

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

**In the Matter of the Petition of Charter
Fiberlink-Missouri, LLC for Arbitration of
An Interconnection Agreement Between
CenturyTel of Missouri, LLC and Charter
Fiberlink-Missouri, LLC**

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Case No. TO-2009-0037

DIRECT TESTIMONY

OF

TIMOTHY J. GATES

ON BEHALF OF CHARTER FIBERLINK- MISSOURI, LLC

September 30, 2008

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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AFFIDAVIT OF TIMOTHY J GATES

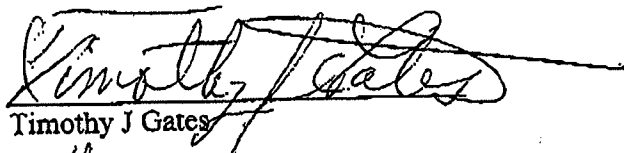
STATE OF COLORADO)
COUNTY OF Douglas) ss.
)

Timothy J. Gates, being first duly sworn on his oath, states:

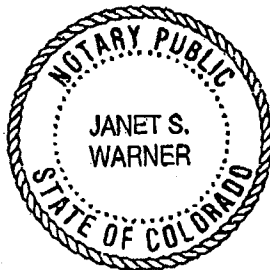
1. My name is Timothy J Gates. I am presently Senior Vice President for QSI Consulting, Inc.

2. Attached hereto and made a part hereof for all purposes is my direct testimony on behalf of Charter Fiberlink-Missouri, LLC.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my personal knowledge, information and belief.


Timothy J Gates

Subscribed and sworn before me this 30th day of September, 2008.



My Comm. Exp. 11-10-2011

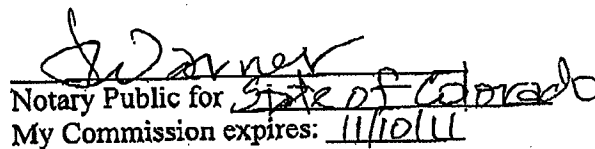

Notary Public for State of Colorado
My Commission expires: 11/10/11

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Exhibits

Exhibit TJG-1: Curriculum Vitae of Timothy J Gates

1 **I. INTRODUCTION**

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

3 A. My name is Timothy J Gates. My business address is QSI Consulting, 819
4 Huntington Drive, Highlands Ranch, Colorado 80126.

5 **Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION**
6 **WITH THE FIRM?**

7 A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in traditional and
8 non-traditional utility industries, econometric analysis and computer-aided
9 modeling. QSI provides consulting services for regulated utilities, competitive
10 providers, government agencies (including public utility commissions, attorneys
11 general and consumer councils) and industry organizations. I currently serve as
12 Senior Vice President.

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
14 **WORK EXPERIENCE.**

15 A. I received a Bachelor of Science degree from Oregon State University and a
16 Master of Management degree, with an emphasis in Finance and Quantitative
17 Methods, from Willamette University's Atkinson Graduate School of
18 Management. Since I received my Masters, I have taken additional graduate-level
19 courses in statistics and econometrics. I have also attended numerous courses and
20 seminars specific to the telecommunications industry, including both the NARUC
21 Annual and NARUC Advanced Regulatory Studies Programs.

1 Prior to joining QSI, I was a Senior Executive Staff Member at MCI WorldCom,
2 Inc. ("MWCOM"). I was employed by MCI and/or MWCOM for 15 years in
3 various public policy positions. While at MWCOM I managed various functions,
4 including tariffing, economic and financial analysis, competitive analysis, witness
5 training and MWCOM's use of external consultants. Prior to joining MWCOM, I
6 was employed as a Telephone Rate Analyst in the Engineering Division at the
7 Texas Public Utility Commission and earlier as an Economic Analyst at the
8 Oregon Public Utility Commission. Exhibit TJG-1 contains a complete summary
9 of my work experience and education.

10 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE MISSOURI**
11 **PUBLIC SERVICE COMMISSION ("COMMISSION")?**

12 A. No. I have testified more than 200 times in 44 other states and Puerto Rico, and
13 filed comments with the FCC on various public policy issues ranging from
14 costing, pricing, local entry and universal service to strategic planning, merger
15 and network issues. See attached Exhibit TJG-1.

16 **Q. DO YOU HAVE EXPERIENCE WITH THE ISSUES IN THIS**
17 **PROCEEDING?**

18 A. Yes. I have participated in dozens of arbitrations since the 1996 amendments to
19 the Communications Act of 1934 ("Act") were enacted. I am knowledgeable
20 about the issues addressed in this testimony arising from the obligations imposed
21 by federal and state law.

22 **Q. ON WHOSE BEHALF ARE YOU FILING THIS DIRECT TESTIMONY?**

1 A. I am filing this testimony on behalf of Charter Fiberlink-Missouri, LLC
2 ("Charter").

3 **II. SUMMARY OF ISSUES TO BE ADDRESSED BY WITNESS**

4
5 **Q. PLEASE IDENTIFY THE ISSUES YOU WILL ADDRESS IN YOUR**
6 **TESTIMONY.**

7 A. My testimony addresses the following issues: Issues 2 and 24 (Network Interface
8 Device Issues), Issue 9 (Penalties Related to Forecasts), Issue 11 (Incorporation of
9 the Service Guide), Issue 16 (Technology Upgrades), Issue 27 and 40 (Porting
10 Charges) and Issue 32 (Directory Assistance Obligations). I also address the
11 various interconnection and traffic exchange issues that are presented in Issues 18
12 through 23.

13 **Q. PLEASE EXPLAIN HOW CHARTER WILL ADDRESS THE OTHER**
14 **ISSUES IN DISPUTE IN THIS PROCEEDING.**

15 A. Yes, of course. There are five other witnesses offering testimony on behalf of
16 Charter. First, Charter employee Mr. Saconna Blair provides testimony on Issues
17 2 and 24, the two issues that raise the question of access to the Network Interface
18 Device, or "NID." In conjunction with Mr. Blair's testimony, and as noted above,
19 I am also offering testimony on the NID access issue.
20 Second, Charter employee Mr. Robert Gyori offers testimony on Issues 1 and 9,
21 which raise the question of the proper definition of traffic on Charter's network
22 (Issue 1), and whether Charter should be required to pay penalties for forecasts of
23 facilities (Issue 9).

1 Third, Charter employee Ms. Peggy Giaminetti offers testimony on several billing
2 and termination issues (4, 6, 8, and 14) arising out of the parties' disputes over
3 general terms and conditions in the interconnection agreement.

4 Fourth, Charter employee Ms. Amy Hankins offers testimony on several directory
5 and OSS issues (28, 30, and 32) in dispute between the parties.

6 Finally, my colleague Mr. Webber, also from QSI, provides testimony on certain
7 general terms and conditions issues (3, 13, 14, 29 and 41), as well as several 911
8 issues (33 and 39). Also, I understand from Charter's attorneys that the parties
9 have agreed to address certain disputed issues in the briefs, rather than filing
10 testimony on such issues.

11
12
13 **III. ISSUES**

14
15 **Issue 2** – How should the Agreement define the term Network Interface Device or
16 “NID”?

17
18 **Issue 24** – Should Charter have access to the customer side of the Network Interface
19 Device (“NID”) without having to compensate CenturyTel for such access?
20

21 **Q. WHY HAVE YOU IDENTIFIED TWO ISSUES ABOVE?**

22 A. Issue 2 and Issue 24 deal with the parties' responsibilities associated with the
23 demarcation between the carrier's network and the customer's inside wiring. That
24 demarcation is generally identified as a point within the small gray box placed on
25 the side of single family dwelling that is referred to as the Network Interface
26 Device or “NID.” Rather than repeat much of the testimony in two places it is
27 more efficient to address them together.

1 **Q. PLEASE BRIEFLY INTRODUCE THIS ISSUE AND THE DISPUTE**
2 **BETWEEN THE PARTIES.**

3 A. The NID will be defined below, but its definition and the parties' respective
4 responsibilities with respect to the NID are important. In short, Charter wants to
5 rely upon the FCC's definition of the NID and maintains that it should have
6 access to the customer side of the NID for purposes of interconnection.
7 CenturyTel's language is not consistent with the FCC definition and attempts to
8 control Charter's access to the customer's inside wiring on the customer's side of
9 the NID.

10 **Q. PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE FOR ISSUE**
11 **2.**

12 A. Charter's proposed language for Issue 2 is as follows:

13 2.103 **Network Interface Device (NID)**

14 A means of interconnecting Inside Wiring to CenturyTel's distribution plant, such as a
15 cross-connect device used for that purpose. The NID houses the protector.¹
16
17

18 **Q. PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE FOR ISSUE**
19 **24.**

20 A. Charter's proposed language for Issue 24 is as follows:

21 3.3 Subject to the provisions of this Section 3.0 and its subsections, CenturyTel shall
22 provide access to the NID under the following terms and conditions. Rates and charges
23 applicable to NIDs are set forth in Article XI (Pricing), and such rates and charges shall
24 apply.
25

26 3.4 Maintenance and control of the End User Customer's inside wiring (*i.e., on the*
27 **End User Customer's side of the NID**) is under the control of the End User Customer.

¹ See Parties' Joint Disputed Issues List, dated August 15, 2008 in this proceeding. All proposed language that is referenced or quoted in this testimony will be taken from this joint document.

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.

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 Charter connect to either side of the NID unless the CenturyTel network is first disconnected from the NID as set forth in this Article.

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.

**Q. PLEASE PROVIDE CENTURYTEL'S PROPOSED LANGUAGE FOR
ISSUE 2.**

A. CenturyTel's proposed language for Issue 2 is as follows:

2.103 Network Interface Device (NID)

A means of interconnecting Inside Wiring to CenturyTel's distribution plant, such as a cross-connect device used for that purpose. The NID houses the protector, the point from which the Point of Demarcation is determined between the loop (inclusive of the NID) and the End User Customer's Inside Wire pursuant to 47 CFR 68.105.

