially reasonable. For example, CenturyTel’s decision to seek a deposit or assurance of payment is based on a carrier’s payment history and credit rankings, typical standards in any commercial setting.</p> <p>CenturyTel’s concern with respect to the need for proper deposit language in this case is not speculative. Charter’s delay in paying service order charges has already been experienced by CenturyTel. CenturyTel’s seeks to avoid this delay in the future.</p>

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			<p>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.</p> <p>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</p>	<p>required.</p> <p>Any disputes regarding the need for, or amount of, a deposit should be resolved via the Agreement’s dispute resolution process, upon either Party’s initiative. However, the burden for initiating a dispute should not rest entirely upon Charter (as CenturyTel proposes), but should instead be borne by either Party, depending upon the outcome of the informal dispute resolution process. CenturyTel’s proposal would have the effect of forcing Charter to bear the burden of filing a formal petition; and improperly suggests that CenturyTel invoices are presumptively accurate.</p> <p>Further, during the pendency of any dispute over invoices, neither Party should take any action that could threaten the exchange of traffic, or other essential actions, between the Parties. CenturyTel’s proposal that it be allowed to terminate service during that period of time is inequitable and unreasonable. Any disputes should be resolve on their terms, not based upon</p>	<p><u>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.</u> 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.</p> <p>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 <u>Charter must file a petition for resolution of the dispute. Such petition shall be filed with the Commission.</u> 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</p>	<p>With respect to Section 6.1.1, Charter’s proposed revisions are improper. Under Charter’s proposed language, CenturyTel could not require Charter to make a deposit until after Charter has failed to pay. Charter has provided no sustainable basis for a “one free pass” concept with respect to its requirement to establish its ability to pay CenturyTel for the services Charter receives.</p> <p>Charter’s effort to limit the right to seek a deposit until the event of a bankruptcy should also be rejected. If an entity has a properly established credit history, a credit check is appropriate, particularly by someone to whom that entity may be indebted. The need to address this concern cannot wait for a bankruptcy filing. Credit-worthiness must be established <i>before the debt is incurred</i>. Indeed, once a party has declared bankruptcy, it will be difficult, if not impossible, to enforce deposit and other remedies.</p> <p>As a provider of services, it is reasonable for CenturyTel to take steps to ensure that the party to whom it provides services is capable of paying for them. CenturyTel’s Section 6.1.1 achieves that result.</p>

Charter ICA Terms and Issue Formulations in Bold

CenturyTel ICA Terms and Issue Formulations in Double-Underlined

Agreed to Terms and Issue Formulations in Normal Text

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			<p>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.</p> <p>6.2 <u>Calculating the Amount of Deposit/Assurance of Payment.</u> 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.</p>	<p>CenturyTel’s ability to threaten to discontinue services, or terminate the Agreement.</p> <p>Because Charter and CenturyTel are already interconnected in Texas, there is a history of invoicing and payments between the Parties. Therefore, because the Parties have actual evidence of invoicing, payments and services utilized, there is no reason for the Parties to utilize projections of what may be invoiced between the two Parties, i.e. forecasts, as CenturyTel proposes. Where actual billing history and data exists, as is the case here, the Parties should use such data to determine the amount of any deposit or assurance of payment that may be established under this Agreement.</p> <p>Should CenturyTel wish to modify the amount of deposit required of Charter, it should only be permitted to do so based upon certain specific, pre-defined, events or actions. The Agreement should not give CenturyTel the unfettered discretion to modify deposit amounts simply when</p>	<p>initial deposit, the Parties acknowledge that CenturyTel will <u>not</u> be required to accept any orders for service <u>until such time as the requested deposit is paid or the dispute is settled.</u> <u>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</u> CenturyTel may terminate service to Charter <u>in accordance with Sec. 2 and</u> any security deposits <u>will be applied to Charter’s account.</u></p> <p>6.2 <u>Calculating the Amount of Deposit/Assurance of Payment.</u> <u>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</u></p>	<p>And, absent that result, CenturyTel’s rate payers will be put in a position of financing Charter’s bad debt.</p> <p>Charter’s proposed revision to Section 6.1.2 should also be rejected. While Charter seeks to engage in formal dispute resolution of any disagreement over the amount of the initial deposit, CenturyTel’s language would require the matter to go directly to the Commission. In this instance, there is no need for dispute resolution because the Parties have already disagreed and could not reach agreement. Due to the anticipated internal escalation of the issue by both Parties, the additional time and expense required to engage in Section 20 dispute resolution is unnecessary.</p> <p>With respect to Section 6.2, CenturyTel notes that there are two (2) major flaws with Charter’s proposed revisions. First, Charter’s proposed language regarding an amount based on “2 months of CenturyTel’s charges from the previous 6 month period” is, at best, vague. Charter’s language does not identify which two months billings to use in that 6-month period. Thus, the proposal is likely to result in disputes. Second, Charter’s</p>

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			<p>6.3 <u>Modifying the Amount of Deposit/Assurance of Payment.</u> 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.</p>	<p>CenturyTel believes “conditions otherwise justify” such action.</p>	<p><u>amount of \$5000.</u></p> <p>6.3 <u>Modifying the Amount of Deposit/Assurance of Payment.</u> 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, <u>or when conditions otherwise justify such action based on actual billing history and/or the credit rating of Charter.</u> “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.</p>	<p>proposed language does not address the situation where Charter’s service orders begin to increase. In this situation, Charter’s historical 2-month measurement may be much lower, and thus an insufficient measure to properly establish the level of a deposit in those instances where Charter’s service order activity increases.</p> <p>Both of these flaws are avoided in CenturyTel’s language. CenturyTel’s proposed language for Section 6.2 pegs the deposit amount not to a historical 2-month time period but to Charter’s 2-month “forecast.” This is another reason why CenturyTel needs “service order” activity to be forecasted—see dispute on Art. III, Sec. 11 in Issue 41.</p> <p>Finally, CenturyTel believes that its revisions to Section 6.3 are reasonable to insure that Charter’s ongoing payment history and credit rating can be taken into account with respect to the level of any deposit or assurance of payment. Thus, CenturyTel’s language insures that factors associated with the level of security for proper payment by Charter do not remain static over the term of the Agreement.</p>

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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?	8.4	<p>8.4 <u>**CLEC Certification.</u> Notwithstanding any other provision of this Agreement, CenturyTel shall have no obligation to perform under this Agreement until such time as **CLEC has obtained such FCC and Commission authorization(s) as may be required by Applicable Law for conducting business in the State as **CLEC. **CLEC will provide a copy of its Certificate of Operating Authority or other evidence of its status to CenturyTel upon request. **CLEC shall not place any orders under this Agreement until it has obtained such authorization.</p>	<p>Charter should not be required to “represent and warrant” to CenturyTel that it is a certified local provider of Telephone Exchange Service. There is no reason for Charter to make such assurances through the use of a “representation and warranty” clause, rather than a simple statement that it is certified.</p> <p>Indeed, Charter has already provided such proof to CenturyTel, and has contractually agreed that it will provide such proof to CenturyTel upon request. But CenturyTel’s request that Charter “represent and warrant” to its status is problematic because it is tied to a remedy that would allow CenturyTel to excuse itself from performing under this Agreement –in effect voiding the terms of the Agreement. That result could seriously undermine Charter’s ability to serve its subscribers, because it could eliminate Charter’s ability to interconnect with, and exchange traffic to, the PSTN. This Agreement should not include provisions that have the potential to affect subscribers in that way without prior approval from the</p>	<p>8.4 <u>**CLEC Certification.</u> Notwithstanding any other provision of this Agreement, CenturyTel shall have no obligation to perform under this Agreement until such time as **CLEC has obtained such FCC and Commission authorization(s) as may be required by Applicable Law for conducting business in the State as **CLEC. <u>**CLEC must represent and warrant to CenturyTel that it is a certified local provider of Telephone Exchange Service in the State.</u> **CLEC will provide a copy of its Certificate of Operating Authority or other evidence of its status to CenturyTel upon request. **CLEC shall not place any orders under this Agreement until it has obtained such authorization.</p>	<p>Each Party’s rights and obligations as set forth in this Agreement are predicated on its status under applicable law and continued compliance with it. In Missouri, Charter is not permitted to offer local exchange services as a CLEC unless it holds a valid COA. <i>See</i> RSMo § 392.410 (1) Thus, the requirement to maintain a valid COA should be and is a continuing obligation under the Agreement. Charter’s representation that it <i>currently</i> is a certificated provider, and the fact that Charter has provided proof that it <i>currently</i> maintains a COA, does not address the broader issue of whether Charter’s obligation to remain certificated should run for the entire term of the Agreement.</p> <p>The warranty being requested is not burdensome. CenturyTel’s proposal merely requires Charter to warrant the fact of its continuing compliance with Missouri law throughout the term of the Agreement, not just upon the effective date of the Agreement.</p>

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				Commission; an outcome that is not in the public’s interest.		
8.	<p>There are two separate issues presented in Issue 8:</p> <p>(a) Should the bill payment terms related to interest on overpaid amounts be equitable?</p> <p><u>(a) Should the billed Party be entitled to receive interest from the billing Party on amounts paid to the billing Party in error and which are later returned to the billed Party?</u></p> <p>(b) Should the bill dispute provisions ensure that neither Party can improperly terminate the Agreement in a manner that</p>	9.4.2, 9.5	<p><u>9.4.2 Billing Disputes Related to Paid Amounts</u> 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</p>	<p><u>Issue 8(a):</u> Following the resolution of a billing dispute the Party who prevails in the dispute should be “made whole.” Thus, if the billing party prevails the billed party should pay any amount underpaid. At the same time, if the billed party prevails, and is found to have overpaid the billing party, then the billed party should be entitled to request a refund of amounts that were overpaid. In addition, the amounts overpaid should be subject to a basic rate of interest that is fair and equitable. Such rate should be equal to the rate of interest that would be assessed by the billing Party for any late payment charges (as CenturyTel has proposed, and as Charter has agreed).</p>	<p><u>9.4.2 Billing Disputes Related to Paid Amounts</u></p> <p>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.</p>	<p><u>Issue 8(a):</u> By its suggested revision, Charter would have CenturyTel act as Charter’s “investment bank”.</p> <p>Under the undisputed language in Art. III, Sec. 9 <i>et seq.</i>, Charter can choose one of two options: (1) it can withhold disputed charges before the Bill Due Date (<i>see</i> Sec. 9.4.1); or (2) it can pay all amounts (withhold nothing) by the Bill Due Date and later seek recovery of any disputed amounts already paid.</p> <p>If Charter seeks option 2, it would have 1 year from the date of invoice to dispute any charge. As a result, under option 2, Charter’s proposed revision would effectively require CenturyTel to remit any overpayment <i>plus interest</i> at a rate of 1.5% per month on any amount that Charter successfully disputes. Consequently, Charter’s revision creates the incentive for Charter to avoid taking commercially prudent/reasonable steps to review its bills and submit notices of billing disputes prior to or coincident with the Bill Due Date (<i>i.e.</i>, option 1). This incentive is created because if Charter paid all charges and</p>

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	<p>could impair service to the public?</p> <p><u>(b) Should the billing Party be permitted to suspend or discontinue accepting orders from the billed Party under certain conditions when the billed Party fails or refuses to pay “undisputed” charges?</u></p>		<p>or the highest rate of interest that may be charged under Applicable Law, compounded daily, for the number of days from the Bill Date until the date on which such payment is made.</p> <p>9.5 <u>Effect of Non-Payment.</u></p> <p>9.5.1 If the billed Party does not remit payment of all undisputed charges on a bill by the Bill Due Date, the billing Party may initiate dispute resolution procedures under Section 20 of this Agreement.</p>	<p><u>Issue 8(b):</u></p> <p>Any and all disputes about the failure to pay certain charges should be resolved through the Dispute Resolution process of the Agreement. That process allows for either Party to seek an informal resolution thru negotiations, or business discussions. In addition, that process also allows an aggrieved Party to file an appropriate action seeking relief that it believes is necessary for any alleged failures to pay. Under such circumstances, both Parties interests are preserved, and protected.</p> <p>In contrast, CenturyTel’s proposal simply seeks to impose a process which is inequitable and one-sided (in CenturyTel’s favor). For example, under CenturyTel’s proposal it would have the right</p>	<p>9.5 <u>Effect of Non-Payment.</u></p> <p>9.5.1 If the billed Party does not remit payment of all undisputed charges on a bill by the Bill Due Date, the billing Party may <u>discontinue processing orders for relevant or like services provided under this Agreement on or after the tenth (10th) calendar day following the Bill Due Date. The billing Party will notify the other Party in writing, via email or certified mail, at least five (5) Calendar Days prior to discontinuing the processing of orders for the relevant services. If the billing Party does not refuse to accept additional orders for service(s) on the date specified in such notice, and the billed Party’s non-compliance continues, nothing contained herein shall preclude the billing Party from refusing to accept any or all additional orders for service(s) from the non-complying Party without further notice or from billing and collecting the appropriate charges from the billed Party. For order processing to resume, the billed Party will be required to make</u></p>	<p>disputed those charges later (within 1 year of billing), any recovery of an overpayment would be subject to what amounts to 18% per annum interest. Such a result is untenable, and Charter’s revision should be rejected.</p> <p><u>Issue 8(b):</u></p> <p>Charter’s proposed language in Section 9.5.1, limiting CenturyTel’s rights to <i>only</i> instituting a dispute proceeding if Charter fails to pay <i>undisputed charges</i>, is patently unreasonable. If charges are undisputed, they should be paid. If Charter fails to pay such charges, CenturyTel should, as the CenturyTel language provides, be permitted to discontinue processing Charter’s orders. Absent that conclusion, the payment due date is meaningless and would result in untold disputes and resource commitments by CenturyTel for collecting charges which, <i>as the language states, are undisputed charges.</i></p> <p>CenturyTel should not be placed in a position of expending unnecessary resources to collect charges that no one disputes. At the same time, Charter should not expect to receive free service by forcing CenturyTel to decide whether an amount due is</p>

