

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> |
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| | | | associated with unauthorized subscriber changes will be established by FCC regulations governing subscriber change procedures at 47 C.F.R. § 64.1100, et. seq. | | lieu of any additional charge in order to compensate CenturyTel for switching the End User Customer back to the original LEC. | charges to re-establish a customer’s service with the customer’s authorized telecommunications carrier following an unauthorized change of that customer’s local service. |
| ART. V, INTERCONNECTION | | | | | | |
| 18. | Should Charter be entitled to interconnect with CenturyTel at a single point of interconnection (POI) within a LATA? <u>What terms and conditions that govern the Point of Interconnection (POI) and trunking arrangements should be included in the Interconnection Agreement?</u> | 2.2.2, 3.3.2 & 2.3.2. 4.4 | A Point of Interconnection (POI) is a point in the network where the Parties deliver Local Traffic to each other, and also serves as a demarcation point between the facilities that each Party is responsible to provide. **CLEC may interconnect at any single technically feasible point on the CenturyTel network within a LATA. The technically feasible point at which **CLEC elects to interconnect will be the established POI for such LATA. | Charter is entitled, under federal law, to establish a single point of interconnection (POI) per LATA with CenturyTel as the point at which it will exchange all traffic with CenturyTel in that LATA. The governing statutory standard on this issue is 47 U.S.C. § 251(c)(2). Interpreting this statute, current FCC rules permit Charter to insist on a single POI per LATA, if that is Charter’s preference. As the FCC has explained, an ILEC “must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA.” <i>In the Matter of Developing a Unified Intercarrier Compensation Regime</i> , Notice of Proposed | 2.2.2 A Point of Interconnection (POI) is a point in the network where the Parties deliver Local Traffic to each other, and also serves as a demarcation point between the facilities that each Party is responsible to provide. <u>Requirements for a Local POI are set forth in Section 3.3.2 of this Article. In some cases, multiple POI(s) may be necessary to provide the best technical implementation of Interconnection requirements to each End Office within a CenturyTel company’s service area.</u> <u>3.3.2. Direct Network Connection and Point of Interconnection (POI)</u> <u>3.3.2.1 Unless the Parties mutually agree otherwise, a Direct Network Connection and a POI shall be established upon occurrence of any of the triggers set forth in Section 3.3.2.4 of this Article.</u> <u>3.3.2.2 A Direct Network Connection shall be established by connecting</u> | Contrary to Charter’s position, nothing within the Act precludes multiple Points of Interconnection (“POIs”) or multiple trunk groups for the exchange of local traffic with a non-Bell Operating Company ILEC such as CenturyTel, particularly in those instances in which such requirements are triggered by traffic volumes and other issues that address the continuing need for quality service to the end users of each Party. CenturyTel’s proposed language is reasonable and entirely appropriate because, among other reasons, it ensures that: (1) each party’s network obligations to the POI are properly established so that quality of service does not suffer; (2) the reliance on a non-interconnection and otherwise inferior service – “transit” – is properly limited (also related to Issues 19, 21 and 22); and (3) the ever-evolving network and changing levels of traffic are |

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| | | | | <p>Rulemaking, FCC 01-132 (released April 21, 2001) at ¶ 112 (footnote omitted). <i>See also</i>, 47 C.F.R. § 51.321; and <i>In the Matter of Application by SBC Communications Inc. et al. to Provide In-Region, InterLATA Services in Texas</i>, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238 at ¶ 78, n.174 (rel. June 30, 2000).</p> <p>Notably, these authorities establish that a competing carrier, like Charter, is entitled to establish a single POI per LATA, subject only to limits where such arrangement is not technically feasible. However, CenturyTel proposes to limit Charter’s right to establish a single POI per LATA in several ways, none of which are supported by the statutory standard, and the FCC’s orders. For this reason, CenturyTel’s suggestion that the POI will be “negotiated” based upon criteria that include its network architecture, potential costs, future capacity needs, etc., is not consistent with federal law. Furthermore, CenturyTel’s proposal is inconsistent with federal law in that it</p> | <p><u>**CLEC’s network to CenturyTel’s network at a technically feasible point on CenturyTel’s network within the CenturyTel local exchange. The connection can be established in any of the manners described in Section 2 of this Article.</u></p> <p><u>3.3.2.3 The Direct Network Connection point established in Section 3.3.2.2 of this Article shall also be the POI. Each Party shall be responsible for establishing and maintaining all facilities on its side of the POI. Each Party is responsible for the appropriate sizing, operation, and maintenance of the transport facility to the POI.</u></p> <p><u>3.3.2.4 Unless the Parties agree otherwise, a Direct Network Connection and POI shall be established upon the occurrence of either of the following:</u></p> <p><u>3.3.2.4.1**CLEC has begun serving End Users within a CenturyTel local exchange, or has assigned to any End User numbers that are rated to a Rate Center that is within the Local Calling Area of a CenturyTel exchange and the resulting Local Traffic that is to be exchanged between the Parties is equal to or greater than a DS-1 trunk equivalency as described in Section 3.3.2.5 of this Article.</u></p> | <p>accommodated properly within the network/operational obligations of the Parties. As such, adoption of CenturyTel’s provisions is fully consistent with the requirements of the Act.</p> <p>With respect to the Act’s requirements, Charter’s reliance on Local Access and Transport Area (“LATA”) concepts is misplaced since: (1) the concept of a “LATA” is based on the specific network arrangements of the Bell Operating Companies (“BOCs”) at the time of the break-up of the former AT&T, not the networks of the smaller independent Local Exchange Carriers such as CenturyTel; and (2) a “LATA” designation is relevant only to the BOCs’ line of business restrictions. Thus, Charter is not “entitled” to a single POI within the LATA. Moreover, Charter references 47 C.F.R. § 51.321 of the FCC rules as providing that purported right to Charter. Section 51.321 says nothing of the sort. Section 51.321 addresses the methods of obtaining interconnection and access to unbundled elements under Section 251 of the Act.</p> <p>Further, Charter’s reliance on the following two FCC actions is</p> |

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| | | | | contemplates the establishment of a so-called “Local POI.” Although the term is not well defined, CenturyTel’s language suggests that Charter would be obligated to establish multiple POIs in each local exchange area in which it provides service, or exchanges traffic. Further, Charter should be required to establish a so-called “Local POI” where transiting charges exceed a <i>de minimis</i> threshold of charges. Each of these limitations are, again, inconsistent with the clear federal rule on this issue, which establishes Charter’s right to establish a single POI per LATA. | <p><u>3.3.2.4.2 Either Party is assessed transiting costs by a third party and such charges associated with a single traffic exchange route exceed \$200.00 for one month.</u></p> <p><u>3.3.2.5 A DS-1 trunk equivalency is deemed established in any the following instances:</u></p> <p><u>3.3.2.5.1 Traffic studies of peak busy CCS indicate that the number of trunks necessary to achieve a .001 Grade of Service based upon application of the Erlang B table is equal to or exceeds twenty-four (24) for three (3) consecutive months, or for three (3) months of any consecutive five (5) month period.</u></p> <p><u>3.3.2.5.2 Combined two-way traffic between two single Switches of each Party reaches 200,000 combined minutes of use per month for two (2) consecutive months, or for any two (2) months in a consecutive three-month period.</u></p> <p><u>3.3.2.5.3 At any point where a traffic forecast prepared pursuant to requirements of Article III, Section 11 or Article V, Section 3.5 indicates that combined two-way traffic between two single Switches of each Party will exceed 200,000 minutes of use per month.</u></p> | <p>misplaced: <i>In the Matter of Developing a Unified Inter-carrier Compensation Regime, Notice of Proposed Rulemaking</i>, CC Docket No. 01-92, FCC 01-132 (rel’d April 27, 2001) (“<i>Unified Carrier Compensation NPRM</i>”) at ¶ 112 and <i>In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications, Inc. d/b/a Southwestern Bell Long Distance, Pursuant to § 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, Memorandum Opinion and Order</i>, CC Docket No. 00-65, FCC 00-238 (rel’d June 30, 2000) (“<i>SWBT Texas 271 Order</i>”). Neither of these FCC actions supports Charter’s position.</p> <p>In paragraph 112 of the <i>Unified Carrier Compensation NPRM</i>, the FCC references footnote 91 and accompanying text. Footnote 91, in turn, references Section 51.321 (which is not applicable as noted above) and the <i>SWBT Texas 271 Order</i>. Thus, Charter’s reliance for its “single POI per LATA” concept relies upon a <i>single reference</i> within the <i>SWBT Texas 271 Order</i> and that single reference is to a specific section within an interconnection agreement between Southwestern</p> |

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| | | | 2.3.2.4.4 Design Four: Upon mutual agreement of the Parties, both **CLEC and CenturyTel may each provide two fibers between their | | <p><u>3.3.2.5.4 In any instance where **CLEC has requested to port a number or numbers associated with an End User Customer and it is known that local trunks previously associated with that customer and those numbers equaled or exceeded 24. In any other instance where it can be shown that a customer that **CLEC is about to serve previously had 24 or more local trunks associated with the service that the customer will disconnect or has disconnected in migrating its service to **CLEC.</u></p> <p><u>3.3.2.5.5 In any instance where **CLEC is providing a Tandem function then **CLEC must direct connect to CenturyTel pursuant to the terms of this section. In such situations, **CLEC also shall record and provide billing records for that traffic transiting its Switch and terminating to CenturyTel.</u></p> <p><u>3.3.2.6 The Parties may mutually agree to establish a Direct Network Interconnection even where none of the conditions set forth in Section 3.3.2.4 of this Article has occurred.</u></p> <p>2.3.2.4.4 Design Four: Upon mutual agreement of the Parties, both **CLEC and CenturyTel may each provide two fibers between their respective locations. This design may only be</p> | <p>Bell Telephone Company (which is a “BOC”) and MCI Worldcom. (<i>SWBT Texas 271 Order</i>, fn. 174) A private, third party contract provision <i>cannot</i> bind CenturyTel. Moreover, no private contract provision can create a general regulatory rule. Independently, however, the same conclusion can be reached based on the fact that the “single POI per LATA” was first raised in the context of the BOCs and the restrictions imposed upon them under the Act. (47 U.S.C. § 271) CenturyTel is not a BOC and is not subject to Section 271 restrictions. Thus, for all of the foregoing reasons, the “single POI per LATA” cannot apply to CenturyTel.</p> <p>Charter erroneously suggests that it is “entitled to establish a single POI per LATA,” subject <i>only</i> to limit that such arrangement is not “technically feasible.” First, the “single POI per LATA” concept is not applicable to CenturyTel. Second, Charter’s suggestion that the only consideration is technical feasibility ignores the other requirements contained in Section 251(c)(2), notably Section 251(c)(2)(C). Section 251(c)(2)(C) obligates CenturyTel to provide interconnection that is not more</p> |

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| | | | <p>respective locations. This design may only be considered where existing fibers are Currently Available and there is a mutual benefit to both Parties. ILEC will establish, deploy, maintain, and assume responsibility for the fibers associated with the “working” side of the system. **CLEC will establish, deploy, maintain, and assume responsibility for the fibers associated with the “protection” side of the system. The Parties will work cooperatively to terminate each other’s fiber in order to provision this joint SONET ring, or point-to-point linear system. Both Parties will work cooperatively to determine the appropriate technical handoff for purposes of demarcation and fault isolation. For purposes of this fiber meet design option, the POI will be defined as located at the POI location established by the Parties pursuant to this Section 2 of Article V. Notwithstanding the Parties’ decision to define the POI in the manner described above, the Parties agree that each Party will be</p> | | <p>considered where existing fibers are Currently Available and there is a mutual benefit to both Parties. ILEC will establish, deploy, maintain, and assume responsibility for the fibers associated with the “working” side of the system. **CLEC will establish, deploy, maintain, and assume responsibility for the fibers associated with the “protection” side of the system. The Parties will work cooperatively to terminate each other’s fiber in order to provision this joint SONET ring, or point-to-point linear system. Both Parties will work cooperatively to determine the appropriate technical handoff for purposes of demarcation and fault isolation. For purposes of this fiber meet design option, the POI will be defined as located at <u>CenturyTel’s switch location</u>. Notwithstanding the Parties’ decision to define the POI in the manner described above, the Parties agree that each Party will be solely responsible for all of the deployment and ongoing maintenance costs associated with the fibers that it establishes and deploys under this design option.</p> | <p>“than equal to” that provided by CenturyTel to itself, affiliates, subsidiaries or other carriers. To impose anything above this “equal to” requirement upon CenturyTel (as Charter’s proposal would do) would create a “superior” form of interconnection for the benefit of Charter that has been rejected by the Courts. <i>Iowa Utilities Bd. v. F.C.C.</i>, 120 F.3d 753, 813 (8th Cir. 1997) (“<i>IUB I</i>”); <i>Iowa Utilities Board v. Federal Communications Commission</i>, 219 F.3d 744, 758 (8th Cir. 2000) (“<i>IUB II</i>”) Even when FCC rules existed that would have required superior forms of interconnection from the incumbent, the requesting party would have nevertheless been responsible for the costs associated with fulfilling the extraordinary request. <i>In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order</i>, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499 (1996) (“<i>First Report and Order</i>”) at 15615 (¶225).</p> <p>Should Charter’s proposal be adopted, it would require CenturyTel to deploy new trunking</p> |

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| | | | solely responsible for all of the deployment and ongoing maintenance costs associated with the fibers that it establishes and deploys under this design option. | | | <p>and network arrangements that are different than those that CenturyTel provides today for its own local traffic or with other carriers. Obligating CenturyTel to make this deployment, in turn, would violate the directives arising from <i>IUB I</i> and <i>IUB II</i>. To be sure, there may be no single point in any of the Missouri LATAs where a CenturyTel company in this proceeding has facilities linking all of the CenturyTel ILEC’s end offices in a LATA. Such a single point could <i>only</i> be created if a CenturyTel company were to build or purchase new trunking routes.</p> <p>Finally, Charter improperly suggests that the Commission should direct the Parties to place a greater reliance on third party transit arrangements. Indefinite use of third party transit arrangements cannot be imposed upon CenturyTel because such transit services are not an interconnection requirement. <i>In the Matter of Petitions of WorldCom, Inc., Cox Virginia Telcom, Inc., and AT&T Communications of Virginia, Inc. Pursuant to § 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., CC</i></p> |

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| | | | | | | Docket Nos. 00-218, 00-249, and 00-251, FCC 02-1731 (rel’d July 17, 2002) (“ <i>Verizon Decision</i> ”), ¶ 117 (With respect to transit arrangements that involve third party intermediary carriers, the FCC has not had “occasion to determine whether incumbent LECs have a duty to provide transit service under this [§ 251(c)(2)] provision of the statute, <i>nor do we find clear Commission precedent or rules declaring such a duty.</i> ”) (emphasis added). Moreover, a greater use of transit arrangements would encourage the Parties to rely on an inferior form of interconnection. Further, any obligation that would be imposed upon CenturyTel to use third party tandem transit services beyond that which CenturyTel has agreed would: (1) require CenturyTel to be responsible for the delivery of traffic beyond the POI (thus creating a violation of the Section 251(c)(2)(B) requirements); and (2) provide solely for the benefit of Charter and Charter’s end users a “superior” transport and traffic delivery service that goes beyond that which is equal to that provided by CenturyTel to its end users or any other carrier (and thus a violation of Section 251(c)(2)(C) and <i>IUB I</i> and <i>IUB II</i>). |

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| 19. | <p>Should Charter’s right to utilize indirect interconnection as a means of exchanging traffic with CenturyTel be limited to only those instances where Charter is entering a new service area, or market?</p> <p><u>Should the Agreement between the Parties limit the voluntary utilization of third party transit arrangements to a DS1 level of traffic?</u></p> | 3.3 | <p>3.3.1.1 Either Party may deliver Local Traffic and ISP-bound Traffic indirectly to the other for termination through any carrier to which both Parties’ networks are interconnected directly or indirectly. The Originating Party shall bear all charges payable to the transiting carrier(s) for such transit service with respect to Local Traffic and ISP-bound Traffic.</p> <p>3.3.1.2 Unless otherwise agreed, the Parties shall exchange all Local Traffic and ISP-bound Traffic indirectly through one or more transiting carriers until the total volume of Local Traffic and ISP-bound Traffic being exchanged between the Parties’ networks exceeds 240,000 minutes per month for three (3) consecutive months, at which time either Party may request the establishment of Direct Interconnection. Notwithstanding the foregoing, if either Party is unable to arrange for or maintain transit service for its originated Local Traffic</p> | <p>Charter has the right to avail itself of indirect interconnection pursuant to Section 251(a). There are no limitations on such right, and Charter should be entitled to utilize indirect interconnection as a means of exchanging EAS, and other traffic, with CenturyTel’s network.</p> <p>To break down barriers to competition in the local phone market, the Act requires all carriers to “interconnect, directly or indirectly” with other carriers. <i>See</i> 47 U.S.C. § 251(a)(1). The FCC and the courts have both reaffirmed that a competing carrier has the right to choose to avail itself of either the right of indirect interconnection under Section 251(c), or the right of indirect interconnection under Section 251(a). Further, the use of direct interconnection in one instance does not preclude the use of indirect interconnection in another instance. <i>See Atlas Tel. v. Okla. Corp. Comm’n</i>, 400 F.3d 1256, 1268 (10th Cir. 2005).</p> <p>If Charter desires to exchange local traffic with CenturyTel</p> | <p><u>3.3.1.1 Indirect Network Connection is intended only for de minimis traffic associated with **CLEC “start-up” market entry into a CenturyTel local exchange. Therefore Indirect Network Interconnection will be allowed only on routes between CenturyTel end offices and a **CLEC switch in instances where, and only so long as, none of the triggers set forth in Section 3.3.2.4 of this Article have been reached.</u></p> <p><u>3.3.1.2 Indirect Network Connection shall be accomplished by CenturyTel and **CLEC each being responsible for delivering Local Traffic to and receiving Local Traffic at the Tandem Switch serving the CenturyTel end office. Each Party is responsible for the facilities to its side of the tandem. Each Party is responsible for the appropriate sizing, operation, and maintenance of the transport facility to the tandem.</u></p> | <p>CenturyTel’s proposed language properly limits utilization of an inferior form of interconnection – third party tandem transit arrangements -- to a DS1 level of traffic, <i>i.e.</i>, 200,000 minutes of use per month of traffic exchanged between the Parties. As an initial matter, Charter has previously agreed that the DS1 level equals 200,000 and not 240,000 minutes of use in its prior ICA and in the currently disputed rural ICA (Art. V, § 2.2.2(c)). While proposing proper limitations on the use of transit arrangements, CenturyTel is not demanding that Charter construct its own trunks to CenturyTel. Charter may still connect indirectly through <i>the use of other carriers’ facilities</i> including the use of the facilities of the same former transit provider. Thus, the “direct interconnection” arrangement that Charter references is the use of trunks <i>dedicated</i> for the exchange of traffic between the Parties rather than existing trunks from the tandem provider that would otherwise be jurisdictionally mixed trunk groups (<i>i.e.</i>, potentially carrying both exchange access traffic (<i>i.e.</i>, toll traffic) and non-exchange access traffic (<i>e.g.</i>, EAS) of multiple carriers). Charter’s use of the term “indirect interconnection” should not,</p> |