**Q. PLEASE PROVIDE CENTURYTEL'S PROPOSED LANGUAGE FOR
ISSUE 24.**

A. CenturyTel's proposed language for Issue 24 is as follows:

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 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.

3.4 Except in those multi-unit tenant properties where CenturyTel owns and maintains control over inside wire within a building, maintenance 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.

3.5 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. Charter may not access the NID except in accordance with these terms. 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 access 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 use either side of the NID unless the CenturyTel network is first disconnected from the NID as set forth in this Article.

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.

Q. WHAT IS A "NETWORK INTERFACE DEVICE?"

A. As Charter witness Mr. Saconna Blair explains in his direct testimony, a NID is typically a small gray box, about the size of a shoe-box, placed on the side of single family dwellings. There is a picture of a typical residential NID in Mr. Blair's testimony.

Q. ABOVE YOU REFERRED TO THE FCC'S DEFINITION OF THE NID. PLEASE PROVIDE THAT DEFINITION.

A. The FCC has defined the NID in several orders. As an example, in 1999 the FCC stated, "Specifically, we define the NID to include any means of interconnection

1 of customer premises wiring to the incumbent LEC's distribution plant, such as a
2 cross-connect device used for that purpose."²

3
4 **Q. ARE THERE NIDS FOR OTHER THAN SINGLE FAMILY**
5 **DWELLINGS?**

6 A. Yes. Different kinds of NIDs might be used in different situations. For example,
7 a large apartment building might have a large NID that terminates dozens of lines,
8 located in a "telephone closet" in the basement. Generally speaking it is not
9 necessary, for this proceeding, to distinguish NID arrangements for single family
10 homes, and those for multiple dwelling units (apartment buildings).

11 **Q. IS THE NID PART OF THE "LOCAL LOOP"?**

12 A. Part is, and part is not. Traditionally the phrase "local loop" refers to the pair of
13 copper wires that runs from a telephone company's central office to the
14 subscriber's premises. In 1984 the Federal Communications Commission
15 ("FCC") adopted a rule establishing a "demarcation point" marking the end of
16 wiring under control of the telephone company and the beginning of wiring under
17 the control of the property owner or subscriber. The FCC's rules have evolved
18 over the years, but the basic technical concept of a demarcation point (sometimes
19 called the "demarc") has remained unchanged. In the context of your question,
20 the demarc is the space inside the NID housing between the network side and the
21 customer side of the NID equipment. Thus, the network side of the NID is part of

² See, for instance, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report And Order And Fourth Further Notice Of Proposed Rulemaking, 15 FCC Rcd 3696,(1999); ("UNE Remand Order"), at ¶233.

1 the local loop, but the customer side of the NID is part of the "inside wiring"
2 controlled by the property owner or subscriber.

3 **Q. DOES CENTURYTEL PERMIT OTHER CARRIERS TO ACCESS THE**
4 **CUSTOMER SIDE OF THE NID?**

5 A. Although CenturyTel has not presented its position formally in this case, based on
6 information and belief, and recalling CenturyTel's position in other states (e.g.,
7 Wisconsin), it appears that CenturyTel is unwilling to let another
8 telecommunications carrier access the customer side of the NID unless that other
9 telecommunications carrier compensates CenturyTel.

10 **Q. WHAT IS THE CONSEQUENCE OF CENTURYTEL'S POSITION?**

11 A. From an engineering perspective, were CenturyTel to deny Charter access to the
12 customer side of the NID, Charter would have to install its own interface
13 equipment at each customer location where Charter replaces CenturyTel as the
14 service provider. Explained differently, Charter would have to terminate the cord
15 running from its MTA to another piece of equipment connected to the customer's
16 inside wire. If Charter chose to install its own NID, the premises owner thus
17 would face the prospect of additional equipment on his property to serve the very
18 same function as the customer side of the CenturyTel NID. This is not the most
19 efficient use of telecommunications plant resources. Indeed, if CenturyTel's
20 position was adopted, the consumer could have many different NIDs on his or her
21 premise depending upon how many different carriers he or she used over the
22 years. The most efficient result would be to use the existing NID.

1 **Q. SHOULD CHARTER COMPENSATE CENTURYTEL FOR ACCESSING**
2 **THE CUSTOMER SIDE OF THE NID?**

3 A. No. Charter should not be required to compensate CenturyTel for accessing the
4 customer side of the NID. To my knowledge, CenturyTel incurs no costs or
5 technical obligations when Charter unplugs the short cross connect between
6 network side and the customer side of the NID. In fact, once the end user has
7 been transferred to Charter, CenturyTel no longer has any engineering and service
8 obligations to that customer. Further, it is extremely rare that ILECs, like
9 CenturyTel, actually remove a NID from a customer premise after the customer
10 has been ported to a competitor. Instead, the ILEC simply leaves the NID
11 attached to the former subscriber's dwelling. Similarly, it is very uncommon for
12 an ILEC to remove a multi-line NID from a multiple dwelling unit (such as an
13 apartment house). Thus, when Charter accesses the customer side of the NID, I
14 am not aware of any engineering activities that CenturyTel experiences which
15 would justify a NID charge on Charter.

16 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION ON**
17 **THIS ISSUE?**

18 A. I recommend that the Commission adopt Charter's proposed language on this
19 issue as it is consistent with the FCC rules and would encourage competition.
20 CenturyTel's position is inconsistent with the development of competition
21 because it imposes inefficiencies and additional costs on competitors.

Issue 9 – Should Charter be required to pay a penalty charge for facilities that it forecasts, but which CenturyTel determines that Charter has not fully utilized?

Q. PLEASE INTRODUCE THE DISPUTE OVER THIS CHARGE.

A. CenturyTel proposes to charge Charter an unspecified (to be determined according to CenturyTel) charge “for stranded interconnection plant/facilities” that are not used by Charter within six months of the order of such plant/facilities. Charter disputes the proposal as vague, unreasonable and inconsistent with the interconnection responsibilities of the parties.

Q. PLEASE PROVIDE THE LANGUAGE PROPOSED BY CENTURYTEL.

A. The language proposed by CenturyTel is as follows:

11.6 CenturyTel reserves the right to assess **CLEC a TBD charge for stranded interconnection plant/facility capacity forecast by **CLEC but not used by **CLEC within six (6) months after a forecast period to the extent that CenturyTel built the plant/facility based on **CLEC’s order.

[NOTE: This dispute also encompasses whether to include the following language in Article XI (Pricing):]

Article XI (Pricing), § I(E):

II(E)

I(E). Stranded Interconnection plant/facility per Article III, Section 11.6:

“TBD”

Q. PLEASE ADDRESS YOUR CONCERNS WITH THIS CENTURYTEL PROPOSAL.

A. There are several reasons why such a charge is inappropriate. First, the proposal implicitly and incorrectly assumes that “forecasts” are somehow supposed to be completely accurate. Forecasts are made under imperfect conditions with the best available information, and, as such, they are never 100 percent accurate. Second,

1 there is no support in the Act or State Law that would support such a charge.
2 Third, there is no need to “penalize” Charter or any CLEC for forecast errors
3 because Charter has every incentive to get the forecasts as close to correct as
4 possible. Finally, the FCC and the states have recognized the problems with
5 “TBD” rates, especially as they are applied to dependent competitors. TBD rates
6 cannot be deemed just and reasonable by a state commission because they are
7 undefined. As such, the incumbent has the incentive and ability to charge
8 excessive rates. Indeed, given the opportunity to disadvantage a competitor, the
9 incentives are great and the risk to the public interest is significant. These flaws
10 with CenturyTel’s proposal are discussed below.

11 **Q. PLEASE ADDRESS YOUR FIRST CONCERN REGARDING THE**
12 **INHERENT NATURE OF FORECASTS.**

13 A. A forecast is an estimate of future demand based on examining and analyzing
14 available information. While statistical forecasting is a science the underlying
15 data and assumptions are anything but certain. Demand forecasting involves
16 formal and informal techniques, but the results are still not guaranteed. The result
17 is an estimate based on best available information.

18 **Q. IS IT POSSIBLE THAT A FORECAST WILL RESULT IN AN**
19 **UNDERESTIMATE AS OPPOSED TO AN OVERESTIMATE OF**
20 **NEEDED FACILITIES?**

21 A. Yes. CenturyTel proposes to penalize Charter if it overestimates demand
22 resulting in unused facilities, but the proposed language does not provide Charter
23 with a “bonus” if they underestimate demand and have to order even more

1 facilities. It is possible, depending upon the area and the vagaries of the market,
2 that the direction and magnitude of the forecasting errors³ (which will occur by
3 definition) will not meet expectations.

4 **Q. PLEASE ADDRESS YOUR SECOND CONCERN REGARDING**
5 **SUPPORT FOR SUCH A PENALTY.**

6 A. The Act requires parties to work together in planning interconnection facilities,
7 but there is no "penalty" language in the Act that allows an incumbent to penalize
8 a competitor if demand does not materialize as expected. The FCC rules with
9 respect to interconnection address technical feasibility, quality, rates, terms and
10 conditions and discrimination, but do not provide for penalties in the
11 circumstances proposed by CenturyTel.⁴

12 Once the Commission orders the terms of the ICA, the parties work cooperatively
13 to establish the interconnection and exchange of traffic on the rates, terms and
14 conditions approved by the Commission. This will include adjusting forecasts
15 and grooming facilities to meet actual demand. Both CenturyTel and Charter will
16 need to adjust deployed facilities.

17 **Q. PLEASE ADDRESS YOUR THIRD POINT REGARDING CHARTER'S**
18 **INCENTIVES TO DO THE BEST POSSIBLE JOB IN FORECASTING**
19 **DEMAND.**

20 A. Carriers must have sufficient facilities in place to ensure that traffic flows in an
21 uninterrupted manner. No provider wants its customers to have blocked calls or

³ By "forecasting error" I am referring to the difference between the expected demand based on the forecast and the realized demand, and not the deviation of the forecast quantity from the forecast.

⁴ See, for instance 47 CFR §51.305 Interconnection.