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			9.5.2 [INTENTIONALLY LEFT BLANK].	to discontinue processing orders, and disconnect services and circuits unilaterally, and without Commission authorization. That result could have serious ramifications for end user subscribers, as well as for Charter’s reputation as a service provider, and is thus contrary to the public interest.	<p><u>full payment of all past and current undisputed charges under this Agreement for the relevant services. Additionally, the billing Party may require a deposit or assurance of payment (or additional deposit or assurance of payment) from the billed Party, pursuant to Section 6. In addition to other remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief, including injunctive relief and specific performance.</u></p> <p>9.5.2 <u>Notwithstanding 9.5.1 above, if the billed Party does not remit payment of all undisputed charges on a bill by the Bill Due Date, the billing Party may at its option disconnect any and all relevant or related services provided under this Agreement following written notification to the billed Party at least seven (7) Business Days prior to disconnection of the unpaid service(s). Such notification may be included in a notification to refuse to accept additional orders so long as the appropriate dates for each consequence are listed therein. If the billed Party subsequently pays all of such undisputed charges and desires to reconnect any such disconnected services, the billed Party shall pay the applicable charge set forth in this Agreement or in the applicable Tariff</u></p>	<p>worth the cost of pursuing dispute resolution under the Agreement.</p> <p>Charter’s proposed revision to Section 9.5.1 should be rejected.</p> <p>At the same time, CenturyTel’s proposed language in Section 9.5.1 is entirely reasonable and consistent with the common sense notion that a CLEC is required to pay for services provided by an ILEC. Moreover, CenturyTel’s proposed language provides Charter with notice and then the ability to cure. Thus, CenturyTel’s proposed language should be adopted.</p>

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					<u>for reconnecting each service disconnected pursuant to this paragraph. In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due and payable. If the billing Party does not disconnect the billed Party’s service(s) on the date specified in such notice, and the billed Party’s non-compliance continues, nothing contained herein shall preclude the billing Party from disconnecting all service(s) of the non-complying Party without further notice or from billing and collecting the appropriate charges from the billed Party. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services. Additionally, the billing Party may require a deposit or assurance of payment (or additional deposit or assurance of payment) from the billed Party, pursuant to Section 6. In addition to other remedies that may be available at law or equity, the billing Party reserves the right to seek equitable relief, including injunctive relief and specific performance.</u>	
9.	Should Charter be required to pay a penalty	11.6	11.6 [INTENTIONALLY LEFT BLANK]	CenturyTel should not be entitled to assess an unspecified, and undefined,	11.6 <u>CenturyTel reserves the right to assess **CLEC a TBD charge for stranded interconnection plant/facility</u>	Charter’s issue and position statements are misleading. CenturyTel’s proposed language

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	<p>charge for facilities that it forecasts, but which CenturyTel determines that Charter has not fully utilized?</p> <p><u>If CenturyTel builds interconnection plant or facility at Charter’s request and Charter fails to use such plant or facility within six (6) months, may CenturyTel reserve the right to assess a stranded interconnection plant/facility charge on Charter?</u></p>			<p>“service order charge” for so-called stranded plant or facilities. To the extent that any facility is ordered by Charter, and deployed by CenturyTel, the Parties should work cooperatively to ensure that the facility is utilized based upon industry standard utilization levels. To the extent that the Parties believe that a facility is not fully utilized the Parties should work cooperatively to re-engineer the facility to ensure efficient utilization of the facility, consistent with industry-accepted standards.</p>	<p><u>capacity forecast by **CLEC but not used by **CLEC within six (6) months after a forecast period to the extent that CenturyTel built the plant/facility based on **CLEC’s order.</u></p> <p>[NOTE: This dispute also encompasses whether to include the following language in Article XI (Pricing):]</p> <p>Article XI (Pricing), § I(E):</p> <p>I(E). <u>Stranded Interconnection plant/facility per Article III, Section 11.6:</u> “TBD”</p>	<p>does not purport to assess a penalty where Charter forecasts the need for a facility and then under-utilizes that facility. Rather, by its proposed Section 11.6, CenturyTel makes clear that it seeks the right, when necessary, to assess “stranded plant/facility” charges in <i>the limited situation</i> where: (1) CenturyTel constructs plant or a facility “based on Charter’s order”; and (2) such facility is not used by Charter within six (6) months. Unless CenturyTel has the ability to assess such charge, CenturyTel (and its end users) could be required under the Agreement to incur significant costs of building plant/facility at Charter’s specific request, and then not be able to recover such sunk costs if Charter walks away from the very facility that it ordered.</p> <p>Taken to its logical conclusion, Charter could utilize the provision to run up the costs of its competitor (<i>i.e.</i>, CenturyTel) without constraint. Artificially increasing a competitor’s costs to inhibit its ability to compete constitutes anticompetitive behavior. That result is encouraged under Charter’s language, and provides an independent reason for rejecting Charter’s proposed language.</p>

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10.	When should certain changes in law be given retroactive effect?	12.3	<p>12.3 Retroactive Application of Change in Law.</p> <p>If the Parties amend the terms and conditions of this Agreement to add, remove, or modify terms of the Agreement following a change in Applicable Law, and pursuant to this Section 12, such amended terms and conditions shall apply retroactively to the effective date for the change specified by Applicable Law, if so ordered by the FCC, court of competent jurisdiction, or the Commission (“Relevant Authority”). Further, to the extent a true-up of any billing or payment for existing services and/or facilities is required by the change in Applicable Law, the Parties shall include in the change in law amendment appropriate true-up terms and conditions, if so ordered by the Relevant Authority.</p>	<p>Where a change of law requires an amendment, or modification, to the Agreement, any retroactive effect, or true up of rates, should occur upon express direction by the authority whose actions precipitated the change of law event. In other words, if the Commission, a court, or the FCC directs the Parties to give retroactive effect to its decision, then the Parties should do so. However, if those decision making bodies do not direct the Parties to give retroactive effect to the decision, the Parties should do so only where mutually agreed upon. The Agreement should not give one Party the unilateral right to establish a retroactive right or obligation where the other Party does not agree, and where the Commission, court or the FCC has not specifically directed.</p> <p>Moreover, CenturyTel’s proposal is effectively one-sided because it would apply only to those amendments which result in the removal of contractual obligations. If Charter proposed an amendment that would have the effect of imposing new, or</p>	<p>12.3 Retroactive Application of Change in Law.</p> <p><u>Except as set forth in Section 12.2 with respect to the addition of new services, if the Parties amend the terms and conditions of this Agreement to remove or modify terms of the Agreement following a change in Applicable Law, such amended terms and conditions shall apply retroactively to the effective date for the change specified by Applicable Law, if so ordered by the FCC, court of competent jurisdiction, or the Commission (“Relevant Authority”). If the Relevant Authority does not specify a date certain for when such change in Applicable Law shall take effect, such amended terms and conditions shall apply retroactively to the date on which the Party that first submitted a written request to amend the Agreement pursuant to Section 12.1 delivered such notice to the other Party.</u> Further, the Parties shall include in the change in law amendment appropriate true-up terms and conditions <u>for the billing or payment for existing services and/or facilities affected by the change in Applicable Law, if any.</u></p>	<p>Aspects of this issue relate directly to Issue 26. Thus, Issue 10 and Issue 26 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel.</p> <p>The Parties have resolved almost all of the language related to amending the Agreement in the event of a “change in law.” The one exception is whether and in what manner certain changes in law should be retroactively applied. While the Parties obviously have agreed to retroactively apply changes in law when so required by the relevant legal authority, the Parties dispute whether certain changes in law should be applied retroactively when the relevant authority is silent on retroactive application. The rules proposed by CenturyTel are simple and straightforward –</p> <p>(1) If the authority directing the change expressly provides when the change should take effect, that date will be used.</p> <p>(2) Conversely, if the authority is silent as to when the change should take effect, it is the date that one of the Parties makes a request of the other to incorporate the change into the Agreement.</p>

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				additional, obligations upon CenturyTel, then CenturyTel’s proposal would not allow such new obligations to have any retroactive effect. Thus, CenturyTel’s proposal would have the effect of limiting Charter’s rights to seek retroactive effect of changes of law which may benefit Charter, while at the same time giving CenturyTel the full benefit of any retroactive effect of changes in law that may benefit CenturyTel. This Commission should not accept, or endorse, a provision that favors one Party over the other in this way.		(3) New service rates are effective on the date of that the amendment that incorporates that service is approved by the Commission. These rules are implemented through CenturyTel’s language and are entirely reasonable.
11.	Should CenturyTel be allowed to incorporate its Service Guide as a means of imposing certain process requirements upon Charter, even though Charter has no role in developing the process and procedural terms in the Service Guide?	Art. I, §41	41. STANDARD PRACTICES 41.1 The Parties acknowledge that CenturyTel shall be adopting some industry standard practices and/or establishing its own standard practices to various requirements hereunder applicable to the CLEC industry which may be added in the CenturyTel Service Guide. Charter agrees that CenturyTel may implement such practices to satisfy any CenturyTel obligations under	For purposes of establishing obligations under the Agreement, the CenturyTel Service Guide should be used as a reference only, and should not be incorporated into the Agreement. As such, the Service Guide should not be contractually binding on Charter. CenturyTel’s proposal that it be allowed to implement practices in its “Service Guide”, and in that way satisfy “any contractual obligations” under this Agreement is problematic	41. STANDARD PRACTICES 41.1 The Parties acknowledge that CenturyTel shall be adopting some industry standard practices and/or establishing its own standard practices to various requirements hereunder applicable to the CLEC industry which may be added in the CenturyTel Service Guide, <u>which is further described in Section 53.</u> Charter agrees that CenturyTel may implement such practices to satisfy any CenturyTel obligations under this Agreement. Where a dispute arises between the Parties with respect to a conflict between the CenturyTel Service Guide	Charter mischaracterizes the role of the CenturyTel Service Guide, and misstates the issue. The role of the CenturyTel Service Guide is to assist CLECs, like Charter, by describing common operational procedures for interacting with CenturyTel. These procedures are maintained in an open and transparent document that is posted on CenturyTel’s website. Besides ease of interaction with CenturyTel, the Service Guide is also intended to ensure parity treatment to all CenturyTel CLEC customers by applying a set of