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| | | | <p>upon commercially reasonable terms before the volume of Local Traffic and ISP-bound Traffic being exchanged between the Parties’ networks exceeds 240,000 minutes per month, that Party may unilaterally, and at its sole expense, utilize one-way trunk(s) for the delivery of its originated Local Traffic to the other Party.</p> <p>3.3.1.3 After the Parties have established Direct Interconnection between their networks, neither Party may continue to transmit its originated Local Traffic and ISP-bound Traffic indirectly except on an overflow basis to mitigate traffic blockage, equipment failure or emergency situations.</p> <p>3.3.1.4 Local Traffic and ISP-bound Traffic exchanged by the Parties indirectly through a transiting carrier shall be subject to the same Reciprocal Compensation, if any, as Local Traffic and ISP-bound Traffic</p> | <p>from an existing point of interconnection, and the indirect traffic exchange threshold for the switch serving that POI has been satisfied, Charter may elect to establish a direct interconnection arrangement between such switch and CenturyTel’s network or to interconnect its switch to another Charter switch in order to utilize an existing direct interconnection arrangement already established between Charter Fiberlink and CenturyTel.</p> | <p><u>3.3.1.3 The Parties agree to enter into their own agreements with third-party providers. In the event that **CLEC sends traffic through CenturyTel’s network to a third-party provider with whom **CLEC does not have a traffic interexchange agreement, then **CLEC agrees to indemnify CenturyTel for any termination charges rendered by a third-party provider for such traffic.</u></p> <p><u>3.3.1.4 To the extent a Party combines Local Traffic and Jointly-Provided Switched Access Traffic on a single trunk group for indirect delivery through a tandem, the originating Party, at the terminating Party’s request, will declare quarterly Percentages of Local Use (PLUs). Such PLUs will be verifiable with either call summary</u></p> | <p>therefore, be used to confuse the issue. Charter’s use of the term “indirect interconnection” refers to <i>transit arrangements offered by third party tandem providers</i>.</p> <p>CenturyTel’s proposed language is proper. CenturyTel’s position reflects the real-world issue of when it makes sense for Charter and CenturyTel, from an operational perspective, to begin discussions to migrate a transit arrangement to a dedicated trunking arrangement. Such discussions and migration are necessary in order that continued reliability for the exchange of traffic is ensured and that network control is not compromised. Not only does Charter apparently want the Commission to turn a blind eye to this practical, real world issue, but Charter does so in a manner contrary to any rational reading of the Act’s requirements.</p> <p>Charter’s position rests upon a fundamentally erroneous premise – that Section 251(a) establishes interconnection standards, <i>i.e.</i>, third party transit arrangements can be required of each Party to be used indefinitely. Charter’s reliance on “transit” services is fatally flawed because, as the FCC has indicated, the use of transit services is not an</p> |

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| | | | exchanged through Direct Interconnection. | | records utilizing <u>Calling Party Number (CPN) information for jurisdictionalization of traffic or call detail samples. Call detail or direct jurisdictionalization using CPN information may be exchanged in lieu of PLU, if it is available. The terminating Party should apportion per minute of use (MOU) charges appropriately.</u> | <p>interconnection requirement. <i>See Verizon Decision</i>, ¶ 117. Moreover, the FCC has left unanswered a variety of issues associated with the legal status of transit services. The FCC has also stated that transit arrangements were assumed to be applicable to situations “when carriers do not exchange significant amounts of traffic.” <i>In the Matter of Developing a Unified Inter-carrier Compensation Regime, Further Notice of Proposed Rulemaking</i>, CC Docket No. 01-92, FCC 05-33 (rel’d March 3, 2005) (“<i>Unified Carrier Compensation FNPRM</i>”), ¶ 126 (footnote omitted). Charter has not and cannot explain these fundamental flaws. If a service that is integral to Charter’s theory (<i>i.e.</i>, transit) is not an interconnection requirement in the first place and otherwise is assumed to be used for a limited volume of traffic, how can a transit arrangement be imposed upon CenturyTel, let alone indefinitely?</p> <p>In any event, Section 251(a) creates no standards. The Section 251(a) directive is a general duty which CenturyTel is already meeting – to interconnect directly or indirectly with other telecommunications carriers. Charter’s position would turn Section 251(a)’s duty into a</p> |

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| | | | | | | <p>more onerous interconnection obligation upon CenturyTel than that required under Section 251(c)(2). Charter improperly attempts to turn this general duty equally applicable to each carrier into a unilateral right for Charter to demand how both carriers comply with the general duty. No such right exists. As the FCC has stated, the requirements Section 251 “create[s] a three-tiered hierarchy of escalating obligations based on the type of carrier involved.” <i>In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation, Memorandum Opinion and Order</i>, File No. E-97-003, FCC 01-84, released March 13, 2001 (“<i>Atlas Decision</i>”), ¶ 25. Thus, Section 251(a) cannot be interpreted in a manner that is more onerous than Section 251(b) duties, and Section 251(a) and (b) duties cannot be interpreted in a manner more onerous than Section 251(c). Nonetheless, that is the result of Charter’s proposal.</p> <p>Charter wants to be able to require the Parties to utilize a third party transit arrangement indefinitely (or as Charter states, at its “elect[ion]”). The approach would require CenturyTel to have the financial</p> |

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|-------------------------|----------------------|-----------------|----------------------------------|----------------------------------|-------------------------------------|--|
| | | | | | | <p>responsibility to transport traffic beyond its network. That result is more onerous than the requirements of Section 251(c)(2)(B) and of Section 251(c)(2)(C) which requires CenturyTel to deliver traffic to a POI within its network and to be obligated to provide interconnection to Charter at no more than “equal to” that which CenturyTel provides to itself, respectively. And, as to this latter point, Charter’s suggested resolution of Issue 19 would impose a “superior” form of interconnection upon CenturyTel that would run counter to the directives of <i>IUB I</i> and <i>IUB II</i>.</p> <p>Finally, Charter’s reliance on <i>Atlas Telephone Company v. Oklahoma Corporation Commission</i>, 400 F.3d 1256 (10th Cir. 2005) (<i>Atlas</i>) is misplaced. The issue in <i>Atlas</i> was whether the obligation to enter into reciprocal compensation obligations under Section 251(b)(5) was altered based on whether the requesting carrier was directly or indirectly connected. The Court’s discussion of Section 251(a) and Section 251(c) rights were made as the preface to its statement that the “obligation to establish reciprocal compensation arrangements with the CMRS provider in the instant case is not impacted by the presence or absence</p> |

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| | | | | | | of a direct connection.” (<i>Atlas</i> , 400 F.3d at 1268) Such Section 251(b)(5) issues are not present in this proceeding. |
| 20. | <p>Should Charter be entitled to lease interconnection facilities from CenturyTel at cost-based rates pursuant to Section 251(c)(2) of the Act?</p> <p><u>How long should the Agreement provide the Parties to negotiate cost-based rates for such facilities before they may seek Commission intervention?</u></p> | 2.3.1 | <p>Where facilities exist, Charter may lease facilities from CenturyTel at cost-based rates pursuant to Section 251(c)(2). Upon the Effective Date of this Agreement, the Parties shall attempt to negotiate such cost-based rates for up to ninety (90) days. If the Parties cannot reach agreement with respect to such cost-based rates within 90 days of the Effective Date, either Party may seek to resolve the dispute by filing an action with the Commission to determine the appropriate rate pursuant to Section 251(c)(2) of the Act. If a party files such an action with the Commission, that action, including resolution of any permissible appeals thereto, shall be the sole mechanism for resolving the dispute. Until such time as the Commission finally determines the appropriate</p> | <p>The FCC has ruled that competitive carriers, like Charter, are entitled to lease those facilities used to interconnect two LEC networks for the exchange of traffic) at cost-based rates pursuant to Section 251(c)(2). The FCC reaffirmed this ruling in its Triennial Review Order. In that order the FCC explained that interconnection facilities must be provided to competitive carriers, when such facilities are used for interconnection purposes (but not when used as an unbundled network element, or UNE). <i>See In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers</i>, Triennial Review Order, Report and Order and Order on Remand and Further NPRM, 18 FCC Rcd 16978 at para. 366 (2003) (the “TRO”).</p> <p>Charter’s proposed language is consistent with the FCC’s decision in this regard because</p> | <p>Where facilities exist, Charter may lease facilities from CenturyTel. <u>Such facilities shall be provided pursuant to the CenturyTel Tariff identified in Section II, Article XI (Pricing), which currently governs Charter’s leasing of such facilities pursuant its prior interconnection agreement with CenturyTel. The rates set forth in such Tariff shall be deemed “interim rates.” Upon the Effective Date of this Agreement, the Parties shall attempt to negotiate new rates for such facilities, which rates shall be cost-based pursuant to Section 251(c)(2) of the Act and shall replace the interim rates once agreed upon by the Parties. If the Parties cannot reach agreement with respect to such new rates within six (6) months of the Effective Date of this Agreement, either Party may seek to resolve the dispute pursuant to the formal dispute resolution procedures set forth in Article III, Section 20.</u> Charter also may lease facilities from a third party, or may construct or otherwise self-provision facilities.</p> | <p>As an initial point, Charter’s statement of the Issue and its position explanation are not consistent with the status of the negotiations. The Parties have agreed to develop mutually agreeable cost-based rates for the referenced Agreement section after the effective date of the Agreement. The issue to be resolved (as evidenced by Charter’s proposed language and CenturyTel’s latest proposal) is the amount of time to be afforded for the Parties to negotiate resolution, and the specific means later to resolve any dispute should the Parties not arrive at mutually agreeable rates.</p> <p>The disagreement between the Parties relates to when the Commission should be asked to resolve a dispute between the Parties regarding the pricing of direct connection facilities that Charter may lease from CenturyTel. Charter requests a thirty (30) day period for negotiations prior to seeking Commission intervention. CenturyTel seeks six (6) months for</p> |

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| | | | <p>rate pursuant to Section 251(c) (2), such facilities shall be provided pursuant to an “Interim Rate” as defined herein. For purposes of this Section 2.3.1, the Interim Rate will be established by applying the originated local traffic factor of fifty percent (50%), set forth in Article XI (Pricing), to the rate set forth in the section of the CenturyTel Tariff that is identified in Section II of Article XI (Pricing). After the Commission finally determines the appropriate cost-based rate pursuant to Section 251(c) (2), the rate for such facilities will be trued-up back to the Effective Date of this Agreement. Charter also may lease facilities from a third party, or may construct or otherwise self-provision facilities.</p> | <p>Charter is proposing that the interconnection facilities deployed under this section be used for the purposes of interconnection, <i>not</i> as an UNE. Therefore, Charter is entitled to obtain such facilities at cost-based rates pursuant to Section 251(c)(2). The Seventh Circuit recently affirmed this principle in its review of an interconnection arbitration decision requiring the incumbent LEC, SBC, to provide interconnection facilities to a competitive LEC at cost-based rates pursuant to Section 251(c)(2). See <i>Illinois Bell v. Box</i>, Nos. 07-3557, 07-3683 (slip op.) (7th Cir. May 23, 2008).</p> | | <p>such negotiations. (As an aside, the <i>TRRO</i> was addressing “entrance facilities” which are the same as direct interconnection facilities – “dedicated transmission facilities that connect ILEC and CLEC locations.” (<i>United States Telecom Ass’n v. FCC</i>, 359 F.3d 544, 589 (D.C. Cir. 2004)).</p> <p>The need for the full 6-month period will permit the Parties an appropriate amount of time to try to amicably resolve any pricing issue. In that discussion, and based on Charter’s reference to <i>Illinois Bell Telephone Company v. Charles Box et al.</i>, Nos. 07-3557 and 07-3683 (slip opinion) (7th Cir. May 23, 2008) (“<i>Illinois Bell</i>”), one of the subjects of discussion will be the determination of the standard referenced by the FCC in paragraph 140 of <i>In the Matter of Unbundled Access to Network Elements, Order on Remand</i>, WC Docket No. 04-313, FCC 04-290, 20 FCC Rcd 2533 (2005) with respect to what is “cost-based.” Because, as the <i>Illinois Bell</i> Court noted, “[w]hat the FCC said in ¶140 is that ILECs must allow use of entrance facilities for interconnection at ‘cost-based rates.’ TELRIC is a cost-based rate, <i>though not the only one.</i>” (emphasis added).</p> |

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| | | | | | | With respect to timing, CenturyTel believes that six (6) months is a reasonable time to permit the Parties to meet and exchange proposals in an effort to agree on rates. This 6-month period will afford the Parties the time to engage in the necessary good-faith “gives and takes” with respect to negotiating rate issues. Moreover, in light of CenturyTel’s willingness to agree to Charter’s proposed “true-up”, the only issue with respect to providing the additional time is the potential level of a payment being required of one of the Parties at the time the rate is either approved by the Commission (arising from the Parties’ agreement) or the establishment by the Commission of the rate (where the Parties disagree on the rate). Given that fact, providing additional time for good faith negotiations is entirely reasonable and does not prejudice either Party’s rights. |
| 21. | Should Charter be allowed to deploy one-way trunks at its discretion; and without having to assume the entire cost of | 3.2.3 | Notwithstanding 3.2 above, the Parties recognize that certain technical and billing issues may necessitate the use of one-way trunking for an interim period. Either Party may provision its own one-way trunks. Notwithstanding | Charter should be allowed to establish one-way trunks, at its discretion, for the purpose of delivering its traffic to CenturyTel’s network. FCC regulations, 47 C.F.R. § 51.305(f), establishes that one-way trunks are available by | Notwithstanding 3.2 above, the Parties recognize that certain technical and billing issues may necessitate the use of one-way trunking for an interim period. Either Party may provision its own one-way trunks. <u>Regardless of whether one-way or two-way facilities are provisioned</u> each Party is individually | <u>Issue 21(a):</u> To the extent that the Parties are exchanging defined local traffic between their respective end users, there is no sound reason why the Parties would not want to deploy two-way trunks which are more |

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| | <p>interconnection facilities used to carry traffic between the Parties’ respective networks?</p> <p><u>There are two separate issues presented in Issue 21.</u></p> <p><u>(a) Under what terms and conditions should one-way trunks be used for the exchange of traffic within the scope of this Agreement?</u></p> <p><u>(b) Regardless of whether one-way or two-way trunks are deployed, where should Points of Interconnection (POIs) be located and what are each party’s responsibilities with respect to facilities to reach the POI?</u></p> | | <p>any other provision of this Article V, (including those provisions which establish that each Party is individually responsible to provide facilities to the POI), where one-way trunks are deployed then each Party is responsible for establishing any necessary interconnection facilities, over which such one-way trunks will be deployed to the other Party’s switch. Subject to the terms herein, each Party is individually responsible to provide facilities to the POI. The Parties will implement the appropriate trunk configuration, whether one-way or two-way giving consideration to relevant factors, including but not limited to, existing network configuration, administrative ease, any billing system and/or technical limitations and network efficiency. Any disagreement regarding appropriate trunk configuration shall be subject to the dispute resolution process in Section 20 of Article III.</p> | <p>default, to the competitive LEC. Specifically, the regulation requires that incumbent LECs provide two-way trunking, upon request. For that reason, it is clear that federal law establishes that one-way trunks are available by default. Or, put differently, the competitive LEC may deploy one-way trunks at its discretion. <i>See also In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration</i>, Memorandum Opinion and Order, 17 FCC Rcd 27039 at para. 147 (2002). <i>See also US West v. MFS Intelenet</i>, 193 F.3d 1112, 1124-25 (9th Cir. 1999).</p> | <p>responsible to provide facilities to the POI. The Parties will <u>negotiate</u> the appropriate trunk configuration, whether one-way or two-way giving consideration to relevant factors, including but not limited to, existing network configuration, administrative ease, any billing system and/or technical limitations and network efficiency. Any disagreement regarding appropriate trunk configuration shall be subject to the dispute resolution process in Section 20 of Article III.</p> | <p>efficient than one-way trunks. To the extent that there may be extraordinary circumstances where the Parties mutually agree that one-way trunks may be preferable to two-way trunks, one-way trunks may then be used. However, and most importantly, it appears that the only reason that Charter is arguing for less efficient one-way trunks is in an attempt to apply terms and conditions that would impose interconnection requirements and extraordinary costs on CenturyTel (as discussed in Issue 21(b)) beyond those that actually apply under the controlling interconnection requirements.</p> <p><u>Issue 21(b):</u></p> <p>Charter’s proposed language is vague and confusing, and it is not clear what Charter proposes. In any event, the Act and the FCC’s rules require that exchange of traffic take place at a Point of Interconnection (“POI”) established within the incumbent network of CenturyTel and require only that each Party bring its facilities to its side of the POI. To the extent that Charter’s “one-way trunk” proposal is intended to foist transport obligations on CenturyTel beyond those that are required by the Act</p> |