1 poor quality calls. Quality of service is important if Charter is to attract and retain
2 its customer base. On the other hand, carriers to not want to place too much
3 equipment if it will sit and be unused. This is the dilemma that traffic engineers
4 deal with on a daily basis.

5 This need to maximize efficiencies in the network is what controls profitability
6 and quality of service on the Charter network. These fundamental metrics, which
7 are carefully monitored by the managers and shareholders, are what control
8 Charter's business activities. Indeed, they even control the facilities that Charter
9 forecasts for purposes of interconnection with CenturyTel. Even if a penalty were
10 appropriate – which it is not – it would not modify Charter's behavior as
11 CenturyTel suggests.

12 **Q. PLEASE ADDRESS YOUR FINAL CONCERN ABOUT “TBD” RATES.**

13 A. CenturyTel should not be allowed to propose TBD rates. The Commission cannot
14 approve a rate as just and reasonable without understanding the basis of that rate.
15 This is especially true in an interconnection situation where the Act has
16 recognized the perverse incentives of the incumbent as it relates to the
17 relationship with new entrants. For instance, at paragraph 15 of the *Local*
18 *Competition Order*⁵ the FCC stated:

19 Congress recognized that, because of the incumbent LEC's
20 incentives and superior bargaining power, its negotiations with
21 new entrants over the terms of such agreements would be quite
22 different from typical commercial negotiations. As distinct from
23 bilateral commercial negotiation, the new entrant comes to the

⁵ *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, 11 FCC Rcd. 15,499, ¶ 176 (rel. Aug 8, 1996) (“Local Competition Order”).

1 table with little or nothing the incumbent LEC needs or wants.
2 The statute addresses this problem by creating an arbitration
3 proceeding in which the new entrant may assert certain rights,
4 including that the incumbent's prices for unbundled network
5 elements must be "just, reasonable and nondiscriminatory."
6

7 It would be inconsistent with the Act and the FCC orders implementing the Act to
8 allow CenturyTel to impose some unspecified penalty on dependent competitors
9 for some unspecified situation in which Charter's forecasts do not match actual
10 demand. CenturyTel's forecasts suffer from this same frailty, but that is not
11 intentional or unexpected – it is just the nature of forecasting.

12 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION ON**
13 **THIS ISSUE?**

14 A. I recommend that the Commission reject CenturyTel's proposal for unspecified
15 penalties. There is no need for such penalties as all carriers have sufficient
16 incentives to maximize efficiencies which include the deployment of facilities for
17 the exchange of traffic. CenturyTel has provided no support for this type of
18 penalty because there is none. Finally, CenturyTel should not be allowed to
19 impose some unspecified penalty for some unspecified error in forecasting as that
20 would not be good public policy given CenturyTel's position as the incumbent.

1 **Issue 11** – Should CenturyTel be allowed to incorporate its Service Guide as a means of
2 imposing certain process requirements upon Charter, even though Charter has no
3 role in developing the process and procedural terms in the Service Guide?
4

5 **Q. PLEASE INTRODUCE THE DISPUTE OVER THE CENTURYTEL**
6 **SERVICE GUIDE AND ITS APPLICATION IN THE**
7 **INTERCONNECTION AGREEMENT.**

8 A. CenturyTel's Service Guide is an internal document developed by CenturyTel to
9 describe and document certain processes unique to CenturyTel. CenturyTel
10 describes the Service Guide, in part, as follows: "The CenturyTel Service Guide
11 ("Guide") is a handbook that contains CenturyTel's operating procedures for service
12 ordering, provisioning, billing, maintenance, trouble reporting and repair for wholesale
13 services." CenturyTel proposes to reference the Service Guide as a controlling
14 document in numerous places within the interconnection agreement ("ICA").
15 Charter opposes any reference to the Service Guide because it is subject to change
16 by CenturyTel without any oversight by the Commission or meaningful input
17 from Charter. Charter's business demands the certainty of a specific ICA that is
18 not subject to unilateral changes. The CenturyTel Service Guide should be used
19 as a reference only, and should not be contractually binding upon Charter.

20 **Q. HOW DOES CHARTER'S POSITION DIFFER FROM CENTURYTEL'S**
21 **POSITION?**

22 A. CenturyTel proposes that it should be allowed to implement certain practices and
23 procedures by incorporating its Service Guide into the Agreement. Further
24 CenturyTel insists that these Service Guide terms must be contractually binding
25 upon Charter. Under CenturyTel's proposal, CenturyTel would be permitted to

1 unilaterally modify the contractual obligations of either Party. In addition,
2 CenturyTel claims that Charter would receive notice of all Service Guide changes,
3 and have the right to suspend any changes to the Service Guide for no longer than
4 60 days if Charter believes such changes would materially and adversely impact
5 Charter's business.

6 **Q. WHAT IS CHARTER'S CONCERN WITH CENTURYTEL'S**
7 **PROPOSAL?**

8 A. Charter's concern with CenturyTel's proposal is that CenturyTel could
9 unilaterally modify the terms of the agreement simply by modifying the
10 CenturyTel Service Guide. Any modifications to the Service Guide would then
11 be contractually binding upon Charter, even though Charter would have no role in
12 developing such changes. Because, in the end, the CenturyTel Service Guide is
13 drafted by CenturyTel alone, it represents the interests of CenturyTel and does not
14 need to reflect the interests of Charter. In addition, from a contract administration
15 perspective, it is unreasonable to allow one party to unilaterally modify a binding
16 contract. As explained in Ms. Giaminetti's testimony, Charter needs certainty and
17 reliability in order to plan and manage its business affairs. As such, CenturyTel
18 should not be permitted to contractually bind Charter to a document that can be
19 unilaterally altered on an ongoing basis.

20 **Q. WHAT POTENTIAL PROBLEMS DO YOU FORESEE IF**
21 **CENTURYTEL'S PROPOSAL WERE ADOPTED?**

22 A. The purpose of entering into a contract is to bind the parties to the precise terms
23 set forth in that contract, unless the parties have *mutually* agreed otherwise.

1 Contract language in a Commission approved interconnection agreement allows
2 the Commission to review the terms, decide disputed issues on the merits, and
3 approve changes before they are made to avoid disruption that may occur without
4 Commission oversight. The alternative, *i.e.*, a lack of contract language, leaves
5 Charter in a position in which it will likely be forced to approach the Commission
6 in crisis mode, after it is being faced with adverse consequences that impact its
7 End User Customers, perhaps requesting expedited relief.⁶ It simply makes more
8 sense to allow the Commission to consider the issues in an orderly manner
9 through ICA arbitration, as envisioned by Section 252.

10 CenturyTel's proposal, on the other hand, which would incorporate into the ICA a
11 unilaterally created document, undermines this rationale by modifying terms and
12 conditions of the Agreement that were not mutually agreed upon, or even
13 contemplated when the Agreement was entered into, by the Parties. Generally
14 speaking, it would be patently unfair and unreasonable to allow one Party to a
15 contract to have the right to modify contractual obligations of a document that
16 was unilaterally prepared by only one Party, without the input of the other party,
17 or the oversight or review of a state Commission.

18 **Q. WHY DOES CHARTER BELIEVE THAT THE CENTURYTEL SERVICE**
19 **GUIDE IS NOT REVIEWED BY A STATE COMMISSION?**

20 A. In response to Charter's Data Request No. 13, CenturyTel admitted that the
21 Service Guide is not reviewed, or approved, by the Commission.

⁶ This assumes resources are available to challenge individual issues on a piece-meal basis in every state affected. If that is not the case, CenturyTel may gain an unjust or anticompetitive advantage simply due to lack of resources rather than merit.

1 **Q. IF CENTURYTEL SERVICE GUIDE CHANGES ARE MADE WITHOUT**
2 **THE CLEC'S CONSENT, AND WITHOUT REVIEW BY A STATE**
3 **COMMISSION, IS THAT PROBLEMATIC?**

4 A. Yes. I just explained why changes to a service guide that will be binding on the
5 CLEC must be addressed in the context of the ICA amendment process. As you
6 know, under federal law the state commissions have the authority (indeed the
7 responsibility) to enforce, arbitrate, and approve all interconnection agreements.
8 If one party to an agreement is making unilateral changes to a state-approved
9 agreement, without that state commission's knowledge or oversight, the potential
10 for harm to the other party increases significantly. In addition, it raises real
11 questions concerning whether the modifications to the agreement should be
12 reviewed, or approved, as is required by Section 252 of all other interconnection
13 agreement amendments.

14 **Q. CENTURYTEL CLAIMS THAT CHARTER WILL RECEIVE NOTICE**
15 **OF ALL CHANGES. DOES THAT CLAIM ASSUAGE YOUR**
16 **CONCERNS?**

17 A. No. Notices do not resolve the unilateral nature of the CenturyTel process.
18 CenturyTel's proposal to provide Charter with notice of any changes to the
19 Service Guide is wholly inadequate. This is due in part to the fact that, in
20 Charter's experience, such notices are not sufficiently detailed. In fact, it appears
21 to me that the notices that CenturyTel provides when changes occur to the Service
22 Guide are simply high level summaries that provide nothing more than the name
23 of the section that was affected by a change and the page(s) where such

1 change was made. And unless Charter has a copy of the previous Service Guide
2 on hand, it has no way of knowing for certain what was changed on those pages
3 as CenturyTel's changes to the Service Guide do not appear in redline nor are
4 they otherwise marked so that Charter can readily identify exactly what changes
5 were made. In other words, Charter would be required to analyze the prior
6 version of the Service Guide and compare it line-by-line and word-by-word in
7 order to identify the changes that were made. As such, the notices that
8 CenturyTel posts on its website are insufficient.

9 **Q. DOES CHARTER HAVE ANY CONCERNS WITH THE "VETO"**
10 **RIGHTS IN CENTURYTEL'S PROPOSAL?**

11 A. Yes. With respect to CenturyTel's proposal to provide Charter with "veto" rights
12 to suspend for changes to the Service Guide changes that materially and adversely
13 impact Charter's business, Charter has absolutely no reason to believe that this
14 proposal will be effective upon implementation. Indeed, when Charter's counsel
15 asked CenturyTel, in Charter's Data Request No. 8, to identify those changes to
16 the Service Guide, CenturyTel was unable to point to a single modification to the
17 Service Guide that was offered by a CLEC.