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	<u>Should certain business and operational processes and procedures set forth in CenturyTel’s “Service Guide” be incorporated by reference into the Agreement?</u>		<p>this Agreement. Where a dispute arises between the Parties with respect to a conflict between the CenturyTel Service Guide and this Agreement, the terms of this Agreement shall prevail. The CenturyTel Service Guide is to be used as a reference only, and is not a part of the Agreement, and is not contractually binding on **CLEC.</p>	<p>for several reasons. First, the Service Guide is developed and written by Century Tel alone. It is a unilateral document that CenturyTel prepares without input from Charter, or any other competitive LECs. If the Service Guide is incorporated into the Agreement, as CenturyTel proposes, it will have the effect of modifying contractual obligations of both Parties. It is patently unfair, and unreasonable, to allow one Party to a contract to have the right to modify contractual obligations by amending terms of an incorporated document which is unilaterally prepared by only one Party to the Agreement; and which is not subject to oversight or review by a state Commission.</p> <p>Furthermore, Charter’s proposal does not prohibit CenturyTel from publishing a Service Guide for use with Charter, or other LECs. CenturyTel may continue to do so if it believes that it is operationally efficient to do so. This is consistent with the traditional use of a Service Guide in the telecommunications industry.</p>	<p>and this Agreement, the terms of this Agreement shall prevail.</p>	<p>common operating procedures to them. Thus, when viewed properly, the role of the Service Guide is to communicate, in a uniform manner, the various CenturyTel procedures related to CenturyTel’s commitments under applicable law and its various ICAs. At the same time, the terms of the Agreement set forth CenturyTel’s obligations to Charter and those obligations cannot be changed through the Service Guide. Consequently, CenturyTel believes that its Section 53 proposal, in conjunction with CenturyTel’s proposed language in Section 41.1, strikes the right balance by accommodating Charter’s concerns while at the same time accomplishing CenturyTel’s (indeed, both Parties’) operational objectives.</p> <p>Moreover, if Charter does not wish to utilize, for example, CenturyTel’s automated order processing systems that are continually being developed, Charter has the option to use manual processes. As such, Charter should not be permitted to challenge or call into question CenturyTel’s system wide upgrades and changes which are otherwise aimed at providing a benefit to the total universe of system users—the CLECs.</p>

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				where a Guide is written and provided to facilitate the conduct of business between the parties by informally documenting business processes, but where the Guide is not itself a contract between the parties and does not contractually bind either party. Thus, while Century Tel should be permitted to write and provide a Service Guide, CenturyTel should not be able to use its Service Guide as a binding component of the Parties’ Agreement. Again, allowing one Party to bind the other by modifying a unilaterally controlled document is unreasonable and unfair. Therefore, Charter does not object to CenturyTel’s proposed use of a Service Guide, but will not agree that such document is incorporated into the Agreement, or that the document is contractually binding upon Charter.		<p>Charter asserts that CenturyTel will be able to impose changes to the Service Guide on Charter that are inconsistent with the Agreement. CenturyTel has resolved Charter’s concern. Specifically, CenturyTel proposed Art. III, Sec. 53 which states, in effect, that the Service Guide will <i>only</i> supplement and <i>not contradict or modify</i> the terms of Agreement. As a result, Section 53 makes clear that the Agreement prevails over the Service Guide, and that the Service Guide will apply only with respect to those matters for which it is specifically referenced in Agreement (<i>i.e.</i>, billing disputes (Art. III, Sec. 9.4.1), escalation lists (Art. III, Sec. 16), ordering processes and provisioning intervals (Art. VI, Sec. 2.3), procedures for reporting circuit trouble (Art. VIII, Sec. 2.4), LNP ordering process (Art. IX, Sec. 1.2.2), and ordering/provisioning/billing/maintenance processes (Art. X, Sec. 6.3)).</p> <p>Additionally, Charter is provided with electronic notification of all Service Guide changes and a 60-day period during which any changes are suspended if such change adversely impacts Charter. This suspension</p>

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						period affords the Parties an opportunity to resolve any potential conflicts.
11. (cont’d)	(Cont’d) See Parties’ issue statements immediately above.	Art. I, §53	53. [INTENTIONALLY LEFT BLANK]	See Charter Position Statement above, under Issue 11, Section 41.	<u>53. CENTURYTEL SERVICE GUIDE</u> <u>53.1 The CenturyTel Service Guide (“Guide”) is a handbook that contains CenturyTel’s operating procedures for service ordering, provisioning, billing, maintenance, trouble reporting and repair for wholesale services. In addition to setting forth operational procedures to facilitate the implementation of this Agreement, the Guide serves as a conduit for the conveyance of day-to-day information that **CLEC will need to operate under this Agreement (e.g., repository for CenturyTel’s contact and escalation lists available to **CLEC). **CLEC agrees that, where the terms of this Agreement specifically reference the Guide, **CLEC will abide by the Guide with respect to such specifically-referenced matters. **CLEC may receive email notification of any changes made to the Guide so long as **CLEC subscribes to such electronic notification procedure, which subscription is at no cost to **CLEC.</u> <u>53.2 The Guide is intended to supplement the terms of this Agreement</u>	See CenturyTel’s Position Statement above, under Issue 11 related to Art. III, Section 41.

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					<p><u>where specifically referenced in the Agreement; however, the Guide shall not be construed as contradicting or modifying the terms of this Agreement, nor shall it be construed as imposing a substantive term unrelated to operational procedure (e.g., payment terms) upon **CLEC that is not otherwise contained in this Agreement. Where a dispute arises between the Parties with respect to a conflict between the Guide and this Agreement, the terms of this Agreement shall prevail. If Charter believes that a change to the Guide materially and adversely impacts its business, the implementation of such change, upon Charter’s written request, will be delayed as it relates to Charter for no longer than sixty (60) days to provide the Parties with an opportunity to discuss a resolution to the alleged adverse impact, including but not limited to other potential modifications to the Guide. If the Parties are unable to resolve the dispute regarding the change to the Guide, the Parties will resolve the dispute pursuant to the Dispute Resolution procedures set forth in Section 20.3.</u></p> <p><u>53.3 The Parties acknowledge that, under their prior interconnection agreement, they have or have had disputes pertaining to the applicability and effect of certain provisions in the</u></p>	

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					<u>Guide (“prior Guide disputes”). Section 53.2 is intended to prevent such disputes on a going-forward basis under this Agreement. Nevertheless, neither this Section 53 nor any of the concessions reflected therein shall be considered an admission by either Party with respect to any prior Guide dispute, and neither Party will attempt to use Section 53.2 for that purpose. To that end, each Party expressly reserves it rights with respect to any position taken in any prior Guide dispute, and nothing in this Agreement shall be deemed or construed to limit or prejudice any position a Party has taken or may take before the Commission, the FCC, or a court of applicable jurisdiction regarding any prior Guide dispute.</u>	
11. (cont’d)	(Cont’d) Should the CenturyTel Service Guide be incorporated for: establishing bill dispute processes?	Art. III, §9.4.1	If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party may withhold payment of such Disputed Amounts only if it gives written notice to the billing Party of the amounts it disputes and includes in such notice the specific details and reasons for disputing each item. Such written notice shall be submitted in accordance with the following	The Parties should specifically agree upon mutually acceptable processes for submitting bill disputes to the other Party. To that end, Charter has proposed to use the current process that is outlined in the Service Guide, with several minor modifications. Charter proposes to include the process in Attachment 1 to the Agreement, such that both Parties will be contractually obligated to follow that process, unless a new process is	9.4.1 <u>Disputed Amounts Withheld From Payment.</u> If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party may withhold payment of such Disputed Amounts only if it gives written notice to the billing Party of the amounts it disputes and includes in such notice the specific details and reasons for disputing each item. Such written notice shall be submitted in accordance with the <u>guidelines for submitting billing dispute</u>	<i>See</i> CenturyTel’s Position Statement above concerning Issue 11 related to Art. III, Section 41. In addition, and specific to the dispute in Section 9.4.1, Charter’s proposal to incorporate as an attachment to the Agreement a partial version of the billing dispute procedures currently contained in the Service Guide should be rejected. These operational processes and procedures may change as CenturyTel (even in conjunction with input from the CLEC-community) identifies further

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			<p>agreed upon procedures; as set forth in Attachment 1 to the Interconnection Agreement.</p> <p>[NOTE: Charter’s proposed Attachment 1 sets forth bill dispute processes that are intended to mirror those processes in the current CenturyTel Service Guide.] <i>[excerpt – remaining language not included...]</i></p>	developed and implemented, by mutual agreement.	<p><u>claims set forth in CenturyTel’s CLEC Service Guide.</u> Disputed billing claims shall be submitted no later than the Bill Due Date. Failure by the billed Party to file any such claim on or prior to the Bill Due Date means that the total charges billed are due and payable to the billing Party on the due date. The billed Party shall pay all undisputed amounts no later than the Bill Due Date. The billed Party may not withhold payment of amounts past the due date pending a later filing of a dispute, but must pay all amounts due for which it has not provided a written notice of dispute on or prior to the Bill Due Date. If the billed Party disputes charges after the Bill Due Date and has not paid such charges, such charges shall be subject to late payment charges. If the billed Party disputes any charges and any portion of the dispute is resolved in favor of the billed Party, the Parties shall cooperate to ensure that the billing Party shall credit the invoice of the billed Party for that portion of the Disputed Amount resolved in favor of the billed Party, together with any late payment charges assessed with respect thereto no later than the second Bill Due Date after the resolution of the billing dispute. Nothing in this Section 9.4.1 shall constitute a waiver, or negation, of a Party’s right to seek recovery of amounts already paid pursuant to Section 9.4.2 below.</p>	<p>efficiencies and modifications to such processes and procedures. Charter’s proposal would unnecessarily require the Parties to “amend” the Agreement to take effect of any such changes to increase operational efficiencies.</p>

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11. (cont’d)	(Cont’d) Should the CenturyTel Service Guide be incorporated for providing escalation lists?	Art. III, §16.	Each Party shall update its own contact information and escalation list and shall provide such information to the other Party for purposes of inquiries regarding the implementation of this Agreement. Each Party shall accept all inquiries from the other Party and provide a timely response.	With respect to the provision of contact and escalation lists, Charter believes that the Parties should be obligated to provide such lists to the other Party, directly, rather than publishing those lists in the Service Guide or some other document (as CenturyTel proposes). That approach ensures that the Parties have current, updated, information should the need for contact or escalation of problems arise. Moreover, Charter believes that CenturyTel’s proposal fails to contemplate the exchange of information for contacts which may be necessary on weekends and evenings, should a service outage, or other service-affecting problem arise. In the event of such a problem, Charter would need CenturyTel to provide contact information for purposes of contacting persons responsible for addressing such issues on weekends, and in the evenings.	16. CONTACTS BETWEEN THE PARTIES Each Party shall update its own contact information and escalation list and shall provide such information to the other Party for purposes of inquiries regarding the implementation of this Agreement. Each Party shall accept all inquiries from the other Party and provide a timely response. <u>CenturyTel will provide and maintain its contact and escalation list in its CenturyTel Service Guide ("Guide") as amended and updated from time to time. The Guide is provided to **CLEC on CenturyTel’s Website, and any updates also will be provided on the Website in the event such information changes. Information contained in the Guide will include a single contact telephone number for CenturyTel’s CLEC Service Center (via an 800#) that **CLEC may call for all ordering and status inquiries and other day-to-day inquiries between 8 a.m. and 5 p.m., Monday through Friday (except holidays). In addition, the Guide will provide **CLEC with contact information for the personnel and/or organizations within CenturyTel capable of assisting **CLEC with inquiries regarding the ordering, provisioning and billing of interconnection services. Included in</u>	<i>See CenturyTel’s Position Statement above, under Issue 11 related to Art. III, Section 41.</i>

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					<u>this information will be the contact information for a person or persons to whom **CLEC can escalate issues dealing with the implementation of the Agreement and/or for assistance in resolving disputes arising under the Agreement.</u>	
11. (cont’d)	(Cont’d) Should the Century Tel Service Guide be incorporated for: ordering processes and provisioning intervals?	Art. VI, §2.3	Standard provisioning intervals shall be substantially the same as the intervals under which CenturyTel provisions the same Network Elements to itself.	See Charter Position Statement above, under Issue 11, Section 41.	Article VI: Unbundled Network Elements (UNEs), § 2.3: <u>2.3 Unless expressly stated otherwise in this Article, the ordering processes and standard provisioning intervals applicable to UNEs made available pursuant to this Article shall be as set forth in the CenturyTel Service Guide.</u> Standard provisioning intervals shall be substantially the same as the intervals under which CenturyTel provisions the same Network Elements to itself.	See CenturyTel’s Position Statement above, under Issue 11 related to Art. III, Section 41.
11. (cont’d)	(Cont’d) Should the Century Tel Service Guide be incorporated for: reporting and resolving circuit troubles or repairs?	Art. VIII, §2.4	Art. VIII §2.4 **CLEC agrees to follow the process and procedures for reporting and resolving circuit trouble or repairs as may be agreed to by the Parties. Before contacting CenturyTel’s Trouble Maintenance Center (CTMC), **CLEC must first conduct trouble isolation to ensure that the trouble does not originate from **CLEC’s own equipment or network or the equipment of **CLEC’s	See Charter Position Statement above, under Issue 11, Section 41.	Article VIII (Maintenance), § 2.4: 2.4 **CLEC agrees to follow the process and procedures for reporting and resolving circuit trouble or repairs as <u>set forth in the CenturyTel Service Guide, or as otherwise agreed to by the Parties.</u> Before contacting CenturyTel’s Trouble Maintenance Center (CTMC), **CLEC must first conduct trouble isolation to ensure that the trouble does not originate from **CLEC’s own equipment or network or the equipment of **CLEC’s	See CenturyTel’s Position Statement above, under Issue 11 related to Art. III, Section 41.