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| | | | | | | <p>and the FCC rules implementing those requirements, Charter’s proposal must be rejected.</p> <p>Moreover, to the extent that Charter’s proposal may also be an improper attempt to obtain a “superior” form of interconnection from CenturyTel for Charter’s sole benefit, it must also be rejected. No requirement exists for CenturyTel to fulfill a request by Charter for the provision of a superior form of interconnection.</p> <p>Section 251(c)(2)(C) of the Act requires that the interconnection provided by an incumbent LEC be no more than “at least equal in quality to that provided by the [incumbent LEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.” The form of interconnection that Charter seeks, based on its apparent one-way trunk and contract proposal, appears to be an attempt by Charter to obtain interconnection that goes beyond that standard. Charter’s language could be interpreted as requiring CenturyTel to provide a one-way trunk beyond the POI to the Charter switch if Charter elects one-way trunking.</p> |

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| | | | | | | CenturyTel has no such obligation. CenturyTel’s facility and traffic responsibility is solely with respect to <i>its side of the POI</i> and with respect to interconnection within its incumbent service area. Nonetheless, if CenturyTel was directed by the Commission to comply with Charter’s language, CenturyTel could be held to be responsible for facilities, delivery of traffic, and a transport service beyond CenturyTel’s ILEC network for the sole benefit of Charter and its end users. That obligation would be far beyond that provided by CenturyTel today to CenturyTel end users. Accordingly, if this reading of Charter’s proposal is correct, Charter’s proposal must be rejected. |
| 22. | What threshold test should be used to determine when the Parties will establish direct end office trunks? <u>Should the Parties utilize reasonable projections of traffic volumes in addition to actual</u> | 3.4.2.1.1 | The Parties shall establish a direct End Office primary high usage Local Interconnection Trunk Groups for the exchange of Local Traffic, where actual traffic volume reaches twenty four (24) or more trunks, for three consecutive months. | The threshold test for determining when the Parties will establish direct end office trunks must be based on actual traffic volumes, rather than simply potential, or speculative, volumes of traffic that may exist in the future. Charter’s proposal ties the threshold test to the concept of actual, rather than potential, traffic. Further, Charter’s proposed language includes a consecutive three month to ensure that such | <u>As described in 3.3.1.1, the Parties have established</u> a direct End Office primary high usage Local Interconnection Trunk Groups for the exchange of Local Traffic, where actual <u>or projected</u> traffic <u>demand is or will be</u> twenty four (24) or more trunks, <u>as described in Section 3.3.2.5 of this Article.</u> | The Parties are not in dispute about the level of traffic under which dedicated end office trunks would be established for the exchange of traffic that is within the scope of the Agreement. Charter’s position is that only <i>actual</i> traffic volumes should be relied upon as the trigger to establish dedicated trunks, and that reasonable projections of traffic volumes should be disregarded. Charter’s position undermines the purpose of the provision. |

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| | <u>traffic measurement in their determination of whether the threshold has been reached for purposes of establishing dedicated end office trunks versus after-the-fact traffic measurement solely for such determination?</u> | | | traffic volume is sustained, and truly representative of consistent traffic flows, rather than simply a single month of high-volume traffic, which would represent an anomaly. | | The purpose of including reasonable forecasts of anticipated traffic volumes (together with actual ongoing measurement) is for the Parties to move to dedicated end office trunks in time to avoid overburdening common trunking facilities. Rather than create a standard by which end user service quality standard and network degradation issues can be avoided, which is advanced under CenturyTel’s language, Charter wants to address such issues <i>after the problem arises</i> . Charter’s position is contrary to service quality standards and the public interest and should be rejected. |
| 23. | Should Charter pay CenturyTel a tariffed access charge for transiting traffic where CenturyTel end office switches perform a transit functionality for unqueried calls that have been ported to another carrier? <u>There are two</u> | 4.6.5 | When CenturyTel receives an unqueried call from **CLEC to a telephone number that has been ported to another local service provider, CenturyTel will complete such calls to the new local service provider and Charter shall pay CenturyTel the applicable transit rate(s) and NP query charge set forth in Article XI (Pricing). | Where CenturyTel routes an unqueried call on Charter’s behalf, it should be compensated for such transit service at an appropriate cost-based rate listed in this agreement. However, the Parties should use a reasonable proxy rate for the transit, or transit-like functions, in these circumstances. Charter proposes that the Parties utilize the specific rate of \$.005 per MOU, previously negotiated, and implemented, in other pending agreements between | When CenturyTel receives an unqueried call from **CLEC to a telephone number that has been ported to another local service provider, Charter shall pay CenturyTel the applicable transit rate and NP query charge set forth in Article XI (Pricing). [Article XI Pricing excerpt]: B. Transiting Charges: CenturyTel of the Midwest-Wisconsin, LLC Intrastate Access | As a preliminary point, this issue arises primarily in the instances where Charter fails to perform its “N-1 carrier” obligations for a call to a telephone number that was originally assigned to CenturyTel but has now been ported to a third party carrier or, when CenturyTel is providing a tandem-like function, calls to other carriers’ numbers. In these instances, the call delivered to CenturyTel for termination cannot be completed through normal network architecture because the routing of calls to the ported numbers is not intended to take |

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| | <p><u>separate issues presented in Issue 23:</u></p> <p><u>(a): Where Charter is the N-1 carrier for calls to ported numbers of third party carriers, should Charter be responsible for data base queries and the proper routing of its calls to third party carriers?</u></p> <p><u>(b): For calls that Charter fails to fulfill its N-1 carrier obligations and are routed improperly to a CenturyTel end office, what should Charter be required to pay to CenturyTel for the completion of such calls to third parties?</u></p> | | | the Parties. | <p>Tariff #1</p> <ul style="list-style-type: none"> - Tandem Switching - Tandem Switched Facility - Tandem Switched Termination | <p>place via the particular end office of CenturyTel to which Charter directs these calls. Although not specifically obligated to do so on Charter’s behalf, CenturyTel has, in the public interest, taken extraordinary measures to complete these improperly routed calls. The extraordinary measures include unique switching and trunking over facilities for which the network architecture of certain end offices was not designed.</p> <p>Issue 23(a):</p> <p>Yes. Charter should be required to perform its N-1 obligations for calls to ported numbers of third party carriers. If Charter performed its responsibilities properly, this issue would not exist.</p> <p>Issue 23(b):</p> <p>Where Charter fails to perform its N-1 carrier obligation and improperly routes calls to CenturyTel end offices, Charter should pay to CenturyTel the NP Dip Charge for performing the N-1 query function and must compensate CenturyTel for the extraordinary transit functions performed by CenturyTel. For the transit functions, Charter should pay the</p> |

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| | | | | | | <p>intrastate switched access rate elements related to the functions of transit (<i>i.e.</i>, Tandem Switching, Tandem Switching Facility, and Transport Switched Termination) as set forth in the pricing attachment to the proposed Agreement. No one should be permitted to obtain “free service.”</p> <p>Moreover, the scope of the issue is narrow. Charter has not disputed the transit charge for calls for which no query is required of CenturyTel. <i>See</i> Section 4.6.4.4.1 of the Interconnection Attachment to the proposed agreement and the pricing attachment. Charter also has not disputed the specific charge for queries (the “NP dip charge” as set forth in Section 4.6.5 and the pricing attachment). Thus, the only apparent issue is whether Charter should pay these charges for queries and transit functions for improperly routed calls where Charter fails to perform its N-1 obligations.</p> <p>Charter’s position is not clear. It appears that Charter may simply want the sub-rate elements proposed by CenturyTel for the transit and query functions related to these improperly routed calls to be combined into a single charge that is much less than the total of the</p> |

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| | | | | | | <p>charge elements. Charter should not be rewarded by affording it reduced compensation responsibilities when it is Charter that fails to fulfill its own obligations to route this traffic properly.</p> <p>Regardless of the lack of clarity with respect to Charter’s position, Charter has cited to no legal obligation under the Act requiring CenturyTel to provide this form of transiting when Charter does not perform its N-1 obligations and routes traffic incorrectly, much less to do so at rates dictated or proposed by Charter (such as its proposed \$.005 per call rate). CenturyTel’s already established intrastate rates are the available rates under which CenturyTel provides the transit functions at issue here for intrastate calls. These are the lawful rates for the functions that CenturyTel would perform for Charter and they are appropriate for application to Charter.</p> <p>Charter also appears to assert that the transit rate should be \$0.005 per minute. Charter provides no support for this contention, and CenturyTel disagrees with that rate. CenturyTel states that it has no legal obligation under the 1996 Act to provide transiting much less do so at</p> |

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| | | | | | | Charter’s unsupported proposed rates. CenturyTel will, however, provide to Charter transit services as agreed to by the Parties at CenturyTel’s applicable intrastate access rates. Further, because the agreed-to transiting provisions included in CenturyTel’s transiting proposal are commercial terms and conditions for voluntary services offered by CenturyTel, the intrastate access rates proposed are entirely reasonable. |
| ART. VI, UNBUNDLED NETWORK ELEMENTS | | | | | | |
| 24. | <p>Should Charter have access to the customer side of the Network Interface Device (“NID”) without having to compensate CenturyTel for such access?</p> <p><u>CenturyTel believes that there are two issues presented in this issue:</u></p> <p><u>(a) Should Article IX, Section 3.4 clarify that the End User controls</u></p> | <p>3.3, 3.4, 3.5, and 3.5.1</p> | <p>3.3 Subject to the provisions of this Section 3.0 and its subsections, CenturyTel shall provide access to the NID under the following terms and conditions. Rates and charges applicable to NIDs are set forth in Article XI (Pricing), and such rates and charges shall apply.</p> <p>3.4 Maintenance and control of the End User Customer’s inside wiring (<i>i.e., on the End User Customer’s</i></p> | <p>The question of who owns and maintains control over Inside Wiring is a question of federal and state law, to which the Parties can not simply contract around. CenturyTel’s language suggests that CenturyTel may in fact own and maintain control over Insider Wire within certain buildings, which is contrary to applicable law.</p> <p>Charter should be allowed to access the customer side of the NID, for the purpose of connecting its own loop facilities to the customer’s</p> | <p>3.3 Subject to the provisions of this Section 3.0 and its subsections, CenturyTel shall provide access to the NID under the following terms and conditions. Rates and charges applicable to NIDs are set forth in Article XI (Pricing), and such rates and charges shall apply <u>to any Charter use of the CenturyTel NID. Charter’s use of the NID is defined as any circumstance where a Charter provided wire is connected to End User Customer’s Inside Wiring in any manner and such connection is housed within housed within any portion of the NID.</u></p> <p>3.4 <u>Except in those multi-unit tenant properties where CenturyTel owns and maintains control over inside wire within a building, maintenance</u></p> | <p>Aspects of this issue relate directly to Issue 2. Thus, Issue 2 and Issue 24 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel.</p> <p><u>Issue 24(a):</u></p> <p>The End User maintains control over Inside Wire, “[e]xcept in those multi-unit tenant properties where CenturyTel owns and maintains control over Inside Wire within a building.” Charter objects to the quoted language above arguing that it is inconsistent with applicable law.</p> <p>CenturyTel’s language is not inconsistent with applicable law. CenturyTel’s language is fully</p> |

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| <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> |
|------------------|--|----------|---|---|--|--|
| | <p><u>Inside Wire except in those multi-tenant properties where CenturyTel owns and maintains such Inside Wire?</u></p> <p><u>(b) Is Charter required to submit an order to and pay CenturyTel for accessing CenturyTel’s NID when Charter connects its loop to the End User’s Inside Wiring through the customer access side of the CenturyTel NID?</u></p> | | <p>side of the NID) is under the control of the End User Customer. Conflicts between telephone service providers for access to the End User’s inside wire on the End User’s side of the NID must be resolved by the End User.</p> <p>3.5 Charter may access the NID on CenturyTel’s network side or the End User Customer’s side on a stand-alone basis to permit Charter to connect its own loop facilities to the premises wiring at any customer location. Any repairs, upgrade and/or rearrangements to the NID requested or required by Charter will be performed by CenturyTel based on the Time and Material Charges set out in Article XI (Pricing). CenturyTel, at the request of Charter, will disconnect the CenturyTel Local Loop from the NID, at charges reflected in Article XI (Pricing). Charter may elect to disconnect CenturyTel’s Local Loop from the NID on the customer’s side of the NID, but Charter shall not perform any disconnect on the network side of the NID. Under no circumstances, however, shall</p> | <p>inside wire. Such access does not constitute the use of the NID as an unbundled network element, and does not create any obligation for Charter to pay CenturyTel.</p> | <p>and control of the End User Customer’s Inside Wiring is under the control of the End User Customer. Conflicts between telephone service providers for access to the End User’s Inside Wire must be resolved by the End User.</p> <p>3.5 Charter may access the NID on CenturyTel’s network side or the End User Customer’s <u>access</u> side on a stand-alone basis to permit Charter to connect its own loop facilities to the premises wiring at any customer location. <u>Charter may not access the NID except in accordance with these terms.</u> Any repairs, upgrade and/or rearrangements to the NID requested or required by Charter will be performed by CenturyTel based on the Time and Material Charges set out in Article XI (Pricing). CenturyTel, at the request of Charter, will disconnect the CenturyTel Local Loop from the NID, at charges reflected in Article XI (Pricing). Charter may elect to disconnect CenturyTel’s Local Loop from the NID on the End User Customer’s <u>access</u> side of the NID, but Charter shall not perform any disconnect on the network side of the NID. Under no circumstances, however, shall Charter connect to <u>use</u> either side of the NID unless the CenturyTel network is first disconnected from the NID as set forth</p> | <p>consistent with the underlying principle reflected in the FCC rules that contemplate instances in multi-unit properties where ILEC owns Inside Wire. See 47 C.F.R. §51.319(b)(2).</p> <p><u>Issue 24(b):</u></p> <p>In its position statement, Charter asserts that it should be permitted “to access” CenturyTel’s NID for the purpose of connecting its own loop facilities to the customer’s inside wire. This is apparently what Charter means in its proposed Section 3.5.1 when it “is connecting a Charter provided loop to the Inside Wiring of a customer’s premises <i>through the customer side of the CenturyTel NID.</i>” This language is at best vague, but is clarified by Charter’s position statement.</p> <p>By its position statement, Charter claims a right to place its loop facilities within CenturyTel’s NID, by either connecting to the customer’s Inside Wire inside the customer access side of CenturyTel’s NID, or running its loop facility through the customer access side of CenturyTel’s NID to connect with the customer’s Inside Wire. In either case, Charter would place its loop facilities inside of</p> |

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| | | | <p>Charter connect to either side of the NID unless the CenturyTel network is first disconnected from the NID as set forth in this Article.</p> <p>3.5.1 Notwithstanding any other provision of this Agreement, when Charter is connecting a Charter provided loop to the inside wiring of a customer’s premises through the customer side of the CenturyTel NID, Charter does not need to submit a request to CenturyTel and CenturyTel shall not charge Charter for access to the CenturyTel NID.</p> | | <p>in this Article.</p> <p><u>3.5.1 Notwithstanding any other provision of this Agreement, when Charter is connecting a Charter provided loop to the End User Customer’s Inside Wiring at the Charter provided interface device (i.e. terminal equipment) without also connecting within the End User Customer access side of the CenturyTel NID, Charter does not need to submit a request to CenturyTel and CenturyTel shall not charge Charter for access to the CenturyTel NID, unless any portion of such connection, including but not limited to the End User Customer’s Inside Wire or the Charter provided loop, is housed within any portion of the NID. If any portion of such connection is housed within any portion of the NID, NID use charges shall apply. Removing the End User Customer’s Inside Wire from the protector lugs and leaving the capped off customer wire within the NID is the only situation not considered use of the NID.</u></p> | <p>CenturyTel’s NID.</p> <p>Charter contends that housing all or part of its connection with the customer within the NID “does not constitute the use of the NID as an unbundled network element, and does not create any obligation for Charter to pay CenturyTel.” Charter’s position defies common sense. Charter’s placement of its facilities inside CenturyTel’s NID constitutes use of the NID, just as CenturyTel uses the NID when it connects its loop facilities to the End User Customer’s Inside Wire.</p> <p>Section 3.5 provides that “Charter may access the NID on CenturyTel’s network side or the End User Customer’s access side on a stand-alone basis to permit Charter to connect its own loop facilities to the premises wiring at any customer location.” CenturyTel agrees that the Parties have agreed that Charter may elect to disconnect CenturyTel’s loop on the customer access side of NID, and there is no charge associated with the access provided to perform this activity except if Charter houses any portion of its connection with the customer’s Inside Wire within the NID.</p> |