18 **Q. DOES CHARTER'S PROPOSAL PROHIBIT CENTURYTEL FROM**
19 **PUBLISHING A SERVICE GUIDE FOR USE WITH CHARTER, OR**
20 **OTHER LECS?**

21 A. No. Charter's proposal is in no way intended to prohibit CenturyTel from
22 publishing its Service Guide for use with Charter, or any other LEC.
23 CenturyTel's publication of its Service Guide should be based on whether it

1 determines that it is operationally efficient to do so. In my experience and as
2 practical matter, it is fairly common in the industry for an operational procedures
3 document such as the CenturyTel Service Guide to be written and provided to
4 other LECs in order to facilitate the business dealings between the parties by
5 informally documenting certain business processes. This document is not,
6 however, a contract between the Parties and therefore does not contractually bind
7 either party. Rather, it is simply a guide that can be referenced to facilitate the
8 conduct of business between the Parties.

9 **Q. HOW WOULD CHARTER'S PROPOSAL AVOID THESE PROBLEMS?**

10 A. Under Charter's proposal, CenturyTel would certainly be permitted to publish and
11 provide Charter with a copy of its Service Guide provided that it is clearly
12 understood that the CenturyTel Service Guide is not a binding component of the
13 Parties' Agreement. As I explained earlier in my testimony, allowing CenturyTel
14 to contractually bind Charter to a unilaterally created document that is subject to
15 modification on an ongoing basis would be patently unfair and contrary to well-
16 established principles of contract formation. Thus, while Charter is not opposed
17 to the notion of using the CenturyTel Service Guide solely for reference purposes,
18 it is strongly opposed to incorporating the Service Guide into the Agreement and
19 thereby allowing its terms to be contractually binding upon Charter.

20 **Q. IS CHARTER ARGUING THAT THE COMMISSION SHOULD FIND**
21 **THAT CENTURYTEL'S SERVICE GUIDE IS FLAWED?**

22 A. No. Although the Service Guide has weaknesses, the Commission does not have
23 to find that the Service Guide is "bad" or "broken" to determine the disputed issue

1 in Charter's favor. The Commission simply has to recognize that interconnection
2 agreement terms may vary and, when issues warrant arbitration and inclusion of
3 language in the contract, the resulting publicly available terms govern. The issue
4 then becomes whether each arbitrated issue, on its own merits, warrants inclusion
5 in the contract, and if so, whether Charter's or CenturyTel's proposed language
6 better fits the bill.

7 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION ON**
8 **THIS ISSUE?**

9 A. It is Charter's position that language in the filed and approved ICA is critical so
10 that Charter has certainty to plan and conduct its business, subject to ICA
11 amendment when mutually agreeable modifications or changes in law occur, and
12 so that other CLECs may opt-in or negotiate similar terms consistent with Section
13 252 of the Act and CenturyTel's nondiscrimination obligation.⁷ CenturyTel, on
14 the other hand, proposes to exclude language on these issues from the ICA and
15 relegate them to a forum in which it has much more control and there is much less
16 Commission oversight – *i.e.*, Service Guide. I recommend that the Commission
17 reject CenturyTel's language that refers to its Service Guide. The references
18 insert significant uncertainty for Charter and permit untenable control of
19 contractual obligations by one party.

⁷ Although the FCC eliminated the pick-and-choose rule in favor of the all-or-nothing rule, when it did so, the FCC clearly stated that doing so did not limit the nondiscrimination provisions of the Act, which remain available to protect CLECs. See Section Report and Order, *In re. Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (Rel. July 13, 2004), at ¶¶20-23.

1 **Issue 16** – Should both Parties be allowed to modify, and upgrade, their networks; and
2 should the other Party be responsible for assuming the costs of such network upgrades or
3 modifications?
4

5 **Q. PLEASE INTRODUCE THIS ISSUE.**

6 A. This issue addresses the rights and responsibilities of the Parties with respect to
7 their own networks. Specifically, providers routinely upgrade, groom and/or
8 improve their networks consistent with their business plans and available capital.
9 The dispute here is whether one party can force the other party to accommodate –
10 through additional activities, expenses or investment – the network changes of the
11 other party. This dispute should be resolved such that both parties have similar
12 responsibilities.

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

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

16 **47. TECHNOLOGY UPGRADES**

17
18 Notwithstanding any other provision of this Agreement, **each Party** shall have the right
19 to deploy, upgrade, migrate and maintain its network at its discretion. Nothing in this
20 Agreement shall limit CenturyTel's ability to modify its network through the
21 incorporation of new equipment or software or otherwise. ****CLEC shall be solely**
22 **responsible for the cost and activities associated with accommodating such changes in its**
23 **own network. Nothing in this Agreement shall limit **CLEC's ability to modify its**
24 **network through the incorporation of new equipment or software or otherwise.**
25 **CenturyTel shall be solely responsible for the cost and activities associated with**
26 **accommodating such changes in its own network.** Notwithstanding the foregoing,
27 both Parties have the duty not to install network features, functions, or capabilities that do
28 not comply with the guidelines and standards established pursuant to Section 255 or 256
29 of the Act.
30

31 **Q. PLEASE PROVIDE CENTURYTEL'S PROPOSED LANGUAGE ON THIS**
32 **ISSUE.**

1 A. Based on the jointly provided Disputed Points List, CenturyTel's proposed
2 language is as follows:

3 **47. TECHNOLOGY UPGRADES**

4 Notwithstanding any other provision of this Agreement, CenturyTel shall have the right
5 to deploy, upgrade, migrate and maintain its network at its discretion. Nothing in this
6 Agreement shall limit CenturyTel's ability to modify its network through the
7 incorporation of new equipment or software or otherwise. ****CLEC** shall be solely
8 responsible for the cost and activities associated with accommodating such changes in its
9 own network. Notwithstanding the foregoing, both Parties have the duty not to install
10 network features, functions, or capabilities that do not comply with the guidelines and
11 standards established pursuant to Section 255 or 256 of the Act.
12

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

14 A. CenturyTel has proposed language stating that CenturyTel has the right "to
15 deploy, upgrade, migrate and maintain its network at its discretion." Their
16 proposed language further states that **"**CLEC** shall be solely responsible for the
17 cost and activities associated with accommodating such changes in its own
18 network." **Both** Parties should be allowed to modify and upgrade their networks
19 and each party is solely responsible for accommodating changes to its network
20 that are due to the other Party's modification to its network.

21 **Q. IT APPEARS CHARTER'S CONCERN IS THAT THE OBLIGATION IS**
22 **NOT SYMMETRICAL. IS THAT CORRECT?**

23 A. Yes. It is really that simple. Both CenturyTel and Charter should have the right
24 to deploy, upgrade, migrate and maintain their respective networks as required to
25 meet their business objectives and to conform to legal requirements. In other
26 words, there should not be language in the interconnection agreement that would
27 directly or indirectly prohibit one party from undertaking any plan or program to

1 implement modifications to its network. While this may not have been the intent
2 of CenturyTel's language, it is important to clarify the impact of the language.

3 **Q. DOESN'T CHARTER HAVE TO MAKE SURE THAT IT CAN**
4 **EXCHANGE TRAFFIC WITH CENTURYTEL AND OTHER**
5 **CARRIERS?**

6 A. Yes. Both carriers have an obligation to exchange traffic and that requires some
7 joint planning of the interconnection facilities. After all, there must be sufficient
8 capacity on both sides of the POI so that blocking or other technical problems do
9 not occur. It is in both carriers' interests to ensure that traffic is exchanged in an
10 efficient manner. But, as the federal Act⁸ and the FCC rules point out, each
11 carrier is responsible for the costs on its side of the point of interconnection or
12 "POI." In other words, each carrier is responsible for the costs of delivering its
13 traffic to other carriers for termination. Rule 51.703(b) specifically states that "a
14 LEC may not assess charges on any other telecommunications carrier for local
15 telecommunications traffic that originates on the LEC's network."⁹ So regardless
16 of the type of network facilities that CenturyTel deploys on its side of the POI,
17 those costs are the responsibility of CenturyTel. Likewise, Charter is responsible
18 for the technology, and the cost of that technology, on its side of the POI.

19 **Q. COULD THE TECHNOLOGY UPGRADE LANGUAGE PROPOSED BY**
20 **CENTURYTEL BE INTERPRETED IN A MANNER THAT WOULD**

⁸ Telecommunications Act of 1996, Pub. L.A. No. 104-104, 110 Stat. 56 (1996) ("Telecom Act" or "Act").

⁹ 47 C.F.R., §51.703(b).

1 REQUIRE CHARTER TO BE RESPONSIBLE FOR CENTURYTEL
2 UPGRADE COSTS?

3 A. Yes, I think the CenturyTel language could be interpreted in that manner. The
4 language as proposed by CenturyTel in Section 47 of the proposed ICA is one-
5 sided. The unilateral nature of the CenturyTel proposal continues when it states
6 that only the CLEC will be responsible for its own costs and activities associated
7 with network upgrades. This language explicitly does not provide Charter with the
8 same rights as CenturyTel to upgrade the Charter network. And, absent specific
9 language to the contrary, CenturyTel might pursue an argument that Charter
10 should be responsible for costs that CenturyTel incurs to interconnect with
11 Charter when Charter upgrades its technology.

12 Q. **DO YOU BELIEVE THAT REQUIRING CHARTER TO COMPENSATE**
13 CENTURYTEL FOR CENTURYTEL UPGRADE COSTS IS
14 APPROPRIATE?

15 A. No. In the more than 12 years since the passage of the Act I have never seen
16 language that would require one carrier to pay for upgrades required by another
17 carrier. Charter should not be required to compensate CenturyTel for costs
18 associated with upgrades to the CenturyTel's network simply because CenturyTel
19 wishes to optimize connectivity to Charter after Charter has optimized its
20 network. Each party should be solely responsible for any costs associated with
21 any technology upgrade or other network modifications required on their own
22 network.