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			customer.		customer.	
11. (cont’d)	(Cont’d) Should the CenturyTel Service Guide be incorporated for: submitting LNP requests?	Art. IX § 1.2.2	A Party requesting a number to be ported must send the other providing Party a Local Service Request (LSR). If **CLEC requests that CenturyTel port a number, the Parties shall follow the “Local Number Portability Ordering Process” set forth in CenturyTel Service Guide. **CLEC’s consent to follow the Local Number Portability Ordering Process in the CenturyTel Service Guide shall not be deemed as consent that the Service Guide is incorporated into, or otherwise made a part of, this Agreement. Further, **CLEC’s consent to follow the Local Number Portability Ordering Process in the CenturyTel Service Guide shall not establish any liability upon **CLEC, nor shall CenturyTel assess any charges on **CLEC for number porting, or service order charges associated with such requests.	<i>See Charter Position Statement above, under Issue 11, Section 41.</i>	Article IX (Additional Services), § 1.2.2: 1.2.2 A Party requesting a number to be ported must send the other providing Party a Local Service Request (LSR). If **CLEC requests that CenturyTel port a number, the Parties shall follow the “Local Number Portability Ordering Process” set forth in CenturyTel Service Guide, <u>which will comply with applicable FCC rules, regulations and orders.</u>	<i>See CenturyTel’s Position Statement above, Issue 11 related to Art. III, Section 41.</i>

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11. (cont’d)	(Cont’d) Should the CenturyTel Service Guide be incorporated for: “service ordering, provisioning, billing and maintenance processes and procedures”?	Art. X § 6.3	Except as specifically provided otherwise in this Agreement, service ordering, provisioning, billing and maintenance processes and procedures shall be governed by the CenturyTel Service Guide. Notwithstanding the foregoing, the CenturyTel Service Guide is to be used as a reference only, and is not a part of the Agreement, and is not contractually binding on CLEC. The service order charges set forth pursuant to this agreement shall apply to all orders placed via OSS or pre-OSS services, except as specifically provided otherwise in this Agreement.	See Charter Position Statement above, under Issue 11, Section 41.	Article X (OSS), § 6.3: 6.3 Except as specifically provided otherwise in this Agreement, service ordering, provisioning, billing and maintenance processes and procedures shall be governed by the CenturyTel Service Guide. The service order charges set forth pursuant to this Agreement, if any, shall apply to all orders placed via OSS or pre-OSS services, except as specifically provided otherwise in this Agreement.	See CenturyTel’s Position Statement above, under Issue 11 related to Art. III, Section 41.
12.	Should the Agreement allow one Party to force the other Party into commercial arbitration under certain circumstances? <u>If neither the FCC nor the Commission accepts jurisdiction</u>	20.2, 20.3	20.2 <u>Informal Resolution of Disputes.</u> At the written request of a Party, each Party will appoint a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The location, format, frequency, duration, and conclusion of these	Disputes arising out of this Agreement should be resolved and litigated before the Commission, the FCC, or a court of competent jurisdiction. <i>Only</i> where both Parties mutually agree, should the dispute be submitted to binding commercial arbitration. Commercial arbitration can be used as an alternative form of dispute resolution, but only upon mutual agreement. This	20.2 <u>Informal Resolution of Disputes.</u> At the written request of a Party, each Party will appoint a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon mutual agreement, the representatives may	The Parties are in apparent agreement that disputes which arise under the Agreement should be submitted to the Commission for resolution. The point on which the Parties’ current positions diverge is the dispute resolution procedure that is to be applied in the event that the Commission or FCC either declines jurisdiction or it is determined that the Commission and FCC lack subject matter jurisdiction over a particular dispute.

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	<u>over a dispute between the Parties arising out of the Agreement, should the Agreement permit a Party to submit such dispute to binding commercial arbitration before a mutually agreed upon arbitrator?</u>		discussions shall be left to the discretion of the representatives. Upon mutual agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in any action between the Parties without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, and be admitted in evidence, in the arbitration or lawsuit.	Commission should be the primary forum for interpreting and enforcing the terms of this Agreement. <i>See Sw. Bell Tel. Co. v. Pub Util Comm’n of Texas</i> , 208 F.3d 475, 479-80 (5 th Cir. 2000). For that reason, there should not be any language in the Agreement that could be construed as depriving this Commission of the jurisdiction to interpret and enforce agreements established pursuant to 47 U.S.C. 252. CenturyTel’s proposal contemplates that some disputes will not be heard by this Commission. But the Fifth Circuit, and every federal appellate court to consider the issues has determined or assumed that state commissions have the authority to hear interpretation and enforcement actions regarding approved interconnection agreements. Therefore, it is very unlikely, if not impossible, that this Commission would simply refuse to hear disputes arising out of this Agreement, as CenturyTel’s proposal contemplates. Indeed, because it is not clear when, or whether, this Commission would ever	utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in any action between the Parties without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, and be admitted in evidence, in the arbitration or lawsuit. <u>Unless otherwise provided herein, or upon the Parties’ agreement, either Party may invoke formal dispute resolution procedures including arbitration or other procedures as appropriate, not earlier than thirty (30) days after the date of the dispute notice, provided the Party invoking the formal dispute resolution process has in good faith negotiated, or attempted to negotiate, with the other Party.</u>	CenturyTel’s proposed language for the Agreement also incorporates a provision that the Parties may, pursuant to 47 U.S.C. § 252(e)(5), seek resolution of a dispute in the event that the Commission fails to act in response to such dispute. However, the FCC has ruled that disputes concerning payments pursuant to an interconnection agreement will not be accepted by the FCC. <i>In re Qwest Communications Corp v Farmers and Merchants Mutual Telephone Company</i> , FCC 07-175, 22 FCC Rcd 17,973; 2007 WL 28727554 (rel’d October 2, 2007), ¶ 29. Thus, in this type of situation, commercial arbitration is reasonable and should be required. Accordingly, CenturyTel’s proposed language provides that in the event that the FCC or the Commission declines jurisdiction, the dispute shall be submitted to binding commercial arbitration before a single arbitrator. CenturyTel’s proposed language is also consistent with the FCC’s conclusion that “parties may be bound by dispute resolution clauses in their interconnection agreement to seek relief in a particular fashion . . .” <i>In</i>
			20.3 <u>Formal Dispute Resolution</u> . If the negotiations referenced in Section 20.2 above fail to produce an		20.3 <u>Formal Dispute Resolution</u> . <u>20.3.1</u> If the negotiations	

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			agreeable resolution within thirty (30) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction. In addition, upon mutual agreement of the Parties such disputes may also be submitted to binding commercial arbitration before a mutually agreed upon arbitrator.	decline to accept jurisdiction (as CenturyTel suggests), over a dispute arising out of this Agreement, CenturyTel’s proposal is without merit. Furthermore, even if the Commission or the FCC did not accept jurisdiction over a dispute arising from this Agreement, the appropriate forum may then be federal or state courts. Neither Party should be constrained in its right to pursue relief before federal or state courts, if both the Commission and FCC decline jurisdiction over a dispute arising from this Agreement.	referenced in Section 20.2 above fail to produce an agreeable resolution within thirty (30) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction the Parties agree that all unresolved disputes arising under this Agreement, including without limitation, whether the dispute in question is subject to arbitration, shall be submitted to the Commission for resolution in accordance with its dispute resolution process and the outcome of such process will be binding on the Parties, subject to any right to appeal a decision reached by the Commission under applicable law. In addition, upon mutual agreement of the Parties, such disputes may also be submitted to binding commercial arbitration before a mutually agreed upon arbitrator. 20.3.2 In the event that the Commission fails to act in response to any dispute arising under this Agreement, the dispute may be submitted to the FCC pursuant to 47 U.S.C. § 252(e)(5). If the FCC declines to accept jurisdiction over any	<i>re Starpower Communications, LLC</i> , 15 FCCR 11277 ¶ 6, fn. 14. Based on this guidance, requiring the Agreement arising from this proceeding to provide that commercial arbitration shall be utilized by the Parties in the event that the Commission declines to accept or does not have jurisdiction over a dispute: (1) is within the Commission’s authority under § 252(b)(4)(C); (2) avoids the gaps in the FCC’s jurisdiction; and (3) brings to the dispute resolution process all of the benefits customarily associated with arbitration (<i>e.g.</i> , cost savings, ability to choose an expert arbitrator, timely dispute resolution). Charter’s proposed language regarding this Issue should be rejected and CenturyTel’s language should be accepted.

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					<u>such dispute, or if the Commission declines to accept jurisdiction over any dispute arising under this Agreement, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A Party may demand such arbitration in accordance with the procedures set out in those rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section or upon approval or order of the arbitrator. Each Party may submit in writing to a Party, and that Party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: interrogatories; demands to produce documents; requests for admission. Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within ninety (90) days of the demand for arbitration. The arbitration shall be held in Missouri, unless otherwise agreed to by the Parties or required by the FCC. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties shall submit written briefs five days before the hearing. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close</u>	

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					<p><u>of hearings. The arbitrator has no authority to order punitive or consequential damages. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.</u></p> <p><u>20.3.3 Costs. Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the reasonable costs of production of documents (including search time and reproduction costs). The Parties shall equally split the fees of the arbitration and the arbitrator.</u></p>	
13.	<p>Should the Parties agree to a reasonable limitation as to the period of time by which claims arising under the Agreement can be brought?</p> <p><u>There are two issues presented in this Issue 13:</u></p> <p><u>(a) If the Parties</u></p>	9.4, and 20.4	<p>9.4 <u>Disputed Amounts.</u> The following shall apply where a Party disputes, in good faith, any portion of an amount billed under this Agreement (“Disputed Amounts”). Both **CLEC and CenturyTel agree to expedite the investigation of any Disputed Amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested by the other Party, and work in good</p>	<p>The Parties should agree to limit the time period by which either Party can bring a claim arising under the Agreement. Charter proposes that period of time be established as two years from the date of the occurrence of the action that gives rise to the dispute.</p> <p>This proposal benefits both Parties to the contract because it provides a specific time frame by which either Party can make a claim against the other.</p>	<p>9.4 <u>Disputed Amounts.</u> The following shall apply where a Party disputes, in good faith, any portion of an amount billed under this Agreement (“Disputed Amounts”). Both **CLEC and CenturyTel agree to expedite the investigation of any Disputed Amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested by the other Party, and work in good faith in an effort to resolve and settle the dispute through informal means prior to initiating formal dispute resolution. <u>If the Parties cannot resolve the dispute through</u></p>	<p><u>Issue 13(a):</u></p> <p>CenturyTel has proposed its language in Sections 9.4 and 20.4 to address the on-going issues that it has had with resolving billing disputes with Charter. In general, this language reflects the fact that, as the provider of the service, CenturyTel is obligated to investigate disputes regarding its service offerings and in good faith report its findings to Charter. Once an investigation is conducted and the conclusions reported to Charter,</p>

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	are unable to resolve a “billing dispute” through established billing dispute procedures, should the billed Party be required to file a petition for formal dispute resolution within one (1) year of providing written notice of such dispute, or otherwise waive the dispute?		faith in an effort to resolve and settle the dispute through informal means prior to initiating formal dispute resolution	Upon the expiration of that time period, all potential claims that arose prior to that time would be waived. One benefit of this approach is that it provides both Parties certainty as to when, or if, claims will be brought. That, in turn, provides the business and operations units of each company greater assurance in the resolution of intercompany disputes.	<u>established billing dispute procedures within 180 days of the billed Party providing written notice of Disputed Amounts to the billing Party, the billed Party shall file a petition for formal dispute resolution pursuant to Section 20.3 of this Article (without regard for any further informal dispute resolution negotiations that may be referenced in Section 20.3). If the billed Party fails to seek formal dispute resolution pursuant to Section 20.3 within one (1) year of the billed Party providing written notice to the billing Party of such Disputed Amounts, the billed Party waives its alleged entitlement to and/or right to withhold such Disputed Amount.</u>	<p>it is up to Charter to either accept those conclusions and follow them or escalate the issue to the Commission. Absent that approach, the dispute process acts as nothing more than a delay for the proper payment of charges under the Agreement and/or an effort to ensure that unnecessary resources are expended by CenturyTel beyond those required to investigate the dispute and report those results and conclusions to Charter.</p> <p>Unfortunately, CenturyTel’s experience is that Charter simply disputes Service Order charges for years and never seeks formal resolution of those disputes. CenturyTel’s language addresses that experience as well as properly places the consequences of dilatory conduct by Charter upon Charter.</p> <p>Specifically, CenturyTel’s proposed language would require Charter to file a dispute resolution petition if the Parties cannot resolve a billing dispute within one hundred and eighty (180) days of the dispute notice. If Charter fails to file such petition within one (1) year, it waives the dispute. As explained below, this provision is rational and avoids unnecessary expenditure of Party resources and those of the</p>