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| | | | | | | <p>Where Charter elects to place its loop facilities in CenturyTel’s NID, it must compensate CenturyTel for the use. Charter has no right to use CenturyTel’s NIDs without compensation. Charter conceded in the Wisconsin arbitration (as referenced by CenturyTel in Issue 2) that the NID is owned in its entirety by CenturyTel. While CenturyTel’s retail tariff provides CenturyTel customers with a right to access the side of the NID where the customer’s Inside Wire connects to CenturyTel facilities (the customer’s “access side” of the NID), this right is neither unfettered nor free. The customer’s access is restricted by the retail tariff rules designed to protect the NID and CenturyTel’s system – and the customer pays for the NID through CenturyTel’s regulated rates. When the customer ceases to be a customer of CenturyTel, the customer loses the right of access to CenturyTel’s NID. CenturyTel has agreed that Charter may access CenturyTel’s NID to disconnect the customer’s Inside Wire, but if Charter wants access for the purpose of placing any of its (or the customer’s) plant inside the NID, Charter must compensate CenturyTel for the use of the NID.</p> |

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| | | | | | | This issue was fully litigated in a recent AAA arbitration proceeding concerning CenturyTel’s Wisconsin properties, and CenturyTel prevailed. The arbitrator’s ruling could not be clearer: “In the end, the location of the demarcation point simply does not matter. No matter where that point is, a CLEC does not have the right to use an ILEC’s network facilities without compensation. An ILEC customer has access to remove its wire from the ILEC’s NID and become a CLEC’s customer. After that, neither the customer nor the CLEC have the right to use the ILEC’s NID, much less to house the CLEC’s interconnection with the customer, unless the CLEC purchases the NID as a UNE.” Findings, Conclusions and Award of Arbitrator at p.8, <i>CenturyTel, Inc. v. Charter Fiberlink, LLC</i> , AAA Case No. 51 494 Y 00524-07 (Aug. 24, 2007). |
| ART. IX, ADDITIONAL SERVICES | | | | | | |
| 25. | How should the Parties define certain extraordinary and unique port requests which may require a | 1.2.2.3 | For purposes of this Article, the Donor Party may request to use a project management approach for the implementation of LSRs for large quantities of numbers ported from a single End User | The Parties should define any unique number port requests which would require special processes known as a “project management” approach as those involving the transfer of one hundred or more numbers | 1.2.2.3 For purposes of this Article, the Donor Party may request to use a project management approach for the implementation of LSRs for large quantities of numbers ported from a single End User location. For purposes of this provision, “large quantities” | This issue arises when Charter makes a request for a large number of porting requests that relate to a single End User location. Charter requests that “large quantities” be defined as “100 or more numbers.” CenturyTel requests that this level is |

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| | unique process known as “project management”? | | location. For purposes of this provision, “large quantities” shall mean one hundred (100) or more numbers. The Donor Party also may request to use a project management approach for the implementation of LSRs for complex ports, which shall be defined as those ports that include complex switch translations (e.g., Centrex, ISDN, AIN services, remote call forwarding, or multiple services on the loop). Under such managed projects (“projects”), the Parties may negotiate implementation details including, but not limited to: due dates, cutover intervals and times, coordination of technical resources, and completion notice. | from any single end user location. It is appropriate to define such processes in this way because that presents the appropriate threshold by which either Party should be excused from its established number porting operational obligations under this Agreement, and applicable law. | shall mean <u>fifty (50)</u> or more numbers. The Donor Party also may request to use a project management approach for the implementation of LSRs for complex ports, which shall be defined as those ports that include complex switch translations (e.g., Centrex, ISDN, AIN services, remote call forwarding, or multiple services on the loop). Under such managed projects (“projects”), the Parties may negotiate implementation details including, but not limited to: due dates, cutover intervals and times, coordination of technical resources, and completion notice. | <p>“50 or more numbers.”</p> <p>Where the specified volume of requests is triggered, the Parties have agreed to use a “project management” approach where the standard processing time intervals would not apply to such LSRs (currently four (4) days) Rather, the processing interval would be negotiated.</p> <p>The Commission should adopt CenturyTel’s position. CenturyTel’s personnel cannot process more than 50 number ports during the standard interval. The difficulty of processing 50 or more ports is increased if the ported numbers are not sequential. Thus, any request to port 50 or more numbers from a single End User location should be the trigger for when the Parties institute “project management” requirements, <i>i.e.</i>, subject to negotiated intervals.</p> |

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| 26. | <p>Should the Parties agree to complete number port requests pursuant to the intervals and confirmation periods (“FOCs”) required by applicable law?</p> <p><u>Should the Agreement set forth the specific interval applicable to port requests using an LSR and the specific time deadline for returning a Firm Order Confirmation (FOC) associated with such LSR?</u></p> | <p>1.2.2.1, 1.2.2.2</p> | <p>1.2.2.1 The LSR will have a requested due date that is not less than the standard interval that is required by Applicable Law.</p> <p>1.2.2.2 Both Parties agree to provide a Firm Order Confirmation (FOC) to the Recipient Party within the time frame required by Applicable Law.</p> | <p>Where the Parties intend to include specific contract language concerning the specific technical and operational requirements associated with porting a number, such requirements should be guided by binding FCC precedent, which is covered under “Applicable Law” (as defined in the Agreement). Rather than refer to specific timeframes in such proposals, the Parties are better served by simply referring to Applicable Law because the FCC has recently announced its intent to modify certain rules associated with operational requirements of number porting. Specifically, in October of 2007 the FCC issued a notice of proposed rulemaking, in which it has announced its consideration of a rule that would reduce the current porting “interval” from four days to forty-eight (48) hours. <i>See In the Matter of Local Number Portability Porting Interval and Validation Requirements</i>, 22 FCC Rcd 19531, at paras. 59-63 (2007). There has been a significant amount of support for the FCC’s tentative conclusion, and</p> | <p>1.2.2.1 The LSR will have a requested due date that is not less than the standard interval <u>of four (4) Business Days</u>.</p> <p>1.2.2.2 Both Parties agree to provide a Firm Order Confirmation (FOC) to the Recipient Party within <u>24 hours from the time a LSR is received</u>.</p> | <p>This issue relates directly to Issue 10, and therefore Issue 10 and Issue 26 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel.</p> <p>As a matter of clarification, Charter’s DPL correctly identifies CenturyTel’s proposed language in Section 1.2.2.2 (“24 hours from the time a LSR is received”). Charter’s position statement, however, incorrectly asserts that CenturyTel’s proposal is to return Firm Order Confirmations (“FOCs”) in 48 hours. “CenturyTel’s Language” column in Issue 26 accurately represents CenturyTel’s position.</p> <p>Current law is clear and unambiguous. Porting requests are required to be completed within four (4) days and FOCs are required to be made within 24 hours from the time a LSR is received. If these requirements change, the change of law provisions will afford the Parties the opportunity to amend the interconnection agreement to reflect those changes. <i>See also</i> Discussion of Issue 10, <i>supra</i>.</p> <p>Setting aside the legal obligation, the use of a specific time interval within the Agreement (and which Charter’s proposed language avoids)</p> |

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| | | | | <p>there is some possibility that this conclusion could be adopted as a final rule later this year. For that reason, it is not appropriate, or wise, to adopt a specific timeframe in Section 1.2.2.1, as CenturyTel has proposed.</p> <p>Furthermore, CenturyTel’s proposal that confirmation of receipt of port requests, known as firm order confirmations (or “FOCs”), be delivered in 48 hours. However, current FCC regulations require that such confirmations be provided in 24 hours. <i>See In the Matter of Local Number Portability Porting Interval and Validation Requirements</i>, 22 FCC Rcd 19531, at para. 61 (2007). Therefore, CenturyTel’s proposal conflicts with applicable law. For that reason, CenturyTel’s proposals should be rejected and the Agreement should agree to meet these deadlines consistent with applicable law.</p> | | <p>also ensures prompt and proper implementation of the Agreement. The specific time intervals are used by CenturyTel’s operational personnel that would process Charter’s orders. The use of actual time frames within the Agreement, therefore, avoids any question as to when action must occur. The Commission should reject Charter’s proposed language and adopt CenturyTel’s proposed language on this ground alone.</p> <p>Charter has also failed to explain the inconsistency of its position on Issue 26 with its position with respect to the retroactive application of certain “changes in law” in Issue 10. In Issue 10, Charter opposes CenturyTel’s proposed language that retroactively applies certain changes in law, alleging that it is “effectively one-sided” to CenturyTel’s benefit. In Issue 10, however, Charter takes the position that all such changes should be subject to negotiation, arbitration and amendment with no retroactive application when it claims that all changes in applicable law are likely only to benefit CenturyTel.</p> <p>Yet, here in Issue 26, Charter identifies a change of law – porting intervals – that would benefit</p> |

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| | | | | | | <p>Charter (since it is more likely that end users would initially migrate to Charter rather than vice versa). Charter’s position in this Issue 26 fatally undercuts Charter’s position in Issue 10.</p> <p>Moreover, CenturyTel’s position provides the specificity that Charter requests in other areas. <i>See</i> Issue 3 regarding tariff references and 11 regarding Service Guide references. CenturyTel’s position is consistent throughout, and CenturyTel’s position on Issue 26 should be adopted.</p> |
| 27. | <p>Should CenturyTel be allowed to assess a charge for administrative costs for porting telephone numbers from its network to Charter’s network?</p> <p><u>When Charter submits an LSR requesting a number port, should Charter be contractually</u></p> | 1.2.3 | <p>1.2.3 Notwithstanding any other provision of this Agreement, the Pricing Appendices, and any attachment or appendix incorporated herein, the Parties shall not assess charges on one another for porting telephone numbers, or for processing service orders associated with requests for porting numbers. Neither Party will bill the other Party any service order charge for a LSR, regardless of whether that LSR is later supplemented, clarified or</p> | <p>Neither Party should be permitted to assess charges upon requests from the other Party to fulfill a subscriber’s number porting requests. In several orders implementing 47 U.S.C. § 251(e)(2) shortly after enactment of the Telecommunications Act of 1996, the FCC held that carriers are required to recover their costs of implementing local number portability (“LNP”) through tariffed end user charges. <i>See Telephone Number Portability</i>, Third Report and Order, 13 FCC Rcd 11701 (1998) (the “Cost</p> | <p>1.2.3 <u>The Party receiving the LSR will bill the service order charges set forth in the Pricing Article XI for each LSR received. The Party receiving the LSR will bill an Initial Service Order Charge for each initial LSR submitted. A Subsequent Service Order Charge applies to any modification to an existing LSR.</u></p> | <p>This issue relates directly to Issue 40 discussed below. Thus, Issue 27 and Issue 40 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel.</p> <p>Charter mischaracterizes the non-recurring order charges that CenturyTel seeks to recover as the costs of <i>implementing</i> LNP. To the contrary, these charges relate to the processing activity that is involved prior to and after a port request, and the charges arise only as a result of one Party’s request for a port. Basic “cost causation” principles require the “cost causer” (<i>i.e.</i>, Charter when</p> |

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| | <u>required to pay the service order charge(s) applicable to such LSR?</u> | | cancelled. Notwithstanding the foregoing, neither Party will bill an additional service order charge for supplements to any LSR submitted to clarify, correct, change or cancel a previously submitted LSR. | Recovery Order”), <i>aff’d</i> , <i>Telephone Number Portability</i> , Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002) (the “Cost Recovery Reconsideration Order”). <i>See also Telephone Number Portability Cost Classification Proceeding</i> , Memorandum Opinion and Order, 13 FCC Rcd 24495 (1998). In these orders the FCC determined that recovery by ILECs through end user charges of carrier-specific costs directly related to providing number portability best serves the statutory goal of competitive neutrality. <i>Cost Recovery Order</i> , at ¶¶ 8, 39 and 135. Accordingly, the FCC promulgated its current rule, codified at 47 C.F.R. § 52.33, entitled “Recovery of carrier-specific costs directly related to providing long-term number portability.” The rule states that ILECs may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with | | requesting the port) to pay the cost of the entity responding to the cost causer’s request (<i>i.e.</i> , CenturyTel processing the port request). The FCC has already determined that its cost recovery policies <i>do not</i> bar the recovery that CenturyTel is seeking through its NRCs when incurred for LNP orders. <i>See In the Matter of Telephone Number Portability</i> , 19 FCC Rcd 6800, 2004 FCC Lexis 188 *17-19, n.49 (finding Verizon Wireless complaint about BellSouth’s recovery of “transaction charges to recover ... porting expenses” that “are standard fees assessed for various services provided to carriers” was without merit because these charges were not recoverable through an end-user tariff). Since these activities are for the benefit of Charter, CenturyTel knows of no rational basis to suggest that the Party causing the cost and receiving the benefits should not bear the associated costs. Finally, CenturyTel notes that this exact issue has been brought for review by this Commission when Charter filed its complaint against CenturyTel in Case No. LC-2008-0049. In that proceeding, Commission Staff William Voight testified that carriers incur legitimate costs when processing a request to |

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| | | | | the FCC, certain charges over a five (5) year term assessed against end users. <i>See</i> 47 C.F.R. § 52.33(a)(1)(i) & (a)(3). Rule 52.33(a)(1)(ii) also allows ILECs to assess charges on carriers that purchase switching ports as UNEs or resell the ILECs’ local services. Charter does not purchase switching ports and is not reselling CenturyTel’s services. In addition, the number portability “query service” charge described in 47 C.F.R. § 52.33(a)(2) may be assessed against carriers. Charter, however, is not requesting that CenturyTel perform a “query-service.” No other cost recovery from carriers like Charter is authorized by the rule for LNP charges. <i>See</i> Cost Recovery Reconsideration Order, ¶ 62. Consequently, under the FCC’s rules, CenturyTel cannot assess any charges, including service order charges, on Charter to process a LNP request. | | port a telephone number to another carrier. Mr. Voight also testified that there is nothing in the law that prohibits carriers from seeking to recover these legitimate costs. <i>See Complaint of Charter Fiberlink, LLC Seeking Expedited Resolution and Enforcement of Interconnection Agreement Terms Between Charter Fiberlink – Missouri, LLC and CenturyTel of Missouri, LLC, Case No. LC-2008-0049, Transcript, Vol. 2. p. 311.</i> |
| ART. X, OSS | | | | | | |
| 28. | Should CenturyTel be entitled to | 8.3.1, 8.3.2, 8.3.3 | 8.3 Unless sooner terminated or suspended in accordance with the | Where Charter uses the CenturyTel OSS (Operations Support System) databases to | 8.3 Unless sooner terminated or suspended in accordance with the Agreement or this Article (including, | Charter has provided no basis to limit the ability of CenturyTel to monitor and track the use of its OSS |

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| | <p>monitor, and audit, Charter’s use of OSS systems which Charter may use to make a service request, or other similar request of CenturyTel?</p> <p><u>Does CenturyTel have the right to monitor and audit Charter’s access to its OSS to ascertain whether Charter is using such access in accordance with the Agreement and applicable law?</u></p> | | <p>Agreement or this Article (including, but not limited to, Article III, Sections 2.0 and 9.0 of the Agreement and Section 11.1 below), **CLEC’s access to CenturyTel OSS Information through CenturyTel OSS Services shall terminate upon the expiration or termination of the Agreement.</p> <p>8.3.1 CenturyTel shall have the right (but not the obligation) to ascertain whether **CLEC is complying with the requirements of Applicable Law and this Agreement with regard to **CLEC’s access to, and use and disclosure of, CenturyTel OSS Information.</p> <p>8.3.2 Without in any way limiting any other rights CenturyTel may have under the Agreement or Applicable Law, CenturyTel may, upon CLEC’s consent, monitor **CLEC’s access to and use of CenturyTel OSS Information which is made available by CenturyTel to **CLEC pursuant to this Agreement, to ascertain</p> | <p>submit orders, request information, or other wise communicate with CenturyTel, Charter has agreed to a number of specific limitations and restrictions with respect to the use of such databases. Indeed, Section 8 of Article X, OSS, sets forth a lengthy list of limitations of use and restrictions upon Charter with respect to access, and use of, the OSS. For example, Charter has agreed to treat all OSS information as confidential, that it has no license rights in such information, that its right of access is limited in time, and that it will destroy or return all information upon expiration or termination of the Agreement. Thus, Charter has agreed to a number of very specific terms which strictly limits its use of, and access to, CenturyTel’s OSS.</p> <p>Despite these existing safeguards, CenturyTel also proposes that it have the right to “audit” and “monitor” Charter’s use of the OSS. However, other than an ambiguous and open-ended statement in Section 8.3.2, CenturyTel has refused to define how it would</p> | <p>but not limited to, Article III, Sections 2.0 and 9.0 of the Agreement and Section 11.1 below), **CLEC’s access to CenturyTel OSS Information through CenturyTel OSS Services shall terminate upon the expiration or termination of the Agreement.</p> <p>8.3.1 CenturyTel shall have the right (but not the obligation) <u>to audit **CLEC</u> to ascertain whether **CLEC is complying with the requirements of Applicable Law and this Agreement with regard to **CLEC’s access to, and use and disclosure of, CenturyTel OSS Information.</p> <p>8.3.2 Without in any way limiting any other rights CenturyTel may have under the Agreement or Applicable Law, CenturyTel <u>shall have the right (but not the obligation) to monitor **CLEC’s access to and use of CenturyTel OSS Information which is made available by CenturyTel to **CLEC pursuant to this Agreement, to ascertain whether **CLEC is complying with the requirements of Applicable Law and this Agreement,</u></p> | <p>(Operations Support System) Information. CenturyTel’s OSS systems and the information contained within them are confidential and remain the property of CenturyTel. The Agreement grants Charter a limited license to access and use such information solely for the purposes expressly stated in the Agreement (see Art. X, Sections 8.1-8.2), and proper monitoring by CenturyTel of the OSS system is appropriate to ensure that Charter complies with the license.</p> <p>Based upon CenturyTel’s interest in protecting the confidential nature of the OSS Information and recognizing its obligations under 47 U.S.C. § 222(c), CenturyTel should have the right to audit/monitor Charter’s access to its OSS systems to ensure compliance with the terms of this Agreement. This audit/monitor provision is similar to CenturyTel’s right to audit Charter’s records for billing purposes under Art. III, Sec. 7. Charter’s refusal to agree to such audit/monitoring is commercially unreasonable and would reduce CenturyTel’s ability to effectively protect its interests in proper operation, implementation and utilization of its OSS.</p> |