1 **Q. DOES THE CHARTER LANGAUGE FIX THE ONE-SIDED NATURE OF**
2 **THE PROPOSED CENTURYTEL LANGUAGE?**

3 A. Yes it does. In its proposed ICA Charter has simply made the right to upgrade
4 mutual by proposing that the language read that “each Party shall have the right to
5 deploy, upgrade, migrate and maintain its network at its discretion.” Charter also
6 proposed language that explicitly states that Charter’s ability to modify its
7 network is not limited and that CenturyTel is solely responsible for the costs and
8 activities associated with CenturyTel accommodating such changes in its own
9 network. The Charter proposed language provides the required equity between
10 the Parties and allows both companies the ability to update their networks as
11 required without any interconnection agreement related prohibitions.
12 Furthermore, the Charter proposed language is identical to the language offered
13 by CenturyTel in the preceding sentence of that paragraph. Charter simply
14 wanted to make the benefits of that sentence mutual, and simply restated the
15 language first proposed by CenturyTel.

16 **Q. DOES CHARTER DISPUTE CENTURYTEL’S ABILITY TO MAKE**
17 **MODIFICATIONS?**

18 A. No. Charter does not dispute that CenturyTel can make any required
19 modifications or upgrades to its network. It is Charter’s assumption that both
20 parties will comply with 47 U.S.C. § 251(a)(2) which imposes a duty on a
21 telecommunications carrier “not to install network features, functions, or
22 capabilities that do not comply with the guidelines and standards established
23 pursuant to section 255 or section 256.” Section 255 (Access by Persons with

Disabilities) and Section 256 (Coordination for Interconnectivity) contemplate that entities will update their networks, and coordinate their upgrades, in a manner that optimally maintains interconnection with interconnecting carriers.

Q. WHAT IS THE CORE ISSUE ASSOCIATED WITH CENTURYTEL'S PROPOSED LANGUAGE?

A. The core issue is whether the disputed provision should reasonably apply mutually, to the benefit of both parties. The proposed CenturyTel language inappropriately applies the technology upgrade provisions solely to CenturyTel. The Charter proposed language makes the technology upgrade provisions mutual.

Q. WHAT WOULD BE THE RESULT OF THE DISPUTED PROVISION APPLYING TO CHARTER?

A. If the technology provision was a mutual provision there would be no negative impact on CenturyTel. There is no suggestion that Charter ever has, or, ever, will change or modify its network in an unjust and discriminatory manner. However, even in the extremely unlikely event that did occur, Charter would be subject to the basic principles of nondiscrimination, and just and reasonable terms, under both Missouri state law and federal law.

Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION ON THIS ISSUE?

A. As a matter of equity the Commission should adopt Charter's language which makes the technology upgrade language applicable to both CenturyTel and Charter.

1 **Issue 18** – Should Charter be entitled to interconnect with CenturyTel at a single point of
2 interconnection (POI) within a LATA?

3
4 **Q. PLEASE BRIEFLY INTRODUCE THIS ISSUE AND THE DISPUTE**
5 **BETWEEN THE PARTIES.**

6 A. This dispute relates to whether Charter is entitled to a single point of
7 interconnection (“POI”) in a LATA. CenturyTel proposes the use of multiple
8 POIs which inappropriately increases the cost of interconnection for Charter.
9 Charter, which chooses in some instances to establish more than one POI per
10 LATA, wants to ensure that its right to a single POI per LATA is preserved.

11 **Q. PLEASE PROVIDE CHARTER’S PROPOSED LANGUAGE ON THIS**
12 **ISSUE.**

13 A. Charter’s proposed language is as follows:

14 A Point of Interconnection (POI) is a point in the network where
15 the Parties deliver Local Traffic to each other, and also serves as a
16 demarcation point between the facilities that each Party is
17 responsible to provide. ****CLEC may interconnect at any single**
18 **technically feasible point on the CenturyTel network within a**
19 **LATA. The technically feasible point at which **CLEC elects**
20 **to interconnect will be the established POI for such LATA.**¹⁰
21

22 **Q. PLEASE PROVIDE CENTURYTEL’S LANGUAGE ON THIS ISSUE.**

23 A. CenturyTel’s proposed language is as follows:

24 2.2.2 A Point of Interconnection (POI) is a point in the network
25 where the Parties deliver Local Traffic to each other, and also
26 serves as a demarcation point between the facilities that each Party
27 is responsible to provide. Requirements for a Local POI are set
28 forth in Section 3.3.2 of this Article. In some cases, multiple

¹⁰ See Parties’ Revised Statement of Unresolved Issues, dated September 2, 2008 in this proceeding. All proposed language that is referenced or quoted in this testimony will be taken from this joint document. Bold text denotes language proposed by Charter and objected to by CenturyTel. Double underlined text denotes language proposed by CenturyTel and objected to by Charter.

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.

Q. PLEASE DEFINE A POINT OF INTERCONNECTION OR POI.

A. Interconnection is the physical linking of local networks for the purpose of exchanging traffic between customers subscribed to the respective networks.¹¹ In order for Charter and CenturyTel to exchange traffic between their respective customers, they must interconnect their networks, and the physical location at which that interconnection takes place is the Point of Interconnection or "POI." The POI is also the financial demarcation point that defines where one party's financial obligations end and the other party's begin. Section 251(c)(2) of the Telecommunications Act of 1996¹² as well as the FCC's implementing rules (e.g., 47 C.F.R. § 51.305) and orders impose certain obligations on incumbent local exchange carriers, like CenturyTel, related to interconnection. For example, the incumbent LEC must provide interconnection at any technically feasible point

¹¹ 47 C.F.R. § 51.5 defines "Interconnection" as: "the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic." *See also 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, 11 FCC Rcd. 15,499, ¶ 176 (rel. Aug 8, 1996) ("*Local Competition Order*"). ("We conclude that the term 'interconnection' under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic.")

¹² § 251(c)(2) of the Telecommunications Act of 1996 states: "INTERCONNECTION – The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network – (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252."

1 within the ILEC's network,¹³ at a level of quality equal to that which the ILEC
2 provides itself, an affiliate or any other party,¹⁴ and on terms and conditions that
3 are just, reasonable, and nondiscriminatory.¹⁵

4 **Q. WHO SHOULD BEAR THE COSTS OF INTERCONNECTION?**

5 A. The FCC recognized, when it codified Rule 703(b), that the financial
6 responsibilities for interconnection for the exchange of traffic should be borne
7 solely by each carrier on its side of the POI. This rule prohibits carriers from
8 shifting costs of transporting traffic to the POI to other carriers. In other words,
9 each carrier is responsible for the costs of delivering its traffic to other carriers for
10 termination. Several Federal Circuit Courts of Appeal have specifically upheld
11 this interpretation. For example, as the Fourth Circuit stated in a dispute between
12 SBC and MCI on this very point,

13 In sum, we are left with an unambiguous rule, the legality of
14 which is unchallenged, that prohibits the charge that SBC seeks to
15 impose. Rule 703(b) is unequivocal in prohibiting LECs from
16 levying charges for traffic originating on their own networks, and,
17 by its own terms, admits of no exceptions. Although we find some
18 surface appeal in SBC's suggestion that the charge here is not
19 reciprocal compensation, but rather the permissible shifting of
20 costs attending interconnection, the FCC, as noted above, has
21 endorsed cost-shifting related to interconnection only as it relates
22 to the one-time costs of physical linkage, and in doing so,
23 expressly declined the invitation to extend the definition of
24 "interconnection" to include the transport and termination of
25 traffic.¹⁶

¹³ 47 C.F.R. § 51.305(2).

¹⁴ 47 C.F.R. § 51.305(3).

¹⁵ 47 C.F.R. § 51.305(4).

¹⁶ *MCImetro Access Transmission Services, Inc. v. SBC Telecommunications, Inc.*, No. 03-1238
2003 US App. LEXIS 25782, *24-5 (4th Cir. Dec 18, 2003).

1 These decisions flow from the simple technical reality that interconnection simply
2 means linking up networks. It is also consistent with the accepted economic
3 expedient of cost-causation. Cost shifting is unnecessary, uneconomic and anti-
4 competitive. This point is recognized by the FCC and by the federal circuit courts
5 of appeal that have addressed the issue in the context of interconnection
6 agreements: to wit, each carrier pays its own costs of exchanging traffic.

7 **Q. WHY DOES CHARTER REQUIRE THE FLEXIBILITY OF A SINGLE**
8 **POI PER LATA?**

9 A. A single POI is critical in areas where customers and traffic volumes cannot
10 justify the costs incurred in creating additional POIs. It is important to recognize
11 that the location and number of POIs has dramatic financial and operational
12 impacts, and can potentially have disproportionate adverse impacts on CLECs
13 entering specific markets. Each carrier needs to assess the costs of installing
14 transmission facilities and equipment to deliver its originating traffic to each POI,
15 and to receive terminating traffic. Of course, CenturyTel already has a ubiquitous
16 network throughout many areas of the State by virtue of its monopoly heritage
17 and can use its existing facilities for originating and terminating traffic. Notably,
18 CenturyTel, or its predecessors, built out that network to reach virtually all
19 customers within its operating territory over a very long period of time. On the
20 other hand Charter must construct (or lease or acquire) new facilities for access to
21 each POI. Therefore, this issue has significant competitive cost and operational
22 implications for Charter.