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	<p>(b) <u>To the extent a “Claim” arises under the Agreement, should a Party be precluded from bringing such “Claim” against the other Party more than twenty-four (24) months from the date of the occurrence giving rise to the</u></p>		<p>20.4 Except as otherwise specifically provided in this Agreement, no Claims will be brought for disputes arising from this Agreement more than twenty-four (24) months from the date of the occurrence which gives rise to the dispute. Notwithstanding the foregoing, Claims for indemnification will be governed by the applicable statutory limitation period.</p> <p>[NOTE: ACCOMPANYING PROPOSED DEFINITIONS, ART. II, § 2.26.1:</p> <p>“CLAIMS” The term Claims means any pending or threatened claim, action, proceeding or suit.</p>		<p>20.4 <u>[Intentionally omitted]</u></p>	<p>Commission.</p> <p>Charter should not be permitted to withhold payment with a sense of impunity, knowing that the expense of dispute resolution would chill CenturyTel’s willingness to seek recovery of lesser amounts. CenturyTel’s language would resolve this conduct by placing the obligation to file a petition on Charter with the corresponding consequence of waiving the dispute if it does not. Thus, CenturyTel’s language creates incentives for Charter to withhold <i>only legitimately disputed charges</i> in light of the fact that it will have to justify its withholding of such charges to the Commission or risk waiving its alleged entitlement to same.</p> <p><u>Issue 13(b):</u></p> <p>Through its revisions to Section 20.4, Charter proposes language to the effect that neither Party may bring a “Claim” for disputes arising more than 24 months from the date of the occurrence giving rise to the Claim. While Charter’s intentions may be focused on cutting off potential liability for unpaid/disputed charges related to billing, its language is too broad. Charter has not explained why it is</p>

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	<u>“Claim”?</u>					<p>reasonable to cover any potential claim a Party might have against the other under this Agreement or why it is reasonable to waive any applicable statute of limitation that may apply to a specific contract dispute arising under the Agreement. CenturyTel should not be required to waive these rights.</p> <p>Nonetheless, CenturyTel is willing to consider a more narrowly focused provision associated with a twenty-four (24) month window assuming that the provision can bring to both Parties a greater degree of financial certainty. <i>Thus, with respect to billing claims only</i>, Charter’s proposal may be worthy of consideration provided that Charter is required by the Agreement (as described in Issue 13(a) above) to file billing dispute petitions for a determination. However, if Charter is unwilling to do so, there is no basis for CenturyTel to be required to accept a more narrowly focused version of Section 20.4. Otherwise, Charter would refuse to pay, and Charter’s potential liability would be cut off after two (2) years unless CenturyTel incurred the cost to file a billing dispute proceeding.</p>
14.	Should	22,	22.1 [INTENTIONALLY	The costs incurred by each	22. EXPENSES	This issue relates directly to Issue 3.

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	<p>CenturyTel be allowed to assess charges upon Charter for as yet unidentified and undefined, potential “expenses” that CenturyTel may incur at some point in the future?</p> <p><u>There are two issues presented in this Issue 14:</u></p> <p><u>(a) If Charter requests that CenturyTel provide a service or perform an act not otherwise provided for under the Agreement, and Charter pre-approves the quoted costs of CenturyTel’s performance, should the Agreement include a provision requiring Charter to pay such costs as pre-approved by</u></p>	<p>and Art. I, § 3</p>	<p>LEFT BLANK]</p>	<p>Party in performing under this Agreement are a consequence of their respective obligations to one another under Section 251 of the Communications Act, and other applicable law. Neither Party should be allowed to recover its costs or “expenses” from the other Party unless specifically authorized to do so, as evidenced by the inclusion of rates in the price list.</p> <p>Should CenturyTel conclude at some point in the future that it incurs some costs for which it is entitled to compensation, there is already a process under this Agreement for which it can seek to recover such costs. Specifically, pursuant to Sections 4 and 12 of the current draft Agreement, CenturyTel can propose an amendment to the Agreement which specifically details the costs and expenses it seeks to recover, and the basis for requiring Charter to compensate CenturyTel. Under that scenario Charter will be required to engage in negotiations to amend the Agreement to incorporate CenturyTel’s proposed cost</p>	<p><u>22.1 In performing under this Agreement, if **CLEC makes a request not already provided for in this Agreement, CenturyTel may be required to make expenditures or otherwise incur costs that are not otherwise reimbursed under this Agreement. In such event, CenturyTel is entitled to reimbursement from **CLEC for all such reasonable and necessary costs to the extent pre-approved by **CLEC. For all such costs and expenses, CenturyTel shall receive through nonrecurring charges (“NRCs”) the actual costs and expenses incurred, including labor costs and expenses, overhead and fixed charges, and may include a reasonable contribution to CenturyTel’s common costs. If **CLEC makes a request that involves expenditures or costs not otherwise covered under this Agreement, CenturyTel will provide a quote to **CLEC in a timely manner and **CLEC must agree in writing to accept the quoted charges prior to CenturyTel’s initiation of work.</u></p>	<p>Thus, Issue 3 and Issue 14 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel.</p> <p><u>Issue 14(a):</u> This issue involves fundamental fairness and traditional cost-causation principles. The proposed language by CenturyTel is akin to a “Special Assemblies” tariff provision or an “Individual Case Basis” offering. As such, if Charter requests CenturyTel to perform a service or do something that is not otherwise provided for in the Agreement, and CenturyTel is otherwise willing to provide such service or engage in some act for the benefit of Charter, Charter should pay the actual costs incurred by CenturyTel. Moreover, CenturyTel’s language makes clear that prior to undertaking any effort, the Parties <i>must first agree that the charges are reasonable</i>. See CenturyTel Proposed Section 22.1.</p> <p>Absent CenturyTel’s proposed Section 22.1, and given Charter’s position that it should not be required to pay any charge not expressly set forth in the Pricing Article, Charter ostensibly could request CenturyTel perform, induce CenturyTel to perform by approving</p>

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	<u>Charter?</u> (b) _____ If _____ a service or facility is offered under the Agreement but does not have a corresponding charge set forth in the Pricing Article, should such service or facility be subject to “TBD” pricing pursuant to Article III, Section 46.		<p>Article I, § 3:</p> <p>Art. I, § 3 Notwithstanding any other provision of this Agreement, neither Party will assess a charge, fee, rate or any other assessment (collectively, for purposes of this provision, “charge”) upon the other Party except where</p>	<p>recovery scheme. For that reason, there is no need to include CenturyTel’s ambiguous proposed language in the current Agreement. Accordingly, because CenturyTel has sufficient opportunity to address the potential issue of unrecovered costs through the contract amendment process, the Commission should reject its proposed language here.</p>		<p>quoted charges, and then refuse to pay after CenturyTel performed. This result is unreasonable. CenturyTel’s customers should not be required to subsidize Charter’s business, particularly where costs are incurred at Charter’s request.</p> <p><u>Issue 14(b):</u></p> <p>Effectively, Charter’s position is that if a service or facility (or anything) is offered in the Agreement, and it does not have a corresponding rate set forth in the Pricing Article, CenturyTel must provide it <i>without charge</i>. In comparison, CenturyTel’s position is that if a service or facility is offered in the Agreement, and it does not have a corresponding rate set forth in the Pricing Article, such service or facility is subject to “TBD” pricing.</p> <p>CenturyTel’s proposed language avoids subsidization of Charter and requires the Parties to confer in an effort to develop a rate before any service or facility for which a rate is not provided can be ordered. Moreover, in light of Section 20, any disputes over TBD rates are resolved through the dispute resolution process.</p>

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			such charge is specifically authorized and identified in this Agreement, and is (i) specifically identified and set forth in the Pricing Article, or (ii) specifically identified in the Pricing Article as a “TBD” charge. Where this Agreement references a Tariff rate or provides that a specific service or facility shall be provided pursuant to a Tariff, the Tariff rates associated with such specifically referenced service or facility shall be deemed a charge that has been specifically authorized under this provision. The Parties do not intend for this provision to be construed to create any obligation upon CenturyTel to provide, or for **CLEC to pay, for a service that is not otherwise identified in this Agreement.		identified and set forth in the Pricing Article, or (ii) specifically identified in the Pricing Article as a “TBD” charge. Where this Agreement references a Tariff rate or provides that a specific service or facility shall be provided pursuant to a Tariff, the Tariff rates associated with such specifically referenced service or facility shall be deemed a charge that has been specifically authorized under this provision. <u>If a service or facility otherwise offered under the Agreement does not have a corresponding charge specifically set forth in the Pricing Article, or is not specifically identified in the Pricing Article as being subject to “TBD” pricing, such service and/or facility is not available to **CLEC under this Agreement.</u>	As a result, CenturyTel’s provision acts as a “safety net”. While CenturyTel has endeavored to make every effort to specifically tie each and every service to a specific rate, the provision allows for the possibility of human error with respect to CenturyTel’s efforts. Thus, it is, in CenturyTel’s view, entirely reasonable and appropriate.
15.	Indemnity, Warranties and Limitation of Liability Issues (Sub-Issues 15(a), 15(b) and 15(c))					
15(a)	Should Charter be required to indemnify CenturyTel even where CenturyTel’s actions are	30.1	30.1 <u>Indemnification Against Third-Party Claims.</u> Each Party (the “Indemnifying Party”) agrees to indemnify, defend, and hold harmless the other Party (the “Indemnified Party”) and the other Party’s	Each Party’s obligations to indemnify the other Party should be limited where the indemnified Party bears some responsibility for the alleged harms which are the basis for the action for relief. Put	30.1 <u>Indemnification Against Third-Party Claims.</u> Each Party (the “Indemnifying Party”) agrees to indemnify, defend, and hold harmless the other Party (the “Indemnified Party”) and the other Party’s Subsidiaries, predecessors, successors,	Indemnification issues arise when a third party makes a claim. Such claims cannot be ignored; they must be answered and defended. The Parties must be able to determine quickly who will be responsible for that defense. The Agreement

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	<p>deemed to be negligent, grossly negligent, or constituting intentional or willful misconduct; or if CenturyTel otherwise contributes to the harm that is the subject of the cause of action?</p> <p><u>Issue 15(a) consists of two sub-parts):</u></p> <p><u>Part (1):</u></p> <p><u>Should indemnification obligations be triggered by agreed-upon threshold issues or instead become the basis for protracted disputes between the Parties?</u></p>		<p>Subsidiaries, predecessors, successors, Affiliates, and assigns, and all current and former officers, directors, members, shareholders, agents, contractors and employees of all such persons and entities (collectively, with Indemnified Party, the “Indemnitee Group”), from any and all Claims, except to the extent that such Claims arise from the Indemnified Party’s negligence, gross negligence, or intentional or willful misconduct. For purposes of this Section 30, “Claim” means any action, cause of action, suit, proceeding, claim, or demand of any third party (and all resulting judgments, bona fide settlements, penalties, damages, losses, liabilities, costs, and expenses (including, but not limited to, reasonable costs and attorneys’ fees)), (a) based on allegations that, if true, would establish (i) the Indemnifying Party’s breach of this Agreement; (ii) the Indemnifying Party’s misrepresentation, fraud or other misconduct; (iii) the Indemnifying Party’s negligence; (iv) infringement</p>	<p>simply, where one Party has caused the harm, whether due to negligent actions or intentional misconduct, then that Party should not be indemnified against any losses arising from an action against that Party. Charter’s proposal with respect to Section 30.1 in particular, and elsewhere in Section 30, introduces a concept of contributory negligence in to the indemnity obligations, such that indemnity obligations are limited where the indemnified Party has contributed to the alleged harm. The Commission should recognize that reasonable limitation and order the Parties to incorporate the principle in to the Agreement.</p>	<p>Affiliates, and assigns, and all current and former officers, directors, members, shareholders, agents, contractors and employees of all such persons and entities (collectively, with Indemnified Party, the “Indemnitee Group”), from any and all Claims. For purposes of this Section 30, “Claim” means any action, cause of action, suit, proceeding, claim, or demand of any third party (and all resulting judgments, bona fide settlements, penalties, damages, losses, liabilities, costs, and expenses (including, but not limited to, reasonable costs and attorneys’ fees)), (a) based on allegations that, if true, would establish (i) the Indemnifying Party’s breach of this Agreement; (ii) the Indemnifying Party’s misrepresentation, fraud or other misconduct; (iii) the Indemnifying Party’s negligence; (iv) infringement by the Indemnifying Party or by any Indemnifying Party product or service of any patent, copyright, trademark, service mark, trade name, right of publicity or privacy, trade secret, or any other proprietary right of any third party; (v) the Indemnifying Party’s liability in relation to any material that is defamatory or wrongfully discloses private or personal matters; or (vi) the Indemnifying Party’s wrongful use or unauthorized disclosure of data; or (b) that arises out of (i) any act or omission of the Indemnifying Party or its</p>	<p>requires either Party when seeking indemnification to give reasonably prompt notice of the third-party claim. Both Parties can then examine the claim and, without worrying about the merits of the claimant’s allegations, determine whether those allegations, if true, would establish (for example) the Indemnifying Party’s breach or fraud. If so, the Indemnifying Party must defend the claim and indemnify and hold the Indemnitee Group harmless.</p> <p>The language proposed by Charter would transform this straightforward – and standard – approach into an extended and expanded dispute between the Parties. Charter’s approach is impractical if not wholly unworkable.</p> <p>Rather than focusing upon the allegations of the claimant, Charter’s proposal requires an ultimate determination of who is responsible for the claim. Rather than encouraging the Parties to join forces and defeat or minimize liability to third parties, it encourages them to point fingers at each other and to expand the scope of the dispute. Rather than enabling one attorney to represent the</p>