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| | | | <p>whether **CLEC is complying with the requirements of Applicable Law and this Agreement, with regard to **CLEC’s access to, and use and disclosure of, such CenturyTel OSS Information. The foregoing right shall include, but not be limited to, the right (but not the obligation) to electronically monitor **CLEC’s access to and use of CenturyTel OSS Information which is made available by CenturyTel to **CLEC through CenturyTel OSS Facilities.</p> <p>8.3.3 Information obtained by CenturyTel pursuant to this Section 8.0 shall be treated by CenturyTel as Confidential Information of **CLEC pursuant to Section 14.0, Article III of the Agreement; provided that, CenturyTel may, upon CLEC’s consent, use and disclose information obtained by CenturyTel pursuant to this Article to enforce CenturyTel’s rights under the Agreement or Applicable Law.</p> | <p>propose to “monitor” Charter. Nor has CenturyTel explained precisely what would be required of any audit of Charter’s use of the OSS. For these reasons, Charter will only agree to CenturyTel’s monitoring and auditing proposals if such action is conditioned upon mutual consent. Because CenturyTel has failed to provide a sufficient explanation of its intent with respect to monitoring and audits, the Commission should reject its proposals.</p> | <p>with regard to **CLEC’s access to, and use and disclosure of, such CenturyTel OSS Information. The foregoing right shall include, but not be limited to, the right (but not the obligation) to electronically monitor **CLEC’s access to and use of CenturyTel OSS Information which is made available by CenturyTel to **CLEC through CenturyTel OSS Facilities.</p> <p>8.3.3 Information obtained by CenturyTel pursuant to this Section 8.0 shall be treated by CenturyTel as Confidential Information of **CLEC pursuant to Section 14.0, Article III of the Agreement; provided that, CenturyTel <u>shall have the right (but not the obligation) to</u> use and disclose information obtained by CenturyTel pursuant to this Article to enforce CenturyTel’s rights under the Agreement or Applicable Law.</p> | <p>In response to Charter’s other criticism, the permissible scope of the audit is clearly set forth in Section 8.3.2.</p> |
| 29. | Should | 15.2 | [INTENTIONALLY LEFT | Except as specifically set forth | 15.2 <u>CenturyTel is entitled to</u> | Consistent with the generally |

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|------------------|---|----------|---------------------------|---|--|--|
| | <p>CenturyTel be allowed to recover certain unidentified and undefined, costs at some point in the future?</p> <p><u>To the extent CenturyTel provides Charter with access to new, upgraded or enhanced OSS during the term of the Agreement, should CenturyTel be permitted to recover its costs for providing such upgraded access to Charter if such recovery is specifically approved by the Commission?</u></p> | | <p>BLANK.]</p> | <p>in the price list of this Agreement, CenturyTel does not have the right to assess any charges upon Charter for the recovery of any OSS costs that CenturyTel may incur.</p> <p>As noted above with respect to Issue 13, the costs incurred by each 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, 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</p> | <p><u>recover its unrecovered costs of providing access to new, upgraded or enhanced CenturyTel Operations Support Systems via the CenturyTel OSS Services, CenturyTel Pre-OSS Services, or CenturyTel OSS Facilities, or other means pursuant to rates or other charges (“OSS charges”) determined by or otherwise approved by the Commission upon CenturyTel’s submission in accordance with Applicable Law. Should CenturyTel incur the costs of providing access to new, upgraded or enhanced CenturyTel Operations Support Systems during the Term of this Agreement, **CLEC will be responsible for paying such OSS charges under this Agreement only if and to the extent determined by the Commission.</u></p> | <p>accepted principles of cost causation, the Commission should adopt CenturyTel’s language in Section 15.2.</p> <p>This language preserves CenturyTel’s right to recover its costs with respect to upgrades and enhancements to its OSS, should such upgrades and enhancements occur during the term of the Agreement. Moreover, Charter would only be required to pay such charges if CenturyTel first obtains Commission approval of the rates and the Commission then also determines that Charter should be responsible for payment of such charges. CenturyTel should not be forced to provide Charter with enhanced OSS for free. However, that is what Charter’s language would allow, and should be rejected.</p> |

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|--------------------------------------|---|----------|---|--|--|---|
| | | | | compensate CenturyTel. Under that scenario, Charter will be required to engage in negotiations to amend the Agreement to incorporate CenturyTel’s proposed cost 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. | | |
| ART. XII , DIRECTORY SERVICES | | | | | | |
| 30. | Should CenturyTel be required to provide information to Charter concerning key dates, and deadlines, for submitting information to directory publishers? | 2.1.2.3 | 2.1.2.3 Directory Close Date. CenturyTel shall provide **CLEC with publication schedules, including Directory close dates (and changes to those dates) for the Directories associated with the areas where Charter is providing local service. This publication information shall include the name of the directory, the close date, and, where the close date has changed, both | To ensure the efficient, and timely, exchange of directory listing information between Charter, CenturyTel and the directory publisher, the parties should establish certain basic parameters concerning the timeframes by which certain must be exchanged. These basic obligations will ensure that listing information is included in the published directories, a result which benefits all of the parties | <u>2.1.2.3 Directory Close Date. **CLEC must submit all listing information intended for publication by the applicable Directory close date. CenturyTel shall provide **CLEC with publication schedules, including Directory close dates for the Directories associated with the areas where Charter is providing local service.</u> | CenturyTel’s obligation, which is consistent with its proposed language, is to provide Charter with non-discriminatory access to place listings in its directories. Charter, however, seeks to impose additional obligations upon CenturyTel that would result in CenturyTel discriminating in favor of Charter with respect to the publication of <i>Charter’s directory listings</i> . With respect to liability for errors and omission in directory listings, Charter also inappropriately seeks to |

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| | <u>What information regarding Directory close dates is CenturyTel required to provide Charter and in what manner?</u> | | the original close date and the new close date. Century Tel shall provide notification of changes in close dates in a format that specifically identifies the notification as relating to Directory publication. Where Charter has not forwarded its flat file of listing information for a Directory to Century Tel two weeks prior to the date that the listing information is due to the publisher, Century Tel will notify Charter. | involved in the transaction. There is no reason to believe that the assumption of this basic obligation by CenturyTel will create an undue burden, or would otherwise lead to discriminatory practices on its part. The fact is, CenturyTel’s position as the incumbent in this market means that it has a unique relationship with the publisher, and is in the best position to convey the requested information. For that reason, it is both reasonable and appropriate for CenturyTel to assume this responsibility to ensure the prompt, and accurate, publication of directories in the CenturyTel markets. | | shift its own responsibility to CenturyTel. This shifting of responsibility has no rational basis and should be rejected by the Commission. Consistent with its proposed language, CenturyTel should only be required to provide Charter with advanced notification of directory close dates. These close dates are established by the directory publisher, not CenturyTel. Notifications of close dates, and changes to those dates, typically are provided months in advance and are typically accessible to all CLECs on a webpage provided to Charter by CenturyTel. When the schedule is posted or changed, CenturyTel provides electronic notification if Charter has subscribed (free of charge) to the electronic notification service. This information and access to it should be all that is necessary for Charter to place its listing within the CenturyTel directory. CenturyTel should not be required to alter its existing notification requirements to provide the granularity of information suggested by Charter. Charter can obtain this information from CenturyTel’s web site when and if Charter actually requires it (including close date and |

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| | | | | | | formatting). CenturyTel also should not be required to monitor Charter’s compliance with due dates (including “flat file” due dates) particularly where it is in Charter’s best interests to assure that it meets such due dates. Charter should be responsible for monitoring and meeting the deadlines provided by CenturyTel’s publisher. |
| 31. | How should each Party’s liability be limited with respect to information included, or not included, in Directories? | 7.0, 7.1- 7.3 | 7.1 CenturyTel’s liability to **CLEC or any **CLEC End User Customer for any errors or omissions in Directories published by CenturyTel and/or Publisher (including, but not limited to, any error in any End User Customer or **CLEC listing), or for any default or breach of this Article, or for any other claim otherwise arising hereunder, shall be limited to actual damages, except to the extent that such errors or omissions, default, breach, or claims arise from the CenturyTel’s, or its Publisher’s, negligence, gross negligence, or intentional or willful misconduct. However, notwithstanding any other provision of this Agreement, | CenturyTel should be liable for its own errors or omissions that result in subscriber listing errors in CenturyTel’s published directories. The Agreement should allocate risk fairly, and in a manner that is proportionate to each Party’s respective obligations and responsibilities. Specifically, where one Party acts in a manner that is deemed to be grossly negligent, or which constitutes intentional misconduct, then that Party should not be allowed to contract away its liability to end user subscribers, or to the other Party. Charter believes that CenturyTel should not be permitted to limit its liability to the extent that is grossly | 7.0 LIMITATION OF LIABILITY: INDEMNITY <u>The following provision shall apply in addition to the Liability and Indemnity provisions set forth in Article III, Section 30.</u> 7.1 CenturyTel’s liability to **CLEC or any **CLEC End User Customer for any errors or omissions in Directories published by CenturyTel and/or Publisher (including, but not limited to, any error in any End User Customer or **CLEC listing), or for any default or breach of this Article, or for any other claim otherwise arising hereunder, shall be limited to <u>amounts paid by **CLEC to CenturyTel under this Article. Except with respect to errors or omissions caused by the gross negligence or intentional misconduct of CenturyTel, CenturyTel shall have no liability to **CLEC’s or it’s End User Customers for any errors or omissions</u> | CenturyTel should only have exposure to liability with respect to errors and omissions in the Charter’s End User directory listings arising out of CenturyTel’s gross negligence or intentional misconduct. Charter proposes that CenturyTel also should have liability arising out of CenturyTel’s “negligence.” Charter’s position is unreasonable and should be rejected. Charter is <i>solely</i> responsible for all information required for inclusion in the CenturyTel directory. CenturyTel should not be held to a higher standard of conduct than that used commonly in end use terms and conditions. It is common industry practice to exclude liability entirely for directory listing errors subject only to a refund of subscriber charges. For example, this sort of limitation on liability is a |

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| | | | <p>CenturyTel’s liability shall not be limited in any instance in which **CLEC accurately and timely conveys to CenturyTel or its Publisher that its End User Customers desire not to be published in a directory and CenturyTel, or its Publisher, causes the publication of such End User Customer data or listings. **CLEC shall fully indemnify CenturyTel in accordance with the provisions of Section 7.2 below as to any errors or omissions in a **CLEC End User Customer listing for which CenturyTel is not liable under this Section.</p> <p>CenturyTel shall fully indemnify **CLEC in accordance with the provisions of Section 7.2 below as to any errors or omissions in a **CLEC End User Customer listing for which CenturyTel is liable under this Section.</p> <p>7.2 **CLEC agrees to indemnify, defend, and hold harmless CenturyTel, its directors, officers, employees, agents and their affiliates (collectively, the “Indemnified</p> | <p>negligent, engages in intentional or willful misconduct, or otherwise contributes to the events that give rise to the action for damages. If CenturyTel’s actions create a problem in the listing of a Charter subscriber, then it should be liable to the extent that such actions arise from CenturyTel’s failure to ensure that its employees did not act in a grossly negligent manner, or engage in willful or intentional misconduct. The Agreement should, therefore, include such concepts in any provisions limiting liability of one Party.</p> <p>Where the Parties agree to limit liability for special damages, including incidental, indirect, or consequential damages, then that limitation should not include a carve-out for claims which require Charter to indemnify CenturyTel. The liability limitations provisions should apply equitably, without imposing greater obligations on one Party in favor of the other Party (as CenturyTel proposes). For that reason the Commission should adopt Charter’s proposed language, to ensure</p> | <p><u>in any End User Customer or **CLEC listing published by CenturyTel, or for the publication of any End User Customer data where such End User Customer does not desire a published listing.</u> **CLEC shall fully indemnify CenturyTel in accordance with the provisions of Section 7.2 below as to any errors or omissions in a **CLEC End User Customer listing for which CenturyTel is not liable under this section. <u>**CLEC expressly represents that it is authorized to enter into this provision on behalf of itself and its End User Customers.</u></p> | <p>well-established industry standard that is often reflected in end user tariffs, including those of Charter and CenturyTel in Missouri. See, e.g., Charter Fiberlink-Missouri, LLC P.S.C. MO. No.1, Local Exchange Tariff, Section 1.5.4 Directory Errors and Omissions. There is no good reason to expand this well-established scope of liability for directory errors to include “negligence” as proposed by Charter.</p> <p>The industry-standard limitation on liability proposed by CenturyTel also makes sense given the context. Charter alone provides its customer listings for publication. Charter is contractually prohibited from providing to CenturyTel or the third party publisher the listings of any of its customers who do not wish to have published listings. (see Art. XII, Sec. 2.1.2) Thus, if listing information for a Charter customer that requested that Charter provide non-published status was, in fact, published, such publication would <i>solely</i> be due to Charter’s error or omission. Thus, Charter should not be permitted to shift any such risk to CenturyTel.</p> <p>Furthermore, CenturyTel should not be required to incur the additional</p> |

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| | | | Parties”) from all losses, claims, damages, expenses, suits, or other actions, or any liability whatsoever including, but not limited to, damages, liabilities, costs and attorneys’ fees, made or asserted by any third party (including, but not limited to End User Customers) against the Indemnified Parties and arising out of any error or omission for which CenturyTel is not liable pursuant to Section 7.1 above. CenturyTel agrees to indemnify, defend, and hold harmless **CLEC, its directors, officers, employees, agents and their affiliates (collectively, the “Indemnified Parties”) from all losses, claims, damages, expenses, suits, or other actions, or any liability whatsoever including, but not limited to, damages, liabilities, costs and attorneys’ fees, made or asserted by any third party (including, but not limited to End User Customers) against the Indemnified Parties and arising out of any error or omission for which CenturyTel is liable | the fair and equitable application of this provision. | 7.2 **CLEC agrees to indemnify, defend, and hold harmless CenturyTel, its directors, officers, employees, agents and their affiliates (collectively, the “Indemnified Parties”) from all losses, claims, damages, expenses, suits, or other actions, or any liability whatsoever including, but not limited to, damages, liabilities, costs and attorneys’ fees, made or asserted by any third party (including, but not limited to End User Customers) against the Indemnified Parties and arising out of any error or omission for which CenturyTel is not liable pursuant to Section 7.1 above. | costs that would be caused by additional systems and/or processes to monitor Charter’s own submissions and Charter’s compliance with due dates imposed by the third-party directory publisher. |

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| | | | <p>pursuant to Section 7.1 above.</p> <p>7.3 To the maximum extent permitted by the applicable law, in no event shall CenturyTel or **CLEC be liable for any special, incidental, indirect, or consequential damages whatsoever including, without limitation, damages for loss of profits or any other pecuniary loss arising out of or in connection with this Article, even if such Party has been advised of the possibility of such damages, except where such damages occur as the result of a breach of confidentiality, or relate to an indemnity claim made against either Party that is covered by Section 7.2 above. Notwithstanding the foregoing, or any other provision of this Agreement, neither Party’s liability shall be limited in any instance in which such Party, or its Publisher, causes the publication of End User Customer data or listings, where such End User Customer requests that such data or listings not be</p> | | <p>7.3 To the maximum extent permitted by the applicable law, in no event shall CenturyTel or **CLEC be liable for any special, incidental, indirect, or consequential damages whatsoever including, without limitation, damages for loss of profits or any other pecuniary loss arising out of or in connection with this Article, even if such Party has been advised of the possibility of such damages, except where such damages occur as the result of a breach of confidentiality, <u>or relate to a CenturyTel indemnity claim.</u></p> | |