1 **Q. IS CHARTER ENTITLED TO CHOOSE A SINGLE POI PER LATA**
2 **UNDER THE GOVERNING RULES AND ORDERS?**

3 A. Yes. Charter is entitled to establish a single POI per LATA with CenturyTel as
4 the point at which the companies will exchange all traffic in that LATA. When
5 interpreting the governing statute, Section 251(c)(2) of the Act, the FCC has made
6 this point clear. For example, the FCC has stated: “As previously mentioned, *an*
7 *ILEC* must allow a requesting telecommunications carrier to interconnect at any
8 technically feasible point, including the option to interconnect at a single POI per
9 LATA.”¹⁷ In addition, 47 C.F.R. §51.321(a) states in relevant part: “...an
10 incumbent LEC shall provide, on terms and conditions that are just, reasonable,
11 and nondiscriminatory in accordance with the requirements of this part, any
12 technically feasible method of obtaining interconnection or access to unbundled
13 network elements at a particular point upon a request by a telecommunications
14 carrier.” A single POI is a technically feasible method of obtaining
15 interconnection “at a particular point” in the ILEC’s network, and therefore,
16 CenturyTel is required to provide a single POI per LATA to Charter upon
17 Charter’s request per the FCC’s rules. Furthermore, the FCC has stated: “Section
18 251, and our implementing rules, require *an incumbent LEC* to allow a
19 competitive LEC to interconnect at any technically feasible point. This means
20 that a competitive LEC has the option to interconnect at only one technically
21 feasible point in each LATA. *The incumbent LEC* is relieved of its obligation to

¹⁷ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, FCC 01-132, CC Docket No. 01-92, released April 27, 2001, ¶ 112. (footnotes, omitted, emphasis added). See also, *Id.* at ¶ 72 (“Under our current rules, interconnecting CLECs are obligated to provide one POI per LATA.”)(footnote omitted).

1 provide interconnection at a particular point in its network only if it proves to the
2 state public utility commission that interconnection at that point is technically
3 infeasible.”¹⁸

4 **Q. BASED ON THE AUTHORITIES PROVIDED ABOVE, A COMPETING**
5 **CARRIER, LIKE CHARTER, IS ENTITLED TO ESTABLISH A SINGLE**
6 **POI PER LATA SUBJECT ONLY TO ONE EXCEPTION WHERE AN**
7 **ILEC PROVES TO A STATE COMMISSION THAT SUCH**
8 **ARRANGEMENT IS NOT TECHNICALLY FEASIBLE. IS THERE ANY**
9 **INDICATION THAT DOING SO WOULD BE TECHNICALLY**
10 **INFEASIBLE FOR CENTURYTEL?**

11 A. No. As an initial matter, it is the obligation of CenturyTel to prove to the state
12 commission that a particular method of interconnection is technically infeasible –
13 it is not Charter’s responsibility to prove that a method of interconnection is
14 technically feasible. Therefore, the presumption is that a single POI per LATA is
15 technically feasible and I am not aware of any information provided by
16 CenturyTel to suggest (or prove) otherwise. Further, the term “technically
17 feasible” is a defined term in 47 C.F.R. §51.5 of the FCC’s rules:

18 *Technically feasible.* Interconnection, access to unbundled network
19 elements, collocation, and other methods of achieving
20 interconnection or access to unbundled network elements at a point
21 in the network shall be deemed technically feasible absent
22 technical or operational concerns that prevent the fulfillment of a
23 request by a telecommunications carrier for such interconnection,

¹⁸ *In the Matter of Application of SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, FCC 00-238, CC Docket No. 00-65, Released June 30, 2000, ¶ 78 (“Texas 271 Order”) (footnotes omitted, emphasis added).

1 access, or methods. A determination of technical feasibility does
2 not include consideration of economic, accounting, billing, space,
3 or site concerns, except that space and site concerns may be
4 considered in circumstances where there is no possibility of
5 expanding the space available. The fact that an incumbent LEC
6 must modify its facilities or equipment to respond to such request
7 does not determine whether satisfying such request is technically
8 feasible. An incumbent LEC that claims that it cannot satisfy such
9 request because of adverse network reliability impacts must prove
10 to the state commission by clear and convincing evidence that such
11 interconnection, access, or methods would result in specific and
12 significant adverse network reliability impacts.

13 Based on this definition of technically feasible in the FCC's rules, any suggestion
14 by CenturyTel that it must modify the facilities on its side of the POI (like the
15 suggestions it makes in its position statement in the DPL¹⁹) has no bearing on
16 whether Charter should be allowed to choose a single POI per LATA. It is also
17 for these reasons that CenturyTel's proposed requirements to negotiate a POI, for
18 Charter to establish a "Local POI,"²⁰ and other limitations on Charter's ability to
19 request a single POI per LATA (e.g., considerations related to CenturyTel's
20 network architecture, potential costs, future capacity needs, etc.) are not consistent
21 with governing rules and orders and should be rejected.

22 **Q. CENTURYTEL CLAIMS THAT THE SINGLE POI PER LATA**
23 **REQUIREMENT APPLIES TO BELL OPERATING COMPANIES**

¹⁹ See, e.g., pp. 70-71 of the Revised Statement of Unresolved Issues, dated 9/2/08, CenturyTel's position statement ("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 *only* be created if a CenturyTel company were to build or purchase new trunking routes.")

²⁰ CenturyTel's proposed term "Local POI" is not well defined, but suggests that Charter would be obligated to establish multiple POIs in each local exchange area in which it provides service. This clearly conflicts with the FCC's single POI per LATA requirement.

1 **(“BOCS”) AND DOES NOT APPLY TO NON-BOC ILECS LIKE**
2 **CENTURYTEL.²¹ IS CENTURYTEL CORRECT?**

3 A. No. As indicated in the bold/italicized language from the intercarrier
4 compensation NPRM and Texas 271 Order shown above, the FCC has stated that
5 this requirement applies to ILECs in general, and not just BOCs. Further, as
6 indicated in the quote from the intercarrier compensation NPRM, the FCC has
7 interpreted the single POI per LATA requirement to be included as part and
8 parcel of the FCC’s rule under 47 C.F.R. § 51.305(a)(2) – which applies to all
9 incumbent LECs, not just BOCs –for an ILEC to provide interconnection at any
10 technically feasible point within the ILEC’s network.

11 **Q. DO ILECS SUCH AS CENTURYTEL HAVE THE RIGHT TO SELECT**
12 **POIs?**

13 A. No. That right is limited to CLECs and does not extend to ILECs. The FCC
14 explained why this right is provided to the CLECs and not to the ILECs in the
15 *Local Competition Order* as follows:

16 Given that the incumbent LEC will be providing interconnection to
17 its competitors pursuant to the purpose of the 1996 Act, the LEC
18 has the incentive to discriminate against its competitors by
19 providing them less favorable terms and conditions of
20 interconnection than it provides itself.²²

21 The FCC recognized that one of the goals of the Act and competition in general
22 was to eliminate this ILEC incentive and ability to impose financial and

²¹ See, e.g., page 66 of Revised Statement of Unresolved Issues, dated 9/2/08, CenturyTel’s position.

²² See *Local Competition Order* at ¶ 218.

operational burdens on CLECs that multiple POIs could create. At paragraph four of the *Local Competition Order* the FCC states:

Competition in local exchange and exchange access markets is desirable, not only because of the social and economic benefits competition will bring to consumers of local services, but also because competition eventually will eliminate the ability of an incumbent local exchange carrier to use its control of bottleneck local facilities to impede free market competition. Under section 251, incumbent local exchange carriers (LECs), including the Bell Operating Companies (BOCs), are mandated to take several steps to open their networks to competition, including providing interconnection, offering access to unbundled elements of their networks, and making their retail services available at wholesale rates so that they can be resold.

Q. PLEASE MORE FULLY DESCRIBE THE NEGATIVE IMPACTS THAT REQUIRING MULTIPLE POIs COULD HAVE ON CHARTER AND THE DEVELOPMENT OF COMPETITION?

A. If CenturyTel were allowed to dictate the location of a single POI or multiple POIs for originating traffic it would be able to force Charter to build out a ubiquitous network based on the same geographic reach as the CenturyTel network, even before there is a Charter customer base or traffic volumes sufficient to justify the investment. This is inconsistent with the fundamental purposes of the Telecommunications Act, which is intended to allow CLECs to compete without replicating the architecture of the existing ILEC network. This also defies logic from CenturyTel's perspective.

Q. PLEASE EXPLAIN.

A. The ILEC tandem network design is intended to minimize the number of connection points or trunk groups within its network. This is especially true in the initial deployment of facilities. For relatively new networks, traffic volume is

1 typically lower than on more mature networks. That, in turn, dictates the
2 efficiencies of a low number (e.g., one) of connections and trunk groups for that
3 network. Only later, when customer acquisition results in traffic volumes that
4 have a community of interest that is diverse enough to make multiple connections
5 efficient from an engineering perspective, would multiple POIs be economically
6 efficient. I believe that CenturyTel, or its predecessors, designed its network over
7 time with this principle as one of the drivers.

8 **Q. WHAT ARE THE IMPLICATIONS OF THAT FACT FOR THIS**
9 **PROCEEDING?**

10 A. By forcing CLECs to use multiple POIs of CenturyTel's choice and location,
11 CenturyTel is prohibiting CLECs, like Charter, from enjoying the efficiencies
12 CenturyTel built into the network for its own use, and improperly shifting the
13 costs of building out the CenturyTel network to its competitors. Nothing about
14 this approach represents an appropriate balance of costs between the ILEC's
15 existing network dominance and a CLEC's investment to compete in the market.
16 In short, allowing CenturyTel to determine the number and location of POIs
17 would allow CenturyTel to have control over Charter's investment decisions and
18 could force Charter to invest in facilities that are not justified from a market or
19 engineering standpoint. This forced investment would disadvantage CLECs and
20 impose additional and unwarranted costs on them. Specifically, CenturyTel could
21 force CLECs to build or lease facilities to reach into every local calling area
22 regardless of how many customers a CLEC might actually have in a given local

1 calling area. Such a result would be contrary to this Commission's stated intent to
2 encourage competition.²³

3 **Q. HAS CHARTER ESTABLISHED MORE THAN ONE POI PER LATA IN**
4 **CERTAIN AREAS?**

5 A. Yes. In the past, Charter has entered into interconnection agreement provisions
6 that provide for additional POIs if demand, or other circumstances merited such
7 an investment. As I understand it, most of those agreements were established
8 through the opt-in process under Section 252(i), which means that Charter simply
9 had to take the language negotiated by other carriers. For that reason, I don't
10 think those other agreements are instructive here. Furthermore, establishing
11 additional POIs should be based on the need for such additional POIs, and on
12 traffic patterns, not on CenturyTel's attempts to shift its costs of interconnecting
13 at any technically feasible point on its network onto Charter. CenturyTel's
14 proposal makes no economic sense, is not in the public interest, and has the
15 potential to severely impede the development of competition. Moreover, just
16 because Charter may have multiple POIs in certain LATAs does not mitigate the
17 fact that Charter should not be forced to add POIs at CenturyTel's discretion. The
18 law and competitive economics are clear and Charter must be allowed to expand
19 its network coverage in a cost effective and operationally efficient manner.
20 CenturyTel's proposal would not give Charter the needed flexibility and is
21 contrary to federal law.