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			by the Indemnifying Party or by any Indemnifying Party product or service of any patent, copyright, trademark, service mark, trade name, right of publicity or privacy, trade secret, or any other proprietary right of any third party; (v) the Indemnifying Party’s liability in relation to any material that is defamatory or wrongfully discloses private or personal matters; or (vi) the Indemnifying Party’s wrongful use or unauthorized disclosure of data; or (b) that arises out of (i) any act or omission of the Indemnifying Party or its subcontractors or agents relating to the Indemnifying Party’s performance or obligations under this Agreement; (ii) any act or omission of the Indemnifying Party’s customer(s) or End User(s); (iii) the bodily injury or death of any person, or the loss or disappearance of or damage to the tangible property of any person, relating to the Indemnifying Party’s performance or obligations under this Agreement; (iv) the Indemnifying Party’s design,		subcontractors or agents relating to the Indemnifying Party’s performance or obligations under this Agreement; (ii) any act or omission of the Indemnifying Party’s customer(s) or End User(s); (iii) the bodily injury or death of any person, or the loss or disappearance of or damage to the tangible property of any person, relating to the Indemnifying Party’s performance or obligations under this Agreement; (iv) the Indemnifying Party’s design, testing, manufacturing, marketing, promotion, advertisement, distribution, lease or sale of services and/or products to its customers, or such customers’ use, possession, or operation of those services and/or products; or (v) personal injury to or any unemployment compensation claim by one or more of the Indemnifying Party’s employees, notwithstanding any protections the Indemnifying Party might otherwise have under applicable workers’ compensation or unemployment insurance law, which protections the Indemnifying Party waives, as to the Indemnified Party and other persons and entities to be indemnified under this Section 30.1 (other than applicable employee claimant(s)), for purposes of this Section 30.1. “Reasonable costs and attorneys’ fees,” as used in this Section 30.1, includes without limitation fees and costs incurred to interpret or enforce this Section 30.1.	<p>indemnified and indemnifying Parties, it creates a conflict that likely precludes any joint representation.</p> <p>Charter’s invocation of “contributory negligence” as a standard illustrates just a few of the problems that its language would create. How does “contributory negligence” work in a breach of contract action, or an action alleging patent infringement? How can “contributory negligence” be established before there’s any determination of negligence or misconduct? The only predictable thing about Charter’s language is that it will increase the cost of and diminish the likelihood of success in responding to a third-party claim.</p> <p>Further, Charter’s proposed language would impose obligations on CenturyTel that are not imposed on Charter under its own tariffs and customer agreements. The indemnification exclusions Charter proposes for Section 30.1 are not included in the indemnification provisions of Charter’s tariffs and customer agreements (<i>see</i> Charter Internet Residential Customer Agreement, Section 7; Charter Commercial Terms of Service,</p>

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			testing, manufacturing, marketing, promotion, advertisement, distribution, lease or sale of services and/or products to its customers, or such customers’ use, possession, or operation of those services and/or products; or (v) personal injury to or any unemployment compensation claim by one or more of the Indemnifying Party’s employees, notwithstanding any protections the Indemnifying Party might otherwise have under applicable workers’ compensation or unemployment insurance law, which protections the Indemnifying Party waives, as to the Indemnified Party and other persons and entities to be indemnified under this Section 30.1 (other than applicable employee claimant(s)), for purposes of this Section 30.1. “Reasonable costs and attorneys’ fees,” as used in this Section 30.1, includes without limitation fees and costs incurred to interpret or enforce this Section 30.1. The Indemnified Party will provide the Indemnifying Party with reasonably prompt written		<p>The Indemnified Party will provide the Indemnifying Party with reasonably prompt written notice of any Claim. At the Indemnifying Party’s expense, the Indemnified Party will provide reasonable cooperation to the Indemnifying Party in connection with the defense or settlement of any Claim. The Indemnified Party may, at its expense, employ separate counsel to monitor and participate in the defense of any Claim.</p> <p>Notwithstanding anything to the contrary in this Section 30.1, a Party may not seek indemnification with respect to any Claim by that Party’s customer(s) or End User(s), but rather shall be the Indemnifying Party with respect to all Claims by its customer(s) and End User(s).</p> <p>The Indemnifying Party agrees to release, indemnify, defend, and hold harmless the Indemnitee Group and any third-party provider or operator of facilities involved in the provision of products, services or facilities under this Agreement from all <u>losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever</u>, including, but not limited to, <u>costs and attorneys’ fees</u>, suffered, made, instituted, or asserted by the Indemnifying Party’s End User</p>	<p>Section 12; Charter Fiberlink – Missouri, LLC Local Exchange Tariff P.S.C. MO. No. 1, Sections 1.5.3, 1.7.1; Charter Fiberlink – Missouri, LLC Switched Access Services Tariff P.S.C. MO. No. 2, Section 1.5; and Charter Fiberlink – Missouri, LLC Intrastate Interexchange Tariff P.S.C. MO. No. 4, Sections 2.2, 2.3). Charter’s attempt to impose these unworkable exclusions on CenturyTel should be rejected.</p> <p>In the third paragraph of Section 30.1, Charter proposes to use the defined term “Claims” in place of “losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorneys’ fees.” The third paragraph speaks to claims by End User Customers and claims related to the content that they transmit. It implements the policy set forth in the second paragraph: Each Party shall be the Indemnifying Party with respect to such claims. There is no reason to import into the third paragraph the lengthy but restrictive list of matters constituting “Claims” set forth in the first paragraph (e.g., claims by injured employees). To do so will create confusion and lead</p>

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	<p>Part (2):</p> <p><u>Should the items of damage and cost for which the Indemnifying Party _____ is responsible _____ be identified where the claimant is that</u></p>		<p>notice of any Claim. At the Indemnifying Party’s expense, the Indemnified Party will provide _____ reasonable cooperation to the Indemnifying Party in connection with the defense or settlement of any Claim. The Indemnified Party may, at its expense, employ separate counsel to monitor and participate in the defense of any Claim.</p> <p>Notwithstanding anything to the contrary in this Section 30.1, a Party may not seek indemnification with respect to any Claim by that Party’s customer(s) or End User(s), but rather shall be the Indemnifying Party with respect to all Claims by its customer(s) and End User(s).</p> <p>The Indemnifying Party agrees to release, indemnify, defend, and hold harmless the Indemnatee Group and any third-party provider or operator of facilities involved in the provision of products, services or facilities under this Agreement from all Claims suffered, made, instituted, or</p>		<p>Customer(s) arising from or relating to any products, services or facilities provided by or through the Indemnified Party or such third-party provider or operator. The Indemnifying Party further agrees to release, indemnify, defend, and hold harmless the Indemnatee Group from all <u>losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorneys’ fees</u>, suffered, made, instituted, or asserted by any third party against an Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by the Indemnifying Party’s End User Customer(s).</p>	<p>to unintended consequences.</p>

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	<u>Party’s customer?</u>		asserted by the Indemnifying Party’s End User Customer(s) arising from or relating to any products, services or facilities provided by or through the Indemnified Party or such third-party provider or operator, except to the extent that any such Claims were caused by the Indemnified Party’s or other third-party provider’s or operator’s negligence, gross negligence, or intentional or willful misconduct. The Indemnifying Party further agrees to release, indemnify, defend, and hold harmless the Indemnatee Group from all Claims , suffered, made, instituted, or asserted by any third party against an Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by the Indemnifying Party’s End User Customer(s).			
15(b)	Should the	30.2	30.2 <u>Disclaimer</u> of	The Parties should not disclaim	30.2 <u>Disclaimer</u> of Warranties.	Charter argues that the warranty

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	<p>Parties disclaim implied warranties related to the provision of “information and services” that may arise under the Uniform Computer Information Transactions Act (UCITA)?</p> <p><u>Should the disclaimer of warranties be limited to product-based language or extend to the information and services that are the subject of the Parties’ Agreement?</u></p>		<p><u>Warranties.</u> EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY STATUTE, EACH PARTY ON BEHALF OF ITSELF AND ITS AFFILIATES AND SUPPLIERS DISCLAIMS ALL WARRANTIES AND DUTIES, WHETHER EXPRESS OR IMPLIED, AS TO THE SERVICES, PRODUCTS AND ANY OTHER INFORMATION OR MATERIALS EXCHANGED BY THE PARTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY STATUTE, THERE IS NO WARRANTY OF TITLE, AUTHORITY, OR NON-INFRINGEMENT WITH RESPECT TO THE SERVICES, PRODUCTS, AND ANY OTHER INFORMATION OR</p>	<p>any conceivable warranty that may exist under the law, but should limit their disclaimer of warranties to those that have some plausible relationship to the actions and obligations of both Parties under the Agreement. Consistent with that principle Charter proposes to delete CenturyTel’s proposed language that the Parties mutually disclaim certain warranties listed in this provision, such as the warranties of “reasonable care”, “lack of negligence”, and “accuracy of completeness or responses.” Such warranties are not expressly contemplated by either Party, and more importantly, have no relation to each Party’s obligations with respect to the interconnection and exchange of traffic contemplated under this Agreement.</p>	<p>EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY STATUTE, EACH PARTY ON BEHALF OF ITSELF AND ITS AFFILIATES AND SUPPLIERS DISCLAIMS ALL WARRANTIES AND DUTIES, WHETHER EXPRESS OR IMPLIED, AS TO THE SERVICES, PRODUCTS AND ANY OTHER INFORMATION OR MATERIALS EXCHANGED BY THE PARTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, <u>REASONABLE CARE, WORKMANLIKE EFFORT, RESULTS, LACK OF NEGLIGENCE, OR ACCURACY OR COMPLETENESS OF RESPONSES.</u> EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY STATUTE, THERE IS NO WARRANTY OF TITLE, <u>QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION, AUTHORITY, OR NON-INFRINGEMENT</u> WITH RESPECT TO THE SERVICES, PRODUCTS, AND ANY OTHER INFORMATION OR MATERIALS EXCHANGED BY THE PARTIES</p>	<p>disclaimer language in the first sentence of Section 30.2 should address specifically only merchantability and fitness for a particular purpose. These concepts come from Article 2 of the Uniform Commercial Code, covering transactions in goods. The subject matter of this Agreement—interconnection and exchange of traffic—is information and services, not just goods. The Restatement (Second) of Torts § 552 (1997) creates warranty-like liability for inaccuracy in information that is supplied for the guidance of others, based upon a standard of reasonable care. Based upon this standard, the Uniform Computer Information Transactions Act (UCITA) establishes an implied warranty of accurate information. UCITA also provides for the disclaimer of this warranty through language that CenturyTel has proposed. UCITA §§ 404, 406(b). The reference to “quiet enjoyment” in the second sentence of Section 30.2 is also safe harbor language drawn from UCITA § 401(d), which addresses the warranty of non-infringement. There is no reason to favor disclaimer language that is incomplete and potentially ineffective.</p>