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| | | | published in a directory. | | | |
| 32. | How should the Agreement define each Party’s directory assistance obligations under Section 251(b)(3)? | 8 | <p>8.0 DIRECTORY ASSISTANCE OBLIGATIONS</p> <p>To ensure that each Party’s subscribers have non-discriminatory access to directory assistance listings of the other Party’s subscribers, the Parties’ agree to provide each other all necessary End User subscriber listing information for inclusion in each Party’s relevant directory assistance listing databases, as required by Section 251(b)(3) of the Act.</p> <p><u>CenturyTel Obligations:</u> CenturyTel will accept, include, and maintain, in the same manner that CenturyTel treats listings of its own End Users, CLEC subscriber listings in the directory assistance databases maintained by CenturyTel or its third-party vendors. To the extent that CenturyTel’s directory assistance listings are maintained in a database administered by a third party</p> | <p>Pursuant to Section 251(b)(3) of the Act, both Parties have the duty to ensure non-discriminatory access to directory listings and directory assistance databases.</p> <p>FCC has recognized that carriers may agree to have DA databases administered by a third party. <i>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i>, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, 11 FCC Rcd 19392 at ¶ 144 (1996) “Local Competition Second Report and Order”), vacated in part, <i>People of the State of California v. FCC</i>, 124 F.3d 934 (8th Cir. 1997), rev. on other grounds, <i>AT&T Corp. v. Iowa Util. Bd.</i>, 119 S. Ct. 721 (Jan. 25, 1999). However, the FCC has recognized that such agreements for third party administration must still be included in interconnection</p> | <p>8.0 DIRECTORY ASSISTANCE OBLIGATIONS</p> <p><u>Neither Party is a Directory Assistance (DA)-provider, but rather obtains DA services from a third-party vendor(s) that uses or maintains a national DA database(s) (“national database”). Nevertheless, as each Party has the obligation to ensure that its End User Customers’ DA listings are made available to the other Party’s End User Customers, the Parties agree as follows:</u></p> <p><u>8.1 Each Party will promptly, upon request by the other Party, provide the requesting Party with the name of its third-party DA-provider;</u></p> <p><u>8.2 Each Party will be responsible for contracting with or otherwise making its own arrangements for services with any such third-party DA-provider, including but not limited to arrangements to provide its own End User Customers’ DA listings to such third-party DA-provider for inclusion in a national database accessible to the other Party.</u></p> | <p>CenturyTel’s obligation is to provide Charter with non-discriminatory access to Directory Assistance (“DA”). CenturyTel is not a DA provider but does obtain DA services from a third party provider. CenturyTel’s proposed language meets its obligation and recognizes the actual manner in which DA will be provided to end users. Accordingly, CenturyTel’s proposed language in Section 8 should be adopted.</p> <p>CenturyTel’s proposed language requires each Party to comply with its DA requirements and, in doing so, provides the mechanism by which each Party can obtain access to the other Party’s DA information as required by applicable law. Because CenturyTel’s DA provider provides national listings, any issue of the access that Charter may have with respect to CenturyTel’s information has been resolved.</p> <p>Charter’s language also is inaccurate insofar as it states that CenturyTel will “accept, include, and maintain” Charter’s end user listings. Rather, Charter will provide its end user listings directly to the third-party</p> |

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| | | | <p>vendor, CLEC shall cooperate with CenturyTel as needed to ensure that CLEC listings are promptly loaded into such database and accessible to CenturyTel’s End Users, upon request. CenturyTel will not charge CLEC for including and maintaining CLEC subscriber listings in the directory assistance databases maintained by CenturyTel, or its vendors.</p> <p>CLEC Obligations: CLEC authorizes CenturyTel, and its third party vendors, to include and use CLEC’s directory assistance listing information in accordance with Applicable Law, and shall provide such information to CenturyTel, or its third-party vendors, at no charge. CLEC shall provide to CenturyTel the names, addresses and telephone numbers of all End Users who wish to be listed in the directory assistance database but omitted from publication in white pages directories (i.e. non-published).</p> | <p>agreements because entering into a side agreement for access to DA databases contravenes the FCC requirement that LECs provide DA on a nondiscriminatory basis and make such provisions related thereto available to other carriers in interconnection agreements for adoption through the mechanism of 47 U.S.C. § 252. <i>Provision of Directory Listing Information under the Communications Act of 1934, As Amended</i>, FCC 01-27, 16 FCC Rcd 2736 at ¶ 36 (2001) (“SLI/DA First Report and Order”). Therefore, CenturyTel must include rates, terms and conditions of access to its DA database within the interconnection agreement despite use of a third-party DA database administrator.</p> <p>For that reason, the Agreement should include a statement that each Party is obligated to ensure that its subscribers can obtain subscriber list information of the other Party’s subscribers, via generally available directory assistance services. Charter’s proposal includes that statement</p> | <p><u>8.3 Neither Party shall be required to directly provide its End User Customers’ DA listings to the other Party, nor shall either Party be required to accept directly from the other Party such other Party’s End User Customers’ DA listings, for the purpose of submitting the Parties’ commingled, End User Customers’ DA listings to any third-party DA-provider that maintains and/or uses a national database accessible to the other Party.</u></p> | <p>DA-provider and not to CenturyTel, a point CenturyTel and Charter have agreed upon.</p> |

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| | | | | <p>reflecting both Parties’ respective obligations, and also sets forth specific terms and obligations that each Party must satisfy to ensure that directory assistance listing information is available to the subscribers of the other Party.</p> <p>Although this obligation may seem obvious, it is necessary to include in this Agreement because of previous operational problems between the Parties. Specifically, when operating under other interconnection agreements there have been problems surrounding CenturyTel’s failure to ensure that Charter subscriber listings are properly conveyed to CenturyTel subscribers who wished to contact Charter subscribers. This problem occurred because CenturyTel’s directory assistance database vendors did not include Charter subscriber listing information in their databases. This problem meant that both Charter and CenturyTel subscribers could not utilize directory assistance in the manner that they desired. Further, the problem reflected a failure by CenturyTel to satisfy its directory assistance</p> | | |

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|----------------------|---|----------|--|--|--|--|
| | | | | obligations under federal law, because it did not ensure that its vendors included Charter subscribers in the proper databases. To avoid this problem in the future the Parties should include Charter’s proposed language, which sets forth these basic obligations in clear and unequivocal terms. | | |
| ART. VII, 911 | | | | | | |
| 33. | <p>Should CenturyTel be required to make 911 facilities available to Charter at cost-based rates pursuant to Section 251(c)?</p> <p><u>Is Charter entitled to lease CenturyTel facilities for the purpose of connecting Charter’s network to CenturyTel’s 911 networks? If so, is Charter entitled to lease such facilities at TELRIC rates?</u></p> | 3.3.1 | <p>CenturyTel shall provide and maintain sufficient dedicated E911 circuits/trunks from each applicable Selective Router to the PSAP(s) of the E911 PSAP Operator, according to provisions of the applicable State authority, applicable NENA standards and documented specifications of the E911 PSAP Operator. CenturyTel will permit **CLEC to lease 911 facilities from **CLEC’s network to CenturyTel’s Selective Router(s) at the rates set forth in Article XI (Pricing).</p> <p>The rates for 911 facilities set forth in Section IV. B of Article XI (Pricing) are TELRIC-based rates as</p> | <p>Century Tel is required to provide to Charter interconnection trunks and facilities for the provision of 911 services at TELRIC rates, at Charter’s requests. In a recent order concerning the provision of facilities for 911 services, the FCC has definitively ruled on this question: “We note that the Commission currently requires LECs to provide access to 911 databases and interconnection to 911 facilities to all telecommunications carriers, pursuant to sections 251 (a) and (c) and section 271(c)(2)(B)(vii) of the Act. We expect that this will include all the elements necessary for telecommunications carriers to provide 911/E911 solutions that</p> | <p>CenturyTel shall provide and maintain sufficient dedicated E911 circuits/trunks from each applicable Selective Router to the PSAP(s) of the E911 PSAP Operator, according to provisions of the applicable State authority, applicable NENA standards and documented specifications of the E911 PSAP Operator. CenturyTel will permit **CLEC to lease 911 facilities from **CLEC’s network to CenturyTel’s Selective Router(s) at the rates set forth in Article XI (Pricing). **CLEC has the option to secure alternative 911 facilities from another Provider to provide its own facilities.</p> | <p>CenturyTel operates and maintains 911 networks in its service territories pursuant to Missouri Law §§ 190.300 <i>et seq.</i>, RSMo. Under these statutes, the “public agencies” authorized to impose tax levies on the tariffed rate for basic local service and which operate the public safety answering points that CenturyTel serves are also the agencies that govern the provision of 911 emergency phone systems. Each public agency is authorized to contract with the “service suppliers” in the public agency’s jurisdiction for these systems. As part of these contracts, the LECs collect the authorized tax levy as a per-access-line 911 surcharge, which cannot exceed statutory caps and remit these amounts to the appropriate public agency. <i>See</i> § 190.305, RSMo.</p> |

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|------------------|---------------|----------|---|---|------------------------------|--|
| | | | required under Section 251(c). **CLEC has the option to secure alternative 911 facilities from another Provider to provide its own facilities. | are consistent with the requirements of this Order...” WC Docket No. 04-36, WC Docket No. 05-196, <i>In the Matters of IP-Enabled Services 911 Requirements for IP-Enabled Service Providers</i> , First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 para. 38 (2005) (footnote omitted). Century Tel’s obligation to provide interconnection trunks and facilities for 911 services is thus unambiguous. Moreover, because Century Tel’s obligations arise under sections 251(a) and (c), Century Tel is required to provide these facilities at TELRIC rates. | | Under Missouri 911 Law, a “service supplier” is defined as “any person providing exchange telephone services to any service user in this state.” <i>See</i> § 190.300, RSMo. Thus, any authorized LEC providing basic local service in a Missouri exchange would qualify under this definition as a “service supplier”. Indeed, the Commission’s definition of “basic local telecommunications service” includes the requirement to provide “[a]ccess to local emergency services including, but not limited to, 911 service established by local authorities”. <i>See</i> § 386.020, RSMo. If a certificated LEC intends to supply basic local telecommunications service to customers in Missouri exchanges, it must, at the very least, provide access to any 911 service established by local authorities <i>and</i> collect from its end users and remit to the appropriate public agency any authorized tax levy or fee required to fund such service. As to the facilities Charter needs to connect its network to CenturyTel’s 911 facilities, Charter can elect to install its own facilities, purchase them from a third party, or lease them from CenturyTel. Under existing arrangements, Charter |

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|------------------|---------------|----------|---------------------------|---------------------------|------------------------------|---|
| | | | | | | <p>leases trunks under CenturyTel’s wholesale tariff. In Section 3.3.1 of the Agreement, CenturyTel proposes to continue to make this option available to Charter.</p> <p>In its proposed language, Charter claims that it is <i>entitled</i> to lease facilities connecting its network to CenturyTel’s 911 facilities at <i>TELRIC</i> prices. Charter cites no provision of federal or state law that requires CenturyTel to provide any 911 facilities to Charter. Charter quotes a general statement by the FCC that refers to access to “911 databases” and “interconnection to 911 facilities.” But as the footnote omitted from Charter’s excerpt makes clear, the FCC was referring both to requirements generally applicable to all LECs, as well as requirements exclusive to BOCs under the “competitive checklist” for long distance services, which have no application to CenturyTel. The footnote identifies 911 interconnection as an obligation only with respect to BOCs.</p> <p>Charter’s claim that the facilities to connect its network to CenturyTel’s selective routers constitute “interconnection trunks and facilities” to which CenturyTel must provide access under 47 U.S.C. §</p> |

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|-------------------------|----------------------|-----------------|----------------------------------|----------------------------------|-------------------------------------|--|
| | | | | | | <p>251(c) at TELRIC rates is also in error. Under the FCC’s <i>TRRO</i> order, ILECs have no obligation to provide interconnection facilities as unbundled network elements under 47 U.S.C. § 251(c)(3). <i>In the Matter of Unbundled Access to Network Elements, Order on Remand</i>, WC Docket 04-313, FCC 04-290, 20 FCC Rcd 2533 (2005) at ¶ 138. The FCC noted (<i>id.</i> at ¶ 140) that its “finding of non-impairment . . . does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service.” The facilities in question are not for the transmission or routing of telephone exchange service or exchange access service, but are rather dedicated facilities for the delivery of 911 calls to CenturyTel’s dedicated 911 network and the public agency’s 911 operator’s PSAPs. Therefore, CenturyTel has no obligation to provide them under § 251(c)(2) and this issue is not subject to arbitration under § 252.</p> <p>In the alternative, even if the Commission determines that the facilities in question are interconnection facilities for the</p> |

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|------------------|---|----------|--|--|---|--|
| | | | | | | <p>transmission and routing of local telephone exchange service and exchange access service that must be provided under 47 U.S.C. § 251(c)(2), such facilities must be provided at “cost-based” rates and not necessarily TELRIC rates. <i>Illinois Bell Tel. Co. v. Box</i>, 526 F.3d 1069, 1072 (7th Cir. 2008) Thus, the Commission has the discretion to establish cost-based rates on a basis other than TELRIC for interconnection facilities.</p> <p>For these reasons, Charter is not entitled to lease CenturyTel’s facilities for connections between Charter’s network and CenturyTel’s 911 facilities. CenturyTel’s proposal to offer these facilities to Charter for lease at tariff rates, the same rates at which CenturyTel and other LECs charge and are charged for use of these systems, is cost-based and non-discriminatory. Coupled with CenturyTel’s offer not to charge Charter for the use of CenturyTel’s other 911 facilities, CenturyTel’s proposal is indeed generous.</p> |
| 34. | What obligations does Charter have to obtain | 4.6.1 | If **CLEC uses a third-party database provider, and provides Nomadic VoIP | Charter does not utilize ESQK routing parameters, or codes, for its traffic. Such parameters | 4.6.1 If **CLEC uses a third-party database provider and provides nomadic VoIP, as defined in Section 4.3.2 | This issue has been settled. CenturyTel has accepted Charter’s proposed language as shown in |

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|------------------|--|----------|--|--|---|--|
| | <p>certain specific routing parameters, even though Charter traffic does not utilize, or require, such parameters?</p> <p><u>Should Charter be required to obtain certain specific routing parameters in the event that it decides to use a third-party provider in the future?</u></p> | | <p>Service, as defined in Section 4.3.2 (above), **CLEC shall obtain its own routable but non-dialable ESQs for each PSAP to which CenturyTel provides or shall provide coverage, and shall supply these ESQs to CenturyTel for the Selective Routers servicing each such PSAP. If warranted by traffic volume growth, or if upon request by a PSAP or other governmental or quasi-governmental entity, **CLEC shall promptly obtain the appropriate number of additional ESQs to be allocated to each PSAP as may be appropriate under the circumstances. The term “ESQK” as used herein, shall be defined as an Emergency Services Query Key, which is used by the National Emergency Numbering Association (“NENA”) as a key to identify a call instance at a VoIP Positioning Center, and which is associated with a particular selective router/emergency services number combination.</p> | <p>are utilized for nomadic VoIP services, and are not applicable to Charter’s service arrangements. Therefore, CenturyTel’s proposed language is inapplicable to Charter, and unnecessary for this interconnection agreement.</p> | <p>(above), **CLEC shall obtain its own routable but non-dialable ESQs for each PSAP to which CenturyTel provides or shall provide coverage, and shall supply these ESQs to CenturyTel for the Selective Routers servicing each such PSAP. If warranted by traffic volume growth, or if upon request by a PSAP or other governmental or quasi-governmental entity, **CLEC shall promptly obtain the appropriate number of additional ESQs to be allocated to each PSAP as may be appropriate under the circumstances. The term "ESQK" as used herein, shall be defined s an Emergency Services Query Key, which is used by the NENA as a key to identify a call instance at a VoIP Positioning Center, and which is associated with a particular selective router/emergency services combination.</p> | <p>CenturyTel’s language column.</p> |
| 35. | Should both | 9.3 | 9.3 Neither Party shall be | Consistent with its position on | 9.3 <u>CenturyTel</u> shall not be liable for | CenturyTel’s limited liability |

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| | <p>parties’ liability for errors associated with the provision of 911 services be limited by contract, in a manner that is consistent with applicable law?</p> <p><u>Should CenturyTel’s liability for 911 system errors be limited to the reasonable cost of replacement services?</u></p> | and 9.6 | <p>liable for civil damages, whether in contract, tort or otherwise, to the other Party for any loss or damage caused by any act or omission of its employees, agents or contractors, in the design, development, installation, maintenance, or provision of any aspect of E911 other than an act or omission constituting negligence, gross negligence, intentional or willful misconduct. . In no event shall either Party be held liable or responsible for any indirect, incidental, consequential, punitive, special, or exemplary damages associated with the provision of E911, unless caused by an act or omission of a Party constituting negligence, gross negligence intentional or willful misconduct.</p> <p>9.6 CenturyTel shall not be liable or responsible for any indirect, incidental, consequential, punitive, special, or exemplary damages associated with the provision of any aspect of E911 when</p> | <p>issue 15(c), above, Charter believes that the Parties should not limit their damages in a way that would preclude one Party from obtaining meaningful relief. Specifically, Charter does not agree with CenturyTel’s proposal that damages be limited to an “amount equal to the prorated allowance of the Article rate for the service or facilities provided to **CLEC for the time such interruption to service or facilities continues.”</p> <p>Apart from the problems associated with the ambiguity of CenturyTel’s language, the proposal presents another issue. 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</p> | <p>civil damages, whether in contract, tort or otherwise, to <u>any person, corporation, or other entity</u> for any loss or damage caused by any act or omission of <u>CenturyTel</u> or its employees, agents or contractors, in the design, development, installation, maintenance, or provision of any aspect of E911 other than an act or omission constituting gross negligence, <u>wanton</u> or willful misconduct. <u>However, in no event shall CenturyTel’s liability to any person, corporation, or other entity for any loss or damage exceed an amount equal to the prorated allowance of the applicable rate set forth in Article XI (Pricing) for the service or facilities provided to **CLEC for the time such interruption to service or facilities continues, after notice by **CLEC to CenturyTel.</u> No allowance shall be made <u>if</u> the interruption is due to the negligence or willful act of **CLEC. In no event shall CenturyTel be held liable or responsible for any indirect, incidental, consequential, punitive, special, or exemplary damages associated with the provision of E911.</p> <p>9.6 CenturyTel shall not be liable or responsible for any indirect, incidental, consequential, punitive, special, or exemplary damages associated with the provision of any aspect of E911 when there is a failure of or interruption E911 due to the attachment of any equipment</p> | <p>language essentially mirrors the liability language in CenturyTel of Missouri’s General and Local Exchange Tariff and CenturyTel’s Wholesale 911 tariff, PSC MO No. 10.</p> |