²³ It would also be inconsistent with the FCC's intentions, sound engineering principles and the interpretations of the courts.

1 **Q. HAS THE IMPORTANCE OF ALLOWING CHARTER THE**
2 **FLEXIBILITY TO SELECT A SINGLE POI PER LATA INCREASED**
3 **SINCE THE FCC MADE THE STATEMENTS IN THE *LOCAL***
4 ***COMPETITION ORDER* REFERENCED ABOVE?**

5 A. Yes. Since the decline of the CLEC industry in 2000, it has become increasingly
6 difficult for CLECs to attract capital necessary to enter markets or to expand.
7 Forcing CLECs to build or lease facilities where margins are slim or nonexistent
8 would only worsen the CLECs' prospects for attracting capital. Indeed, if
9 CenturyTel were allowed such discretion, it may force CLECs to essentially
10 duplicate the incumbent's network. Such a result would be inefficient from both
11 an economic and operational standpoint and has consequently been regularly
12 rejected by regulators as not in the public interest. A more likely result of such a
13 finding would be that CLECs would choose not to enter the market.

14 **Q. DOES CENTURYTEL HAVE ADDITIONAL INCENTIVES TO REQUIRE**
15 **MULTIPLE POIs?**

16 A. Yes. CenturyTel's desire to dictate multiple POIs for its originating traffic is
17 understandable, especially given the incentives discussed above. As I stated
18 earlier, CenturyTel is attempting to shift its network costs on to Charter. Further,
19 simply because CenturyTel's network has been in place for decades does not
20 mean that it is the most efficient network, or that other carriers should develop
21 similar networks. However, CenturyTel will argue otherwise. Requiring multiple
22 POIs would force investment in a network design that is no longer optimal.

1 **Q. PLEASE EXPLAIN.**

2 A. CLECs utilizing new technology and information should not be limited or
3 hampered by the historic decisions of CenturyTel network planners, or their
4 predecessors, who established switch locations and local calling areas decades
5 ago based upon more limited technology.²⁴ Those decisions, which were
6 justifiable and supportable then, would certainly be different today given the
7 changes in technology. As such, forcing CLECs to conform to a specific network
8 topology would be inconsistent with the goals of the *Local Competition Order*
9 and the Act. Rather, the promotion of efficient markets dictates that CLECs such
10 as Charter only be required to interconnect in a specific area where traffic
11 volumes and customer demand justify investment in facilities needed to reach that
12 area. Charter is not required to extend its facilities to POIs unilaterally identified
13 by CenturyTel; instead, CenturyTel is obligated to provide interconnection for
14 Charter facilities at POI(s) which Charter properly determines best serve its
15 network architecture and business plans. This concept actually allows CenturyTel
16 to continue to design a network around its own needs plus allows the CLEC to do
17 the same thing. This is really a win/win situation for both parties.

²⁴ In the past, switching was relatively cheaper than transport, so a switch-centric PSTN was developed. Today, with fiber and electronics making transport very inexpensive, and packet switching increasing efficiencies even more, carriers can serve very large areas with only one switch.

1 **Q. DOES THE SINGLE POI PER LATA RULE ALLOW FOR EFFICIENT**
2 **DEPLOYMENT OF NETWORK FACILITIES AND MORE EFFICIENT**
3 **ENTRY INTO MARKETS?**

4 A. Yes. From an economic standpoint, the single POI allows CLECs to have a
5 minimal, yet efficient, presence until its customer base and traffic patterns warrant
6 the further expansion of its own network.²⁵ In other words, a single POI allows
7 Charter to operate efficiently and offer services to customers without having to
8 uneconomically duplicate an outdated network design (the ILEC network). This
9 is especially important since engineering options are much more robust today than
10 when the ILECs deployed their traditional circuit switched network with
11 hierarchical intelligence. Indeed, the economics of telecommunications
12 engineering – especially with respect to transport and switching technologies --
13 have changed dramatically in the last ten years.

14 **Q. IT IS CLEAR THAT CENTURYTEL'S PROPOSED REQUIREMENT**
15 **THAT CHARTER ESTABLISH MULTIPLE POINTS OF**
16 **INTERCONNECTION WOULD BE DETRIMENTAL TO CHARTER.**
17 **WHAT FINANCIAL IMPACT WOULD A MULTIPLE POI**
18 **REQUIREMENT HAVE ON CENTURYTEL?**

19 A. There is a financial trade-off between establishing a single POI, requiring
20 additional transport usage, and establishing multiple POIs, with less transport.
21 Therefore, the only way that CenturyTel would benefit in the short term from the

²⁵ My reference to "efficient" presence is not meant to suggest that a single POI is necessarily an efficient use of resources. When traffic is minimal, even a single POI results in a high incremental cost of market entry.

1 establishment of multiple POIs would be if establishing, maintaining and
2 monitoring multiple POIs were more cost effective than utilizing existing fiber
3 transport. Such is not the case.

4 **Q. CAN YOU EXPLAIN HOW YOU CAME TO THIS CONCLUSION?**

5 A. Since the first trial of an AT&T light wave system took place in Chicago in 1977,
6 fiber optic technologies have revolutionized the telecommunications industry.
7 Fiber's biggest advantage over copper facilities is that it can carry far more
8 information over much longer distances, thereby drastically reducing the
9 incremental cost associated with transport. As fiber optic technologies have
10 continued to develop and mature, engineers have found more and better ways of
11 increasing the capacity of a single strand of fiber to the degree where, at this point
12 in time, it would be next to impossible to identify what the eventual capacity limit
13 of a strand of fiber might be. In fact, according to Newton's Telecom Dictionary,
14 in reference to the definition of Optical Fiber, it is noted that bandwidth is greater
15 than any other transmission medium we know of today. And we have no idea
16 what the theoretical bandwidth of a strand of fiber might be.²⁶

17 Given the vast existing capacity of fiber facilities, once those facilities are
18 in place, the incremental cost associated with their use is extremely small, if even
19 measurable. Compare those incremental transport costs to the much greater costs
20 associated with the establishment, maintenance, and monitoring of multiple POIs.
21 These costs include the one-time costs of the purchase and installation of any
22 physical equipment as well as the set up, monitoring and maintenance of each

²⁶ Newton's Telecom Dictionary. 19th Edition. Copyright 2003.

1 POI. It should also be noted that the opportunities for network failure increase
2 with the addition of every new interconnection point requiring power, equipment,
3 cross-connections and the maintenance of records as well as the additional
4 opportunities for human failure. The costs associated with setting up and
5 maintaining multiple POIs dwarf the costs associated with transporting traffic to a
6 single POI.

7 **Q. YOU HAVE ESTABLISHED, AND THE FCC HAS CONCLUDED, THAT**
8 **A MULTIPLE POI REQUIREMENT WOULD BE DETRIMENTAL TO**
9 **CHARTER AND OTHER CLECS. ARE YOU SAYING THAT THE**
10 **ESTABLISHMENT OF MULTIPLE POIS WOULD BE MORE COSTLY**
11 **FOR CENTURYTEL AS WELL?**

12 A. CenturyTel's costs are not part of the evidence of this arbitration proceeding, and
13 therefore, I do not have the benefit of performing the cost analysis to prove my
14 point. However, from a theoretical standpoint, that would appear to be the case.
15 From a strict short term economic efficiency standpoint, the establishment of a
16 single POI would be in the best interest of not only Charter, but of CenturyTel as
17 well.

18 **Q. WHY DID YOU QUALIFY YOUR STATEMENT BY SAYING "FROM A**
19 **STRICT SHORT TERM ECONOMIC EFFICIENCY STANDPOINT"?**

20 A. Even though it appears that multiple POIs would not make economic "sense" to
21 CenturyTel, CenturyTel clearly has something to gain by requiring its competitors
22 to incur additional costs. CenturyTel has been and remains the dominant provider
23 of telecommunications services in its service area in Missouri and there is

1 obviously a great deal of value associated with that dominant position. By
2 imposing additional costs on its prospective competitors, CenturyTel has the
3 ability to hinder those carriers' ability to compete and to win or hold market
4 share, and CenturyTel is apparently willing to absorb those costs in order to erect
5 such obstacles. Said another way, CenturyTel absorbs these costs not because it
6 would promote economic and network efficiencies, but because it is the short-
7 term price of maintaining its dominant market share in Missouri.

8 **Q. IF THE COMMISSION MAINTAINS THAT A SINGLE POINT OF**
9 **INTERCONNECTION IS APPROPRIATE, SHOULDN'T CHARTER**
10 **COMPENSATE CENTURYTEL FOR ADDITIONAL COSTS THAT MAY**
11 **ARISE RELATED TO ACCOMMODATING A SINGLE POI PER LATA?**

12 A. No. As noted above, a single POI should actually reduce costs for CenturyTel
13 and for Charter due to lower fiber transport costs. It is critical to understand that
14 Charter is and will continue to take full responsibility for its own network costs.
15 Charter is responsible for the costs associated with providing its customers with
16 connectivity to the network on its side of the POI, and for delivering all of its
17 originating traffic to the POI, while CenturyTel assumes those same
18 responsibilities on its side. This arrangement is entirely consistent with the FCC
19 rulings I have discussed above, and, in addition, is consistent with the principle of
20 cost causation.