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			MATERIALS EXCHANGED BY THE PARTIES UNDER THIS AGREEMENT.		UNDER THIS AGREEMENT.	
15(c)	<p>Should the Agreement limit direct damages to an amount equal to “monthly charges” assessed between the Parties; and otherwise limit liability in an equitable manner?</p> <p><u>Should the Agreement limit damages in a manner that is consistent with telecommunications industry practice and Charter’s own customer agreements and tariffs?</u></p>	30.3, and 30.4	<p>30.3 <u>Limitation of Liability; Disclaimer of Consequential Damages; Exceptions.</u></p> <p>30.3.1 Except as provided in Section 30.3.3, each Party’s liability to the other, whether in contract, tort or otherwise, shall be limited to direct damages.</p>	<p>The Parties should not limit their damages in a way that would preclude one Party from obtaining meaningful relief. Although Charter agrees that damages should be limited to “direct damages”, it does not agree with CenturyTel’s proposal that damages be further limited to the monthly charges, plus expenses, that either Party may recover from the other Party. Because this Agreement contemplates primarily the exchange of traffic, without significant liabilities for leasing, resale or other services, the amount of monthly charges that the Parties are subject to is relatively small. For that reason, CenturyTel’s proposal to limit direct damages to no more than an amount equal to such monthly charges could effectively preclude recovery of the amount of direct damages that arise from a significant harm or error that occurred to one Party’s network, employees, or other assets.</p>	<p>30.3 <u>Limitation of Liability; Disclaimer of Consequential Damages; Exceptions.</u></p> <p>30.3.1 Except as provided in Section 30.3.3, each Party’s liability to the other, whether in contract, tort or otherwise, shall be limited to direct damages, <u>which shall not exceed the monthly charges, plus any related costs/expenses the other Party may recover, including those under Section 22.1 above, and plus any costs/expenses for which the Parties specify reimbursement in this Agreement for the services or facilities for which the claim of liability arose. Except as provided in Section 30.3.3, each Party’s liability to the other during any Contract Year resulting from any and all causes will not exceed the total of any amounts charged to **CLEC by CenturyTel under this Agreement during the Contract Year in which such cause accrues or arises. For purposes of this Section 30.3.1, the first Contract Year commences on the first day this Agreement becomes effective, and each subsequent Contract Year commences on the day following the anniversary of that date.</u></p>	<p>Charter has proposed deleting the provisions in Section 30.3.1 that limit recovery of direct damages, during any given year, to an amount equal to the total amount paid by Charter to CenturyTel during such year. CenturyTel’s approach – limiting damages to the amount charged by CenturyTel for services – is well-established in the telecommunications industry and is reflected in the tariffs and customer agreements of both CenturyTel and Charter (<i>see</i> Charter Internet Residential Customer Agreement, Section 6.2; Charter Commercial Terms of Service, Sections 6, subsections (k),(l) and (m); Charter Fiberlink – Missouri, LLC Local Exchange Services Tariff P.S.C. MO. No. 1, Sections 1.5.2, 1.5.3, 1.5.4, 1.5.8; Charter Fiberlink – Missouri, LLC Switched Access Services Tariff P.S.C. MO. No. 2, Section 1.5; Charter Fiberlink – Missouri, LLC Intrastate Interexchange Tariff P.S.C. MO. No. 4, Section 2.2; and CenturyTel of Missouri, LLC General and Local Exchange Tariff P.S.C. MO. No. 1, Section 2.B). Charter’s attempt to</p>

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			<p>30.3.2 EXCEPT AS PROVIDED IN SECTION 30.3.3, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT.</p>	<p>The Parties agree that for some types of claims their potential liability should not be limited. Although the Parties agree as to the majority of such claims, there are two instances in which they do not agree. Charter’s position is that neither Party should limit their liability for claims arising out of either Party’s acts which are deemed to be grossly negligent. In such circumstances, the grossly negligent Party should be liable, and responsible for, the entire cost of any damages which arise. Further, Charter also proposes that liability not be limited in those instances where liability arises under the indemnity provisions of this Agreement.</p> <p>Additional liability limitations, whether arising out of tariffs, other contracts, or errors, are generally appropriate. However, where the Agreement includes such additional</p>	<p>30.3.2 EXCEPT AS PROVIDED IN SECTION 30.3.3, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT.</p> <p>Should either Party provide advice, make recommendations, or supply other analysis related to the services or facilities described in this Agreement, this limitation of liability shall apply to the provision of such advice, recommendations, and analysis.</p>	<p>prevent this industry standard approach from being applied to CenturyTel should be rejected.</p> <p>Charter has also proposed adding an exclusion for gross negligence to the specified exclusions to each Party’s limitation of liability contained in Section 30.3.3 (the addition of gross negligence is in Section 30.3.3.7). This change should be rejected for two reasons.</p> <p>First, the proposed change is contrary to Charter’s own tariffs and customer agreements, which contain no exclusion to Charter’s limitation of liability based on Charter’s gross negligence or any other Charter conduct, even intentional misconduct (<i>see</i> Charter Internet Residential Customer Agreement, Section 6.2; Charter Commercial Terms of Service, Sections 6, subsections (k),(l) and (m), and Section 11, subsection (a); Charter Fiberlink – Missouri, LLC Local Exchange Services Tariff P.S.C. MO. No. 1, Section 1.5; Charter Fiberlink – Missouri, LLC Switched Access Services Tariff P.S.C. MO. No. 2, Section 1.5; and Charter Fiberlink – Missouri, LLC Intrastate Interexchange Tariff P.S.C. MO. No. 4, Section 2.2).</p>

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			<p>Should either Party provide advice, make recommendations, or supply other analysis related to the services or facilities described in this Agreement, this limitation of liability shall apply to the provision of such advice, recommendations, and analysis.</p> <p>30.3.3 Section 30.3.1 and Section 30.3.2 do not apply to the following:</p> <p>30.3.3.1 Indemnification under Section 30.1;</p> <p>30.3.3.2 Breach of any obligation of confidentiality referenced in this Agreement;</p> <p>30.3.3.3 Violation of security procedures;</p> <p>30.3.3.4 Any breach by **CLEC of any provision relating to **CLEC’s access to or use of Operations Support Systems;</p> <p>30.3.3.5 Failure to properly safeguard, or any misuse of, customer data;</p>	<p>limitations they should be operative as to both Parties, not unilateral, as to only protect CenturyTel. For that reason, Charter proposes to make mutual the additional limitations set forth in this Section 30.4, in recognition of the fact that such limitations should apply mutually, not simply to the benefit of CenturyTel alone.</p>	<p>30.3.3 Section 30.3.1 and Section 30.3.2 do not apply to the following:</p> <p>30.3.3.1 Indemnification under Section 30.1;</p> <p>30.3.3.2 Breach of any obligation of confidentiality referenced in this Agreement;</p> <p>30.3.3.3 Violation of security procedures;</p> <p>30.3.3.4 Any breach by **CLEC of any provision relating to **CLEC’s access to or use of Operations Support Systems;</p> <p>30.3.3.5 Failure to properly safeguard, or any misuse of, customer data;</p>	<p>Second, the addition of gross negligence as an exclusion to a party’s limitation of liability is wholly unworkable. The distinction between negligence and intentional or willful misconduct is well-established in the law – it is the distinction between accidentally causing harm, on the one hand, and meaning to hurt someone and then hurting them, on the other. By contrast, there is no clear distinction between negligence and gross negligence. As a result, there can be no summary adjudication of the issue and very little predictability as to the final result. Contractual language should reduce the need for litigation, not encourage it. Charter’s proposed language would have the perverse effect of encouraging more and longer lawsuits over the degree of a Party’s culpability.</p> <p>Charter has also proposed replacing the references to “applicable provisions” of certain CenturyTel tariffs with specific tariff section references (<i>see</i> Sections 30.3.3.9 and 30.3.3.13). This change is unworkable and should be rejected. Even assuming for argument that the section references for applicable liability provisions are accurately reflected in Charter’s proposed</p>

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			<p>30.3.3.6 Statutory damages;</p> <p>30.3.3.7 Liability for gross negligence, and intentional or willful misconduct;</p> <p>30.3.3.8 Liability arising under any applicable Tariff;</p> <p>30.3.3.9 Liability arising under any indemnification provision contained in this Agreement or any separate agreement or in Section I of the 911 portion of the CenturyTel of Missouri, LLC, PSC No. 10, Wholesale Tariff on file with the with the Missouri Public Service Commission related to provisioning of 911/E911 services;</p> <p>30.3.3.10 Each Party’s obligations under Section 27, Intellectual Property, of this Article III;</p> <p>30.3.3.11 Section 30.4.2 and/or Section 30.4.3 of this Article III;</p> <p>30.3.3.12 Section 45, Taxes, of this Article III, and/or</p>		<p>30.3.3.6 Statutory damages;</p> <p>30.3.3.7 Liability for intentional or willful misconduct;</p> <p>30.3.3.8 Liability arising under any applicable Tariff;</p> <p>30.3.3.9 Liability arising under any indemnification provision contained in this Agreement or any separate agreement or the <u>applicable provisions of the</u> CenturyTel of Missouri, LLC, PSC No. 10, Wholesale Tariff on file with the Missouri Public Service Commission related to provisioning of 911/E911 services;</p> <p>30.3.3.10 Each Party’s obligations under Section 27, Intellectual Property, of this Article III;</p> <p>30.3.3.11 Section 30.4.2 and/or Section 30.4.3 of this Article III;</p> <p>30.3.3.12 Section 45, Taxes, of this Article III, and/or</p>	<p>language with respect to current CenturyTel tariffs, the organization and numbering of these tariffs could change, either by a revision requested by CenturyTel and approved by the Commission or by Commission requirement. Thus, Charter’s language has the potential for becoming inaccurate in the future, with resulting confusion and unintended consequences. Accordingly, this unworkable and wholly unnecessary change should be rejected.</p>

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			<p>30.3.3.13 Liability arising under any indemnification provision contained in this Agreement, a separate agreement or in Section(s) (G) of the Directory Services portion of the CenturyTel of Missouri, LLC, PSC No. 10,. Wholesale Services Tariff on file with the Missouri Public Service Commission related to provisioning of Directory Listing or Directory Assistance Services.</p> <p>30.4 <u>Liability of Each Party.</u></p> <p>In addition to the general limitation of liability in this Section 30, the following shall also limit each Party’s liability under this Agreement.</p> <p>30.4.1 <u>Inapplicability of Tariff Liability.</u> CenturyTel’s general liability, as described in its local exchange or other</p>		<p>30.3.3.13 Liability arising under any indemnification provision contained in a separate agreement or <u>the applicable provisions of the CenturyTel of Missouri, LLC, PSC No. 10, Wholesale Services Tariff on file with the Missouri Public Service Commission related to provisioning of Directory Listing or Directory Assistance Services.</u></p> <p>30.4 <u>Liability of Each Party.</u></p> <p>In addition to the general limitation of liability in this Section 30, the following shall also limit each Party’s liability under this Agreement.</p> <p>30.4.1 <u>Inapplicability of Tariff Liability.</u> CenturyTel’s general liability, as described in its local exchange or other Tariffs, does not extend to **CLEC, **CLEC’s End User Customer(s), suppliers, agents,</p>	

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			<p>Tariffs, does not extend to **CLEC, **CLEC’s End User Customer(s), suppliers, agents, employees, or any other third parties. Liability of CenturyTel to **CLEC resulting from any and all causes arising out of services, facilities or any other items relating to this Agreement shall be governed by the liability provisions contained in this Agreement and no other liability whatsoever shall attach to CenturyTel. **CLEC’s general liability, as described in its local exchange or other Tariffs, does not extend to CenturyTel, CenturyTel’s End User Customer(s), suppliers, agents, employees, or any other third parties. Liability of **CLEC to CenturyTel resulting from any and all causes arising out of services, facilities or any other items relating to this Agreement shall be governed by the liability provisions contained in this Agreement and no other liability whatsoever shall attach to **CLEC.</p>		<p>employees, or any other third parties. Liability of CenturyTel to **CLEC resulting from any and all causes arising out of services, facilities or any other items relating to this Agreement shall be governed by the liability provisions contained in this Agreement and no other liability whatsoever shall attach to CenturyTel. <u>Without limiting the generality of any other provision herein, CenturyTel shall not be liable for any loss, claims, liability or damages asserted by **CLEC, **CLEC’s End User Customer(s), suppliers, agents, employees, or any other third parties arising out of or relating to CLEC’s combination or commingling of its components with those components provided by CenturyTel to CLEC.</u> **CLEC’s general liability, as described in its local exchange or other Tariffs, does not extend to CenturyTel, CenturyTel’s End User Customer(s), suppliers, agents, employees, or any other third parties. Liability of **CLEC to CenturyTel resulting from any and all causes arising out of services, facilities or any other items relating to this Agreement shall be governed by the liability provisions contained in this Agreement and no other liability whatsoever shall attach to **CLEC.</p> <p>30.4.2 <u>**CLEC Tariffs or Contracts.</u></p>	