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|------------------|---|----------|---|---|---|---|
| | | | there is a failure of or interruption of E911 caused by the attachment of any equipment by **CLEC to CenturyTel facilities, except to the extent caused by a CenturyTel act or omission constituting negligence, gross negligence, intentional or willful misconduct. **CLEC may, with the prior written consent of CenturyTel, which consent shall not be unreasonably withheld, attach features, devices, or equipment of other vendors to the equipment or network facilities provided by CenturyTel. Said attachments, devices, or equipment must meet all applicable federal and state registration or certification standards. CenturyTel reserves the right to refuse attachments if CenturyTel determines that said attachments will degrade E911 ordered by **CLEC, CenturyTel facilities, or otherwise affect its telephone operations. | one Party’s network, employees, or other assets. Therefore, it may be improper to limit damages in this way if such limitations precludes the aggrieved Party from recovering its actual damages. Further, and consistent with its position in issue 15, above, CenturyTel should not be allowed to limit its liability where its actions constitute negligence, gross negligence, intentional or willful conduct. In those circumstances CenturyTel should be held liable, to the fullest extent possible, for its actions. Moreover, the liability standards under this agreement must be consistent with applicable law, including but not limited to <i>R.S. Mo. § 392.350</i> . | by **CLEC to CenturyTel facilities. **CLEC may, with the prior written consent of CenturyTel, which consent shall not be unreasonably withheld, attach features, devices, or equipment of other vendors to the equipment or network facilities provided by CenturyTel. Said attachments, devices, or equipment must meet all applicable federal and state registration or certification standards. CenturyTel services the right to refuse attachments if CenturyTel determines that said attachments will degrade E911 ordered by **CLEC, CenturyTel facilities, or otherwise affect its telephone operations. | |
| 36. | Should each party be required to | 9.4 | Each Party (Indemnifying Party) shall indemnify and hold harmless the other Party | Indemnity provisions under this section should be mutual, rather than simply to the benefit of | 9.4 <u>**CLEC</u> shall indemnify and hold harmless <u>CenturyTel</u> from any damages, claims, causes of action, or | CenturyTel’s provisions are standard indemnity provisions, and therefore, should be included in the |

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|------------------|--|----------|---|--|---|---|
| | <p>indemnify and hold harmless the other party except where the indemnified party has engaged in acts that constitute negligence, gross negligence, intentional or willful misconduct in connection with E911 service?</p> <p><u>Should CenturyTel be protected from 3rd party liability related to 911 system errors caused by Charter?</u></p> | | <p>(Indemnified Party) from any damages, claims, causes of action, or other injuries whether in contract, tort, or otherwise which may be asserted by any person, business, governmental agency, or other entity against the Indemnified Party as a result of any act or omission of the Indemnifying Party or any of its employees, directors, officers, contractors or agents, except for the Indemnified Party’s acts of negligence, gross negligence or willful or wanton misconduct in connection with designing, developing, adopting, implementing, maintaining, or operating any aspect of E911 or for releasing subscriber information, including nonpublished or unlisted information in connection with the provision of E911 Service.</p> | <p>CenturyTel alone. CenturyTel proposes that this provision apply unilaterally, rather than mutually, and as such seeks undue advantage under the proposed agreement. This provision should be mutual, and run to the benefit of both Parties, contrary to CenturyTel’s proposal.</p> | <p>other injuries whether in contract, tort, or otherwise which may be asserted by any person, business, governmental agency, or other entity against <u>CenturyTel</u> as a result of any act or omission of <u>**CLEC</u> or any of its employees, directors, officers, contractors or agents, except for <u>CenturyTel</u> acts of negligence, gross negligence or wanton or willful misconduct in connection with designing, developing, adopting, implementing, maintaining, or operating any aspect of E911 or for releasing subscriber information, including nonpublished or unlisted information in connection with the provision of E911 Service.</p> | <p>Agreement. The indemnification that CenturyTel’s provisions afford is reasonable for a number of reasons. Under the Interconnection Agreement, CenturyTel is responsible for managing the Database Management System (“DBMS”) and relaying subscriber information to the counties. If Charter provides CenturyTel with inaccurate subscriber information and CenturyTel releases that inaccurate information to the county, CenturyTel could face potential liability for Charter’s acts or omissions. Finally, third parties such as wireless or nomadic VoIP providers may assert claims against CenturyTel that are based on Charter’s acts or omissions. Thus, in each of these instances, the potential for liability arises from Charter’s actions or failure to act. Requiring Charter to indemnify CenturyTel based on the risks associated with its own actions or failure to act is entirely reasonable and appropriate.</p> |
| 37. | <p>Should the Agreement limit both Parties’ liability related to the release of information,</p> | 9.7 | <p>Neither Party shall be liable for any civil damages, whether in contract, tort, or otherwise, caused by an act or omission of the other Party in the good faith release of information</p> | <p>CenturyTel proposes that this provision apply unilaterally, rather than mutually, and as such seeks undue advantage under the proposed agreement. Given that the circumstances</p> | <p><u>CenturyTel</u> shall <u>not</u> be liable for any civil damages, whether in contract, tort, or otherwise, caused by an act or omission of <u>CenturyTel</u> in the good faith release of information not in the public record, including nonpublished</p> | <p>This issue is related to Issue No. 36. Again, since CenturyTel is responsible for managing the DBMS and relaying subscriber information to the public agency, it must be protected from Charter’s acts or</p> |

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|------------------|---|----------|--|---|--|--|
| | including nonpublished and nonlisted information, in response to a 911 call? <u>Should CenturyTel be protected from 3rd party liability related to Charter’s errors in providing subscriber information to CenturyTel?</u> | | not in the public record, including nonpublished or nonlisted subscriber information to Emergency Response Agencies responding to calls placed to an E911 service using such information to provide an E911 service. | described in this provision could apply to both Parties’ release of information to emergency service providers, this provision should be mutual, and run to the benefit of both Parties, contrary to CenturyTel’s proposal. | or nonlisted subscriber information to emergency response agencies responding to calls placed to an E911 service using such information to provide an E911 Service. | omissions in providing its subscriber information to CenturyTel for the database. Missouri law does not provide telecommunications carriers like CenturyTel with any form of immunity from liability. |
| 38. | Should CenturyTel be permitted to limit its liability for so-called “nonregulated” telephone services in connection with 911 services – even where that term is not defined under the Agreement? <u>Should CenturyTel be</u> | 9.8 | It is the obligation of **CLEC to answer, and transmit to the appropriate CenturyTel Selective Router all E911 telephone calls that originate from **CLEC’s End User Customers . | A basic purpose of any interconnection agreement under Sections 251 and 252 of the Telecommunications Act is to establish definitively the rights and obligations of the parties with respect to interconnection. The rights and obligations of the parties under this agreement must therefore be clear and unambiguous to accomplish the purposes of Sections 251 and 252. Century Tel’s proposal undermines these purposes because Century Tel’s reference to “non-regulated services” is not in any | <u>CenturyTel shall have no liability whatsoever to any person arising from its provision of, or failure to provide, E911 to any subscriber to a nonregulated telephone service (e.g., shared tenant service).</u> It is the obligation of **CLEC to answer, <u>respond to, transfer, terminate, dispatch, or arrange to dispatch emergency services or otherwise handle</u> all E911 telephone calls that originate from <u>telephones within</u> **CLEC’s service area. <u>Neither **CLEC nor CenturyTel shall have any responsibility for E911 calls that carry foreign dial tone, whether they originate within or outside of **CLEC service area.</u> | CenturyTel’s proposed language addresses situations where Charter is, for example, selling its services to a nomadic VoIP provider or to a shared tenant provider. In addition, CenturyTel is also concerned that certain EAS traffic or improperly numbered traffic (i.e. “foreign dial tone”) may not be correctly routed to the PSAP, due to no fault of CenturyTel. CenturyTel should not be liable for these 911 routing situations. Charter’s proposed language does not address CenturyTel’s concern and merely restates only part of Charter’s obligations under this agreement. |

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| | <u>liable for incorrectly routed 911 service, when such incorrect routing is not CenturyTel’s fault?</u> | | | way meaningfully defined. This will invite disputes between the parties as to the meaning of this term. This is especially problematic because Century Tel seeks to limit its liability with respect to vital 911 services in connection with its undefined term. The Commission should refuse to inject such uncertainty into a critical aspect of the interconnection agreement between the parties. | | Thus, adoption of CenturyTel’s language is entirely reasonable. |
| 39. | Should CenturyTel be entitled to assess certain additional 911-related fees and assessments upon Charter? | Art. XI, § IV, Pricing | <p>A. Intentionally Left Blank.</p> <p>B. 911 Facilities from the Provider’s owned or leased network to CenturyTel’s Selective Router (if provided by CenturyTel)</p> <p>911 Facilities from Provider network to CenturyTel Selective Router</p> | As to the respective responsibilities of Charter and CenturyTel in the provision of 911 network facilities, Charter is responsible for establishing appropriate trunks and facilities from its network to the CenturyTel selective router serving the Public Safety Answering Points (PSAP) in the relevant service area. CenturyTel, in turn, is responsible for establishing trunks and facilities from its selective router to the appropriate PSAP. Therefore, because that functionality is CenturyTel’s responsibility, CenturyTel may not assess Charter monthly recurring, or nonrecurring, charges for the | <p><u>A. The following trunk charges will be paid to CenturyTel for each E911 PSAP to which the Provider connects.</u></p> <p><u>911 Trunk Charge</u> <u>Monthly Recurring \$85.00 per trunk</u> <u>Nonrecurring Channel (Each)</u> <u>\$170.00 per trunk</u></p> <p>B. 911 Facilities from the Provider’s owned or leased network to CenturyTel’s Selective Router (if provided by CenturyTel)</p> <p>911 Facilities from Provider network to CenturyTel Selective Router</p> <p>Special Access Circuits</p> | CenturyTel agrees with Charter that Charter is responsible for establishing appropriate trunks and facilities from its network to the CenturyTel selective router serving the Public Safety Answering Points (“PSAP”) in the relevant service area. And those are exactly the charges proposed by CenturyTel. The facility charges have been addressed in Issue 33. The only other charges that would apply to Charter are the monthly recurring charges for each trunk that is established by Charter at the CenturyTel selective router for each PSAP served. CenturyTel notes that in Missouri all costs for the trunks and facilities from its selective router to the appropriate PSAP are recovered from the entity operating |

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|------------------|---------------|----------|---|---|--|--|
| | | | Special Access Circuits Cost based rates / (MRC) and (NRC) C. Intentionally Left Blank. | trunks that may be provisioned over such facilities. Furthermore, CenturyTel is not entitled to recover from Charter every cost that may arise in the provision of its 911 service. Existing cost recovery mechanisms allow CenturyTel to recover such costs from the PSAPs, and its own end users, where appropriate. Therefore, Charter should not be required to pay CenturyTel for the miscellaneous charges proposed by CenturyTel. | <u>Per State Access Tariff</u> <u>PSC Mo. No.2 / (MRC) and (NRC)</u> C. <u>Automatic Location Identification</u> <u>Monthly Nonrecurring (ALI) Database</u> <u>Recurring</u> i. <u>Per Article VII 3.4.5 – If **CLEC uses</u> <u>CenturyTel’s E911 gateway</u> <u>No Charge</u> <u>\$ 380.00</u> ii. <u>If **CLEC does not utilize CenturyTel’s E911 Gateway</u> a. <u>Database Administration, per database</u> <u>\$ 380.00</u> <u>\$--</u> b. <u>Database Monthly Nonrecurring</u> <u>Recurring</u> 1) <u>each non-CENTURYTEL subscriber record for which CENTURYTEL will verify via the MSAG</u> <u>.04</u> <u>.35</u> iii. <u>Third Party FRAD</u> | the PSAP. Therefore, no charges to Charter have been proposed for this portion of the 911 network. Charter has already established and utilizes CenturyTel’s E911 Gateway connection. Therefore, none of the additional charges would apply to Charter today. CenturyTel has included charges that may apply if a new CLEC adopted Charter’s agreement. The only additional charge that could apply to Charter is if Charter requests an additional complete copy of the Master Street Address Guide (“MSAG”). The initial MSAG is provided at no charge. In this instance, Charter should pay CenturyTel miscellaneous charges related to the costs arising from CenturyTel’s provision of 911 service in order for CenturyTel to recover its costs of providing such services in Missouri. |

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| <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> |
|-------------------------|----------------------|-----------------|----------------------------------|----------------------------------|---|---|
| | | | | | <u>Connectivity</u> <u>Third Party Frame Relay</u> <u>Access Device (FRAD)</u> <u>Connectivity provides for</u> <u>retrieval of ALI Database</u> <u>Information for wireless and</u> <u>competitive Local Providers</u> <u>using a non-CenturyTel Third</u> <u>Party Database Provider over</u> <u>a Non-Call Associated</u> <u>Signaling (NCAS) solution.</u> <u>1) FRAD Access 63.44</u> <u> --</u> <u>2) Steerable ALI Software</u> <u>71.42 1000.00</u> <u>iv. Selective Routing Port</u> <u>Charges</u> <u>for Connecting Companies</u> <u>1) Selective Router Port</u> <u>Connection,</u> <u>per trunk 47.19</u> <u> 150.00</u> <u>2) CMRS/VOIP Additive, per</u> <u>wireless or nomadic</u> <u>VOIP service trunk</u> <u>82.54 --</u> <u>D. Additional file copy of the</u> <u>MSAG</u> <u>-- \$250.00</u> | |

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|------------------|--|-----------------|-------------------------------------|--|--|---|
| 40. | Should the Pricing Article include Service Order rates and terms? (This issue is related to issue 27, above.) | Art. II, § 2.70 | 2.70 [Intentionally omitted] | <p>Charter agrees that this issue relates directly to Issue 21, and should be decided in tandem with that issue.</p> <p>As explained in Charter’s position statement for Issue 21, neither Party should be permitted to assess charges upon requests from the other Party to fulfill a subscriber’s number porting requests. Such charges are prohibited under the FCC’s cost recovery rule, and amount to a tax on competition, in that they require the competitor to pay such charges to the incumbent for every subscriber that chooses to leave the incumbent and obtain service from the competitor. CenturyTel’s proposed “service order” charges are essentially charges for responding to number port requests from Charter. This is evident by CenturyTel language describing the distinction between “simple” and complex” service orders: the amount of numbers that are ported is the key distinction in CenturyTel’s language. Therefore, these so-called service order charges are nothing more than charges for porting numbers to Charter.</p> | <p>2.70 <u>Initial Service Order</u></p> <p><u>An order submitted by **CLEC to CenturyTel initially ordering a port or other service required by this Agreement.</u></p> <p>[NOTE: This dispute also encompasses whether to include the following language in Article XI (Pricing):]</p> <p>Article XI (Pricing), § III(B):</p> <p><u>Initial Service Order</u></p> <p style="text-align: right;"><u>Simple</u> \$ <u>14.02</u></p> <p style="text-align: right;"><u>Complex</u> \$ <u>65.77</u></p> <p><u>Subsequent Service Order \$ 7.53</u></p> <p><u>Manual Ordering Charge \$ 12.17</u></p> <p><u>“Initial Service Order” (ISO) applies to every Local Service Request (LSR).</u></p> <p><u>A “Simple” ISO charge applies to every LSR submitted that contains 1 – 9 numbers.</u></p> <p><u>A “Complex” ISO charge applies to every LSR submitted that</u></p> | <p>Aspects of this issue relate directly to Issue 27. Thus, Issue 27 and Issue 40 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel.</p> <p>The definition of Initial Service Order (“ISO”) and corresponding rates should be included in the Agreement. Consistent with Issue 27, <i>supra</i>, the Commission should reject Charter’s effort to strike the definition of Initial Service Order from Art. II and the service order charges from the Pricing Article based on a purported inapplicability of ISO charges to porting requests.</p> <p>CenturyTel notes that it has provided all cost support demonstrating the appropriateness of CenturyTel’s rates to Charter. In light of Charter’s failure to question such rates in its Petition, Charter has agreed that such rates are appropriate assuming that the Commission, as it should so assume, concludes that ISOs are applicable in all instances of a service request made by Charter, including, but not limited to, requests to port an end user’s telephone number.</p> |

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| | | | | <p>Such charges amount to a barrier to entry in to the local voice market, and violate basic principles of competitive neutrality surrounding the recovery of costs associated with number porting.</p> <p>Further, CenturyTel’s characterization of Charter’s position with respect to the propriety of these charges is simply not correct. CenturyTel’s statement that Charter’s “failure to question” CenturyTel’s proposed charges somehow constitutes “Charter’s agreement” is absurd. CenturyTel bears the burden of proving that any charges it seeks to impose are lawful, just, reasonable, and consistent with the public’s interest in a vibrant competitive voice market. Therefore, CenturyTel (not Charter) must bear the burden of proof that it’s proposed charges meet those standards.</p> | <p><u>contains in excess of 10 or more numbers.</u></p> <p><u>“Subsequent Service Order” applies to any modification to an existing LSR.</u></p> <p><u>“Manual Ordering Charge” applies in addition to the ISO charge for every LSR that is submitted manually where an electronic interface for such LSR is available.</u></p> | |

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| 41. | How should specific Tariffs be incorporated into the Agreement? (This issue is related to Issue 3.) | <p>Art. II, Sections 2.79, 2.86, 2.89, 2.97, and 2.113</p> <p>Art. III, Sections 30.3.3.9 and 30.3.3.13</p> <p>Art. V, Sections 4.2.1.1, 4.2.1.3, and 4.2.2.3</p> <p>Art. XI, Section</p> | <p><u>Articles I-III – General Terms and Conditions</u></p> <p><u>2.79 IntraLATA Toll Traffic</u></p> <p>Telecommunications traffic between two locations within one LATA where one of the locations lies outside of the CenturyTel Local Calling Area as defined in Section(s) 3 and 4 of CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff, on file with the Commission. Optional EAS Traffic is included in IntraLATA Toll Traffic.</p> <p><u>2.86 Local Calling Area (LCA)</u></p> <p>Local Calling Area (LCA) traffic is traffic originates and terminates in the local exchange area, and any mandatory Extended Area Service (EAS) exchanges, as defined in Section(s) 3 and 4 of CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff, on file</p> | <p>As explained in Charter’s position statement in Issue 3(b), 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, or which purports to incorporate an identified tariff, without specific reference to the applicable sections of that tariff. Broad, overarching statements of incorporation of extraneous documents will inevitably lead to interpretive disputes as to which tariffs are in fact “applicable” in any given circumstance, or which specific sections of an identified tariff are applicable. Such disputes may lead to conflicts between the parties that that can be resolved only with burdensome litigation.</p> <p>CenturyTel’s contention that Charter’s proposal creates ambiguity is simply not correct. In fact, identifying specific sections of a tariff that is incorporated by reference will reduce ambiguity in the contract because it will clearly</p> | <p>ARTICLE II - DEFINITIONS</p> <p>2.79 IntraLATA Toll Traffic Telecommunications traffic between two locations within one LATA where one of the locations lies outside of the CenturyTel Local Calling Area as defined in CenturyTel of Missouri, LLC, PSC No. 1, General and Exchange Tariff, on file with the Missouri Public Service Commission. Optional EAS Traffic is included in IntraLATA Toll Traffic.</p> <p>2.86 Local Calling Area (LCA) Local Calling Area (LCA) traffic is traffic that originates and terminates in the local exchange area, and any mandatory Extended Area Service (EAS) exchanges, as defined in the CenturyTel of Missouri, LLC, PSC No. 1, General and Exchange Tariff, on file with the Missouri Public Service Commission.</p> | <p>CenturyTel notes that this issue relates directly to Issue 3 discussed above. Thus, Issue 3 and Issue 41 should be addressed in tandem and resolved in relation to each other as proposed by CenturyTel.</p> <p>There are two aspects to this issue. First, and contrary to Issue 3 where the Parties agreed that tariffs must be specifically referenced where and as necessary, Charter proposes to modify this otherwise agreed-upon language to state that such tariffs apply only to the extent that “<i>specific rates or terms set forth</i>” in the tariffs are incorporated into the Agreement.</p> <p>Charter’s proposed change should be rejected by the Commission. Charter’s proposal creates ambiguity in instances where a service is offered pursuant to the terms of a tariff as opposed to pursuant to the terms and conditions of the Agreement. Specifically, Charter’s proposal suggests that no tariff sections apply to Charter’s ordering of a service unless specific tariff section references are cited in the Agreement. If a service is ordered pursuant to a tariff by either Party, the tariff’s terms and conditions should apply.</p> |

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| | | I(C) Art. XII, Sec. 2.1.2. 2 | <p>with the Missouri Public Service Commission.</p> <p>2.89 <u>Local Traffic</u></p> <p>For purposes of Article V of this Agreement, Local Traffic is traffic (excluding CMRS traffic) that is originated and terminated within the CenturyTel Local Calling Area, or mandatory Extended Area Service (EAS) area, as defined in Section(s) 3 and 4 of CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff, on file with the Missouri Public Service Commission. Local Traffic does not include optional local calling (i.e., optional rate packages that permit the end-user to choose a Local Calling Area beyond the basic exchange serving area for an additional fee), referred to hereafter as “optional EAS”. Local Traffic includes Information Access Traffic to the extent that the end user and the ISP are physically located in the same CenturyTel Local Calling Area. Local Traffic</p> | <p>establish what portions of these tariffs the parties intend to incorporate by reference. This approach provides greater specificity, and clarity, to the contract, and therefore ensures uniform interpretation of the terms in the future.</p> <p>Moreover, CenturyTel’s statement of the effect of Charter’s proposal is misleading. Charter does not agree with CenturyTel’s statement that “[i]f a service is ordered pursuant to a tariff by either Party, the tariff’s terms and conditions should apply.” The only question is <i>which</i> terms and conditions should apply. CenturyTel would have this Commission believe that it is impossible, or impractical, to identify such specific terms at this point in time. But a review of the existing tariff incorporation references reveals that this task is neither impossible, nor impractical. In fact, it is a task that Charter has already performed and proposed to CenturyTel. Therefore, CenturyTel claims of impossibility are unavailing.</p> <p>Finally, CenturyTel’s claims</p> | <p>2.89 <u>Local Traffic</u></p> <p>For purposes of Article V of this Agreement, Local Traffic is traffic (excluding CMRS traffic) that is originated and terminated within the CenturyTel Local Calling Area, or mandatory Extended Area Service (EAS) area, as defined in the CenturyTel of Missouri, LLC, PSC No. 1, General and Exchange Tariff, on file with the Missouri Public Service Commission. Local Traffic does not include optional local calling (i.e., optional rate packages that permit the end-user to choose a Local Calling Area beyond the basic exchange serving area for an additional fee), referred to hereafter as “optional EAS”. Local Traffic includes Information Access Traffic to the extent that the end user and the ISP are physically located in the same CenturyTel Local Calling Area. Local Traffic includes <u>IP-Enabled Traffic</u> to the extent that the originating end user and the terminating end user are physically located in the same CenturyTel Local Calling Area.</p> | <p>Second, Charter’s proposal to incorporate references to specific sections of an applicable Tariff is problematic and unnecessary, and would introduce potential ambiguity and inconsistencies into the Agreement. CenturyTel agreed to incorporate the specific names of the referenced tariffs as demanded by Charter. However, because the Agreement at issue in this arbitration is one agreement arising out of a multi-state negotiation, CenturyTel expended considerable time researching and confirming the specific names of the tariffs applicable to 14 CenturyTel local exchange carriers located across the three (3) states that are involved. Despite this agreement, Charter now requests that <i>specific section references within such tariffs</i> be incorporated into the Agreement. That request is impractical and should be rejected. CenturyTel cannot be required to once again research its tariff provisions for Charter nor should CenturyTel be required to modify and seek an amendment to the Agreement if, in the future, tariff section numbering changes based on tariff reorganizations and other changes are made. Charter’s proposal ignores the fact that tariff provisions are subject to change independent of</p> |

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|------------------|---------------|----------|---|--|--|---|
| | | | <p>includes Interconnected VoIP Service Traffic to the extent that the originating end user and the terminating end user are physically located in the same CenturyTel Local Calling Area.</p> <p>2.97 <u>“Meet Point Billing (MPB)” or “Meet Point Billing Arrangement”</u></p> <p>Refers to an arrangement whereby two LECs jointly provide the transport element of a Switched Access Service to one of the LEC’s End Office Switches, with each LEC receiving an appropriate share of the transport element revenues as defined in Section(s) 2.7 of CenturyTel of Missouri, LLC, PSC No. 2, Facilities for Intrastate Access, on file with the Missouri Public Service Commission, and in Section 5.2 of CenturyTel Operating Companies Interstate Access Tariff FCC No. 3.</p> <p>2.113(A) <u>Percentage Local Use (PLU)</u></p> <p>A percentage calculated by</p> | <p>that specifically incorporating a tariff section will somehow violate the Filed Rate Doctrine are not compelling. This assertion represents an attempt to obscure the simple and straight forward proposal offered by Charter on this issue. There is no evidence that Charter expects CenturyTel to provide a tariffed service, when so ordered by Charter, to Charter at a rate other than the tariffed rate.</p> <p>Accordingly, and consistent with its position concerning the definition of a tariff (in Issue 3 above), the agreement should include specific language to reflect the incorporation of only those tariff provisions that are specifically and expressly identified in the Agreement.</p> | <p>2.97 <u>“Meet Point Billing (MPB)” or “Meet Point Billing Arrangement”</u></p> <p>Refers to an arrangement whereby two LECs jointly provide the transport element of a Switched Access Service to one of the LEC’s End Office Switches, with each LEC receiving an appropriate share of the transport element revenues as defined in the CenturyTel of Missouri, LLC, PSC Mo. No. 2, Facilities for Intrastate Access, Intrastate Access Service Tariff on file with the Missouri Public Service Commission, PSC Mo. No. 2; and the CenturyTel Operating Companies Interstate Access Tariff No <u>2</u> or 3.</p> <p>2.113(A) <u>Percentage Local Use (PLU)</u></p> <p>A percentage calculated by dividing the number of minutes of Local Traffic by the total number of minutes. The</p> | <p>the process(es) that govern changes or amendments to the interconnection agreement. Thus, such changes to a tariff could render obsolete references to specific tariff sections incorporated into the Agreement, introducing unintended ambiguity into the Agreement.</p> <p>The more efficient manner to incorporate or reference such terms is by referencing the <i>entirety</i> of the stand-alone tariff, not its individual sections. CenturyTel already has agreed to identify the specific tariffs referencing and incorporating the specific tariff in the Agreement. The Commission should adopt CenturyTel’s proposed language.</p> |

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| | | | <p>dividing the number of minutes of Local Traffic by the total number of minutes. The resulting factor is used to determine the portion of Local Traffic minutes exchanged via Local Interconnection Trunks. PLU is developed from the measurement of calls in which the calling and called parties are located within a given Local Calling Area or mandatory EAS area as defined in Section(s) 3 and 4 of CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff, on file with the Missouri Public Service Commission.</p> <p>30.3.3.8 Liability arising under any applicable Tariff specifically identified herein;</p> <p>30.3.3.9 Liability arising under any indemnification provision contained in this Agreement or any separate agreement or in <u>the applicable provisions of the Section(s) (I) of the 911 portion</u> of CenturyTel of Missouri, LLC, PSC No. 10, Wholesale Tariff, on file with</p> | | <p>resulting factor is used to determine the portion of Local Traffic minutes exchanged via Local Interconnection Trunks. PLU is developed from the measurement of calls in which the calling and called parties are located within a given Local Calling Area or mandatory EAS area as defined in the CenturyTel of Missouri, LLC, PSC No. 1, General and Exchange Tariff, on file with the Missouri Public Service Commission.</p> <p>ARTICLE III GENERAL TERMS AND CONDITIONS</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 <u>the 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> | |

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| | | | <p>the Missouri Public Service Commission related to provisioning of 911/E911 services;</p> <p>30.3.3.13 Liability arising under any indemnification provision contained in this Agreement, a separate agreement or in <u>the applicable provisions of the Section(s) (G) of the Directory Services portion of the CenturyTel of Missouri, LLC, PSC No. 10, Wholesale Tariff, on file with the Missouri Public Service Commission related to provisioning of Directory Listing or Directory Assistance Services.</u></p> <p><u>Article V - Interconnection</u></p> <p>4.2.1.1 “Local Traffic,” for purposes of intercarrier compensation, is Telecommunications traffic originated by a End User Customer of one Party in an exchange on that Party’s network and terminated to a End User Customer of the other Party on that other Party’s network located within</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 MO. No. 10, Wholesale Tariff, on file with the Missouri Public Service Commission related to provisioning of Directory Listing or Directory Assistance Services.</u></p> <p>ARTICLE V: INTERCONNECTION AND TRANSPORT AND TERMINATION OF TRAFFIC</p> <p>4.2.1.1 “Local Traffic,” for purposes of intercarrier compensation, is Telecommunications traffic originated by a End User Customer of one Party in an exchange on that Party’s network and terminated to an End User Customer of the other Party on that other Party’s network located within the</p> | |

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| | | | <p>the same exchange or other non-optional extended local calling area associated with the originating customer’s exchange as defined by Sections 3 and 4 CenturyTel of Missouri, LLC, PSC No. 2, General and Local Exchange Tariff. Local Traffic does not include: (1) any ISP-Bound Traffic; (2) traffic that does not originate and terminate within the same CenturyTel local calling area as such local calling area is defined by CenturyTel’s applicable local exchange tariff; (3) Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; (4) optional extended local calling area traffic; (5) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; or, (6) Tandem Transit Traffic.</p> <p>4.2.1.3 Interconnected VoIP Service Traffic originated by a End User Customer of one Party in an exchange on that Party’s</p> | | <p>same exchange or other non-optional extended local calling area associated with the originating customer’s exchange as defined in the <u>CenturyTel of Missouri, LLC, PSC No. 2, General Exchange Tariff</u>. Local Traffic does not include: (1) any ISP-Bound Traffic; (2) traffic that does not originate and terminate within the same CenturyTel local calling area as such local calling area is defined by CenturyTel’s applicable local exchange tariff; (3) Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; (4) optional extended local calling area traffic; (5) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; or, (6) Tandem Transit Traffic.</p> <p><u>4.2.1.3 IP-Enabled Voice Traffic</u> originated by a End User Customer of one Party in an exchange on that Party’s network and terminated to a End User Customer of the other Party on that</p> | |

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| | | | <p>network and terminated to a End User Customer of the other Party on that other Party’s network located within the same exchange or other non-optional extended local calling area associated with the originating customer’s exchange as defined by Sections 3 and 4 CenturyTel of Missouri, LLC, PSC No. 2, General and Local Exchange Tariff CenturyTel’s applicable local exchange tariff shall be included in Local Traffic. IP-Enabled Voice Traffic directed to a terminating End User physically located outside the originating End User’s local calling area will be considered toll traffic and subject to access charges.</p> <p>4.6.4.4.2 Transit of IntraLATA Toll Traffic: A per-minute-of-use rate will be charged to the originating Party, as contained in Section 4.6 of CenturyTel of Missouri, LLC, PSC No. 2, Facilities for Intrastate Access.</p> <p><u>Article XI Pricing</u></p> <p>B. 911 Facilities from</p> | | <p>other Party’s network located within the same exchange or other non-optional extended local calling area associated with the originating customer’s exchange, as defined in CenturyTel of Missouri, LLC, PSC No. 2 General and Local Exchange Tariff on file with the Missouri Public Service Commission shall be included in Local Traffic. IP-Enabled Voice Traffic directed to a terminating End User physically located outside the originating End User’s local calling area will be considered toll traffic and subject to access charges.</p> <p>4.6.4.4.2 Transit of IntraLATA Toll Traffic: A per-minute-of-use rate will be charged to the originating Party, as contained in CenturyTel of Missouri, LLC’s Intrastate Access tariff, PSC Mo. No. 2.</p> <p>ARTICLE XI: PRICING</p> <p>B. 911 Facilities from the Provider’s</p> | |

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| | | | <p>the Provider’s owned or leased network to CenturyTel’s Selective Router (if provided by CenturyTel)</p> <p>911 Facilities from Provider network to CenturyTel Selective Router</p> <p>Special Access Circuits</p> <p>Monthly Recurring</p> <p>Per Facilities For Intrastate Access Tariff, PSC No.2 Section 5.7</p> <p>Nonrecurring</p> <p>For Facilities For Intrastate Access Tariff, PSC No. 2 Section 5.7</p> <p>V. DIRECTORY SERVICES RATES AND CHARGES</p> <p>Directory Listings</p> <p>Tariff Items (e.g., additional listings, foreign listings, enhanced listings) Rates set forth in CenturyTel of MO PSC No. 1 General and Local Exchange Tariff, Section(s) 9.C.1</p> | | <p>owned or leased network to CenturyTel’s Selective Router (if provided by CenturyTel).</p> <p>911 Facilities from Provider network to CenturyTel Selective Router</p> <p>Special Access Circuits</p> <p>Monthly Recurring</p> <p>Per State Access Tariff, Facilities for Intrastate Access Tariff, PSC No. 2,</p> <p>Nonrecurring</p> <p>Per State Access Tariff, Facilities for Intrastate Access Tariff, PSC No. 2,</p> <p>V. DIRECTORY SERVICES RATES AND CHARGES</p> <p>Directory Listings</p> <p>Tariff Items (e.g., additional listings, foreign listings, enhanced listings)</p> <p><u>Pursuant to</u> CenturyTel of Missouri, LLC, PSC Mo. No. 1 General and Local Exchange Tariff</p> | |

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| | | | <p><u>Article XII</u></p> <p>2.1.2.2 <u>Non-Primary or Additional Listings</u>. Where a **CLEC retail End User Customer requires enhanced, foreign or other listings in addition to the Primary Listings to appear in the CenturyTel Directories, CenturyTel will provide such listings pursuant to CenturyTel’s tariffed rates found in Section 5.7 of CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff on file with the Public Service Commission of Missouri.</p> | | <p>ARTICLE XII: DIRECTORY SERVICES</p> <p>2.1.2.2 <u>Non-Primary or Additional Listings</u>. Where a **CLEC retail End User Customer requires enhanced, foreign or other listings in addition to the Primary Listings to appear in the CenturyTel Directories, CenturyTel will provide such listings pursuant to CenturyTel’s tariffed <u>rates and terms</u> found in CenturyTel of Missouri, LLC, PSC No. 1, General and Local Exchange Tariff on file with the Missouri Public Service Commission.</p> | |