21 **Q. HOW IS THIS RELATIONSHIP CONSISTENT WITH THE ECONOMIC**
22 **PRINCIPLES OF COST CAUSATION?**

1 A. ILECs often argue that the financial responsibilities of the parties should require
2 interconnecting CLECs to pay for facilities on the ILEC side of the POI due to the
3 fact that, as ILEC's have argued "CLECs are loading the ILEC network with
4 traffic." This is simply not the case. While existing traffic may be re-distributed,
5 traffic doesn't automatically increase when a CLEC interconnects with an ILEC.
6 Both carriers are competing for finite customer base – Missouri
7 telecommunications consumers. Also, when a CLEC interconnects with an ILEC,
8 the ILEC is responsible for ensuring that its own customers have the ability to
9 originate calls that terminate on the CLEC's network. While it is true that a
10 change in traffic patterns may result *vis-a-vis* the CLEC's presence in the market,
11 the change in traffic is the direct result of the demands of the ILEC's customers.
12 In other words, the availability of an alternative provider may incent the
13 subscribers to exercise their ability to select another provider. Also, assuming a
14 reduction in price, the new provider may also result in an increase in overall usage
15 given the savings. The relationship described above, therefore, ensures that
16 CLECs do not pay for network modifications that are made necessary by the
17 demands of ILEC customers; rather, because the ILEC's customers have placed
18 those demands on the ILEC network, the ILEC takes this financial responsibility.
19 When or if CenturyTel's customers' demands exceed the capabilities of the
20 existing network, CenturyTel pays for network upgrades and modifications by
21 recovering those costs from its ratepayers. The same holds true for Charter – it
22 pays for its network upgrades and modifications resulting from its customer
23 demands, and like CenturyTel, recovers those costs directly from its end user

1 customers. This arrangement is consistent with the principles of cost causation.
2 Recovering costs from the interconnecting CLEC (whose customers have not
3 placed demands on the ILEC network) would be inconsistent with this regulatory
4 and economic principle.

5 **Q. SHOULD THE COMMISSION BE CONCERNED THAT CHARTER MAY**
6 **NEED TO INDIRECTLY INTERCONNECT WITH THIRD PARTY**
7 **CARRIERS (THROUGH TRANSIT ARRANGEMENTS) IF THE**
8 **COMMISSION ADOPTS A SINGLE POI PER LATA REQUIREMENT?**

9 A. No. Indirect interconnection via transit traffic arrangements is clearly appropriate
10 under existing law and industry practices. The Missouri Commission has ruled
11 that transit is a section 251(c) obligation, subject to TELRIC pricing. The
12 Commission recently stated: "The Commission concludes that the Act, at
13 §251(c)(2) and at §251(a)(1) obligates CenturyTel to receive transit traffic from
14 Socket. Because transit traffic is an obligation imposed on CenturyTel pursuant
15 to §251(c)(2) and (3) of the Act, the applicable pricing standard is TELRIC. This
16 allows Socket to effect an indirect interconnection with other carriers, which is
17 expressly authorized by §251(a)(1) of the Act."²⁷ As such, there can be no
18 question that CenturyTel must provide transit functionality at TELRIC rates.

19 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

20 A. The Commission should reject CenturyTel's attempt to require multiple POIs.

²⁷ *Petition of Socket Telecom, LLC for Compulsory Arbitration of Interconnection Agreements with CenturyTel of Missouri, LLC and Spectra Communications, LLC, pursuant to Section 251(b)(1) of the Telecommunications Act of 1996, Case No. TO-2006-0299, Final Commission Decision, effective date June 30, 2006.*

1 CenturyTel's proposal is inconsistent with the Act and implementing rules and
2 orders on this very point. CLECs like Charter have the right to a single POI while
3 experience shows that additional POIs are added when the traffic and market
4 conditions justify that additional investment. The Commission should adopt
5 Charter's language on this dispute in the arbitration.

1 **Issue 19** - Should Charter's right to utilize indirect interconnection as a means of
2 exchanging traffic with CenturyTel be limited to only those instances where Charter is
3 entering a new service area, or market?
4

5 **Q. PLEASE EXPLAIN THE DISPUTE OVER THE USE OF INDIRECT**
6 **INTERCONNECTION ARRANGEMENTS.**

7 A. The dispute here revolves around the question of indirect interconnection, and the
8 circumstances surrounding when Charter may use indirect interconnection to
9 exchange traffic with CenturyTel.

10 **Q. WHAT IS INDIRECT VERSUS DIRECT INTERCONNECTION?**

11 A. Direct interconnection refers to the actual physical interconnection of networks
12 for the purpose of exchanging traffic originating on two service provider's
13 networks. Direct interconnection normally occurs when two carriers exchange
14 sufficient traffic volumes between their networks to justify establishing a direct
15 interconnection arrangement. In areas where traffic is not sufficient to justify a
16 direct interconnection arrangement, the parties use indirect interconnection
17 arrangements. Indirect interconnection arrangements are a method of traffic
18 exchange between two service provider networks which does not involve the
19 direct, physical interconnection of their respective networks. Instead, those two
20 service provider networks exchange traffic with each other via an arrangement
21 that is referred to as transiting, or transit arrangements.

22 **Q. WHAT IS TRANSITING?**

23 A. According to the FCC, "transiting occurs when two carriers that are not directly
24 interconnected exchange nonaccess traffic by routing the traffic through an
25 intermediary carrier's network. Typically, the intermediary carrier is an

1 incumbent LEC and the transited traffic is routed from the originating carrier
2 through the incumbent LEC's tandem switch to the terminating carrier."²⁸ By
3 way of example, transiting works as follows: a customer of Provider A
4 (originating carrier) calls a customer of Provider B (terminating carrier), and since
5 Providers A and B are not directly interconnected, they utilize another carrier's
6 transiting service as an indirect interconnection so that the call can terminate to
7 Provider B's customer. In Missouri, the transiting carrier would be SBC. SBC,
8 as the largest incumbent LEC, is the only carrier capable of providing transit
9 service connecting all carriers, primarily because of the ubiquitous local network
10 it has deployed.

11 **Q. PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE FOR ISSUE**
12 **19.**

13 **A.** Charter's proposed language for Issue 19 is as follows:

14 3.3.1.1 Either Party may deliver Local Traffic and ISP-bound Traffic indirectly to the
15 other for termination through any carrier to which both Parties' networks are
16 interconnected directly or indirectly. The Originating Party shall bear all charges payable
17 to the transiting carrier(s) for such transit service with respect to Local Traffic and ISP-
18 bound Traffic.

19
20 3.3.1.2 Unless otherwise agreed, the Parties shall exchange all Local Traffic and ISP-
21 bound Traffic indirectly through one or more transiting carriers until the total volume of
22 Local Traffic and ISP-bound Traffic being exchanged between the Parties' networks
23 exceeds 240,000 minutes per month for three (3) consecutive months, at which time
24 either Party may request the establishment of Direct Interconnection. Notwithstanding the
25 foregoing, if either Party is unable to arrange for or maintain transit service for its
26 originated Local Traffic upon commercially reasonable terms before the volume of Local
27 Traffic and ISP-bound Traffic being exchanged between the Parties' networks exceeds
28 240,000 minutes per month, that Party may unilaterally, and at its sole expense, utilize
29 one-way trunk(s) for the delivery of its originated Local Traffic to the other Party.
30

²⁸ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, Federal Communications Commission, 20 FCC Rcd 4685; 2005 FCC LEXIS 1390, FCC 05-33, rel. March 3, 2005 ("ICF FNPRM"), ¶ 120.

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.

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 exchanged through Direct Interconnection.

**Q. PLEASE PROVIDE CENTURYTEL'S PROPOSED LANGUAGE FOR
ISSUE 19.**

A. CenturyTel's proposed language for Issue 19 is as follows:

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.

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.

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.

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 records utilizing 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.

Q. WHAT IS CHARTER'S POSITION ON THIS QUESTION?

A. Charter's position is that it has a statutory right, under Section 251(a), to utilize indirect interconnection as a means of exchanging traffic with CenturyTel. There

1 are no statutory, or regulatory, limitations on the use of indirect interconnection.

2 As such, Charter should be able to utilize indirect interconnection as a means of
3 exchanging local, extended area service ("EAS"), and other traffic with
4 CenturyTel's network, where appropriate.

5 **Q. HOW DOES CHARTER'S POSITION DIFFER FROM CENTURYTEL'S**
6 **POSITION?**

7 A. CenturyTel takes a much more restrictive view of this question, and generally
8 seeks to put specific limits on Charter's indirect interconnection rights. For
9 example, CenturyTel has proposed language that would limit indirect
10 interconnection "only for de minimis traffic associated with **CLEC 'start-up'
11 market entry into a CenturyTel local exchange." See § 3.3.1.1, Article V, and
12 Joint Statement of Unresolved Issues, p. 73 (CenturyTel proposed language). In
13 addition, CenturyTel will only "allow" indirect interconnection on those routes
14 where none of the triggers set forth in CenturyTel's proposed section 3.3.2.4 have
15 been met. The triggers in Section 3.3.2.4 are very similar to those that this
16 Commission rejected in the 2006 arbitration between CenturyTel and Socket
17 Telecom in Case No. TO-2006-0029. Essentially, CenturyTel would force
18 Charter to move off of an indirect interconnection arrangement where traffic
19 volume between the companies for any single exchange reaches a "DS-1 trunk
20 equivalency," or where transit costs by a third party exceed \$200.

21 **Q. DO YOU KNOW WHY THIS COMMISSION REJECTED THAT**
22 **LANGUAGE IN CASE NO. TO-2006-0299?**

1 A. That case, between CenturyTel and another CLEC known as Socket Telecom,
2 involved similar issues. On the question of indirect interconnection, the
3 Commission ruled that Section 251(a)(1) requires every telecommunications
4 carrier to interconnect directly or indirectly with the facilities and equipment of
5 other telecommunications carriers.

6 **Q. PLEASE EXPLAIN.**

7
8 A. I am not a lawyer, but I will provide my understanding of the Commission order.
9 In deciding between the parties' competing language