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			<p>30.4.2 <u>**CLEC Tariffs or Contracts</u>. Nothing in this Agreement shall be deemed to create a third-party beneficiary relationship between CenturyTel and any of **CLEC’s End User Customers, suppliers, agents, employees, or any other third parties. Nothing in this Agreement shall be deemed to create a third-party beneficiary relationship between **CLEC and any of CenturyTel’s End User Customers, suppliers, agents, employees, or any other third parties.</p> <p>30.4.3 <u>No Liability for Errors</u>. If **CLEC uses the signaling networks and call-related databases identified herein, then CenturyTel is not liable for mistakes in CenturyTel’s signaling networks (including but not limited to signaling links and Signaling Transfer</p>	<p>Furthermore, with respect to Section 30.4.3, Charter does not use CenturyTel signaling networks or calling databases that are identified in Section 30.4.3. For that reason, there is no reason to specifically carve out such databases and networks for unique treatment under this Section 30. Instead, the provision should be eliminated from the Agreement because it is not relevant to the</p>	<p>Nothing in this Agreement shall be deemed to create a third-party beneficiary relationship between CenturyTel and any of **CLEC’s End User Customers, suppliers, agents, employees, or any other third parties, <u>except to the extent any such party is included within the applicable Indemnatee Group, for the purpose of indemnification as provided herein only</u>. Nothing in this Agreement shall be deemed to create a third-party beneficiary relationship between **CLEC and any of CenturyTel’s End User Customers, suppliers, agents, employees, or any other third parties, <u>except to the extent any such party is included within the applicable Indemnatee Group, for the purpose of indemnification as provided herein only</u>.</p> <p>30.4.3 <u>No Liability for Errors</u>. If **CLEC uses the signaling networks and call-related databases identified herein, then CenturyTel is not liable for mistakes in CenturyTel’s signaling networks (including but not limited to signaling links and Signaling Transfer Points (STPs) and call-related databases (including but not limited to the Line Information Database (LIDB), Toll Free Calling database, Local Number Portability database, Advanced</p>	<p>With respect to the second sentence of Section 30.4.3, CenturyTel proposes a minor change to clarify that Charter’s indemnification obligations are triggered by use of the referenced databases or signaling networks by or through Charter. CenturyTel also proposes that the defined term “Claims” not be used in this Section. As discussed above, the term “Claims” is defined in Section 30.1, and there is no reason to use this defined term – which definition includes several matters not applicable to Section 30.4.3 – instead of the straightforward phrase “claims, demands, causes of action and liabilities whatsoever, including costs, expenses and reasonable attorneys’ fees.”</p> <p>Charter also proposes to modify the last sentence of Section 30.4.3 by adding gross negligence as an exclusion from CenturyTel’s liability limitation. As discussed above with respect to Section 30.3.3.7, this change should be rejected for two reasons.</p> <p>First, imposition of liability based on gross negligence is contrary to</p>

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			Points (STPs) and call-related databases (including but not limited to the Line Information Database (LIDB), Toll Free Calling database, Local Number Portability database, Advanced Intelligent Network databases, Calling Name database (CNAM), 911/E911 databases, and OS/DA databases). If **CLEC uses the signaling networks and call-related databases identified herein, then **CLEC shall indemnify, defend and hold harmless CenturyTel and CenturyTel’s Indemnatee Group from any and all Claims incurred on account thereof, by or to **CLEC’s End User Customer(s), suppliers, agents, employees, or any other third parties. For purposes of this Section 30.4.3, mistakes shall not include matters arising out of the gross negligence or willful misconduct of CenturyTel or its employees or agents.	Parties respective operations, as they relate to the interconnection and exchange of traffic.	Intelligent Network databases, Calling Name database (CNAM), 911/E911 databases, and OS/DA databases). **CLEC shall indemnify, defend and hold harmless CenturyTel and CenturyTel’s Indemnatee Group from any and all <u>claims, demands, causes of action and liabilities whatsoever, including costs, expenses and reasonable attorneys’ fees</u> incurred on account thereof, by or to **CLEC’s End User Customer(s), suppliers, agents, employees, or any other third parties <u>based on any reason whatsoever arising out of or relating to any use of such signaling networks and call-related databases by or through CLEC.</u> For purposes of this Section 30.4.3, mistakes shall not include matters arising <u>exclusively out of the willful misconduct of CenturyTel</u> or its employees or agents.	Charter’s own tariffs and customer agreements, which contain no exclusion to Charter’s limitation of liability based on Charter’s gross negligence or any other Charter conduct, even intentional misconduct (<i>see</i> Charter Internet Residential Customer Agreement, Section 6.2; Charter Commercial Terms of Service, Sections 6, subsections (k), (l) and (m), and Section 11, subsection (a); Charter Fiberlink – Missouri, LLC Local Exchange Services Tariff P.S.C. MO. No. 1, Section 1.5; Charter Fiberlink – Missouri, LLC Switched Access Services Tariff P.S.C. MO. No. 2, Section 1.5; and Charter Fiberlink – Missouri, LLC Intrastate Interexchange Tariff P.S.C. MO. No. 4, Section 2.2). Second, as discussed above, a contract provision that allows a Party to circumvent the other Party’s limitation of liability based on “gross negligence” is wholly unworkable and would encourage litigation.
16.	Should both Parties be allowed to	47	47. TECHNOLOGY UPGRADES	Both Parties should be able to modify their network through the incorporation of new	47. TECHNOLOGY UPGRADES	The sole issue raised in Section 47 is whether the requirement for Charter to accommodate changes or

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	<p>modify, and upgrade, their networks; and should the other Party be responsible for assuming the costs of such network upgrades or modifications?</p> <p><u>Should the Agreement contain a provision providing that CenturyTel is solely responsible for the costs and activities associated with accommodating changes to its network that are required due to Charter’s modifications to its network?</u></p>		<p>Notwithstanding any other provision of this Agreement, each Party shall have the right to deploy, upgrade, migrate and maintain its network at its discretion. Nothing in this Agreement shall limit CenturyTel’s ability to modify its network through the incorporation of new equipment or software or otherwise. **CLEC shall be solely responsible for the cost and activities associated with accommodating such changes in its own network. Nothing in this Agreement shall limit **CLEC’s ability to modify its network through the incorporation of new equipment or software or otherwise. CenturyTel shall be solely responsible for the cost and activities associated with accommodating such changes in its own network. Notwithstanding the foregoing, both Parties have the duty not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256 of the Act.</p>	<p>equipment or software, assuming such modifications do not materially affect the other Party, consistent with 47 U.S.C. sections 255 and 256. Those provisions of the Communications Act specifically and expressly contemplate that entities will update their networks, and coordinate their actions in so doing. Thus the Telecommunications Act already ensures that the parties must update their networks, and coordinate their upgrades, in a manner that optimally maintains interconnection with interconnecting carriers. Furthermore, both Parties should be responsible for the costs associated with accommodating changes made by the other Party. This principle of cost responsibility is consistent with CenturyTel’s original proposal, and principles of equitable allocation of cost obligations with respect to the cost of network upgrades.</p>	<p>Notwithstanding any other provision of this Agreement, <u>CenturyTel</u> shall have the right to deploy, upgrade, migrate and maintain its network at its discretion. Nothing in this Agreement shall limit CenturyTel’s ability to modify its network through the incorporation of new equipment or software or otherwise. **CLEC shall be solely responsible for the cost and activities associated with accommodating such changes in its own network. Notwithstanding the foregoing, both Parties have the duty not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256 of the Act.</p>	<p>modifications within CenturyTel’s network should also be applied to CenturyTel with respect to Charter’s network modifications or changes. The answer is “no.”</p> <p>Charter requested interconnection with CenturyTel’s network as that network exists today and as that network will be developed in the future. CenturyTel did not request interconnection of Charter. Thus, Charter, and not CenturyTel, has assumed the responsibility associated with its request, including those related to accommodating any changes arising as CenturyTel’s network evolves to address regulatory and technical requirements, expectations and industry standards.</p> <p>As the ILEC, CenturyTel’s network must meet type-accepted standards while a CLEC (like Charter) does not. Further, CenturyTel also has the obligation consistent with 47 U.S.C. § 251(c)(2) to provide interconnection that is at least equal in quality to that provided to itself or to any subsidiary, affiliate, or any other party and in a just, reasonable, and nondiscriminatory manner. Accordingly, any issue of Charter’s cost of accommodating changes in CenturyTel’s network has bounds</p>

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						<p>while the opposite is not true for CenturyTel if the provision at issue was mutual.</p> <p>Further, Charter is not without recourse. CenturyTel has the duty under Section 251(a)(2) of the Act to avoid improper modifications to its network. Charter thus has dispute resolution ability before the Commission should CenturyTel’s upgrades and/or modification of its network <i>ever</i> becomes an issue for Charter.</p> <p>Finally, under Charter’s proposed language, and without being subject to the same duties and obligations as CenturyTel, there is nothing to restrict Charter from changing or modifying its network in an unjust and discriminatory manner to improve its competitive position at CenturyTel’s expense.</p>
17.	Should Charter be contractually bound by terms concerning liability for carrier change requests that exceed its obligations under existing law?	50	<p>50. <u>Unauthorized Changes</u></p> <p>50.1 The Parties agree that each Party is required to comply with End User subscriber carrier change requests, as set forth in 47 C.F.R. § 64.1100, et. seq. (“Changes in Preferred Telecommunications Service</p>	This provision should not apply to Charter because FCC regulations establish the liability and remedy obligations if a subscriber is changed without necessary authorization. In addition if necessary, the Parties can agree upon procedures to exchange any necessary letters of	<p>50. UNAUTHORIZED CHANGES</p> <p>50.1 <u>Procedures. If **CLEC submits an order for number portability under this Agreement in order to provide service to an End User Customer that at the time the order is submitted is obtaining its local services from CenturyTel, and the End User</u></p>	Charter’s proposal to simply invoke the FCC’s slamming rules (47 C.F.R. § 64.1100 <i>et seq.</i>) is insufficient to govern the Parties’ relationship in the event Charter submits an unauthorized request to port a customer’s telephone number. The FCC’s slamming rules are intended primarily to protect the interests of consumers, not carriers

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	Should _____ the Agreement contain terms setting forth the process to be followed if Charter submits _____ an “unauthorized” request to CenturyTel to port an End User’s telephone number, and should Charter be required to compensate CenturyTel for switching the unauthorized port back to the authorized carrier?		Providers”), and any applicable rules or regulations promulgated by the Commission. As such, each Party will comply with such rules and regulations to ensure that End User subscribers are not changed without required authorizations.	authorization, which would ensure that Charter has necessary authorization before submitting a carrier change requests on behalf of a subscriber. Moreover, federal regulations, 47 C.F.R. 64.1100 et. seq., already establish liability obligations where one Party fails to obtain proper authorization prior to submitting a carrier change request on behalf of a potential new subscriber.	<p><u>Customer notifies CenturyTel that the End User Customer did not authorize **CLEC to provide local Telephone Exchange Services to the End User Customer, **CLEC must provide CenturyTel with proof of authorization from that End User Customer within thirty (30) calendar days of notification by CenturyTel. If **CLEC cannot provide proof of authorization within such time frame, **CLEC must, within three (3) Business Days thereafter:</u></p> <p>(a) <u>direct CenturyTel to change the End User Customer back to the LEC providing service to the End User Customer before the change to **CLEC was made;</u></p> <p>(b) <u>provide any End User Customer information and billing records **CLEC has obtained relating to the End User Customer to the LEC previously serving the End User Customer; and</u></p> <p>(c) <u>notify the End User Customer and CenturyTel that the change back to the previous LEC has been made.</u></p> <p>50.2 <u>CenturyTel will bill **CLEC fifty dollars (\$50.00) per affected line in</u></p>	<p>that are parties to an ICA.</p> <p>CenturyTel notes that the slamming regulations provide for no compensation to an “executing carrier” -- the term given to the carrier effecting a change request, <i>see</i> 47 C.F.R. § 64.1100(b), when it is required under the rule to switch back an unauthorized change. The same is true of the Commission’s slamming rules. <i>See</i> 4 CSR 240-33.150. Since this Agreement does not contain terms for Charter to resell CenturyTel’s tariffed telecommunications services but does contemplate number porting, CenturyTel essentially is both the “executing carrier” and the “authorized carrier” under the FCC slamming rules with respect to any unauthorized change requested by Charter.</p> <p>Thus, CenturyTel’s costs are not addressed under the FCC’s rules. The Agreement, therefore, should provide for that recovery for costs incurred due to Charter slamming activities. CenturyTel’s ability to recover such costs would be comparable to Charter’s ability, pursuant to Charter Fiberlink – Missouri, LLC Local Exchange Tariff P.S.C. MO. No. 1, Section 1.7.15, to recover its nonrecurring</p>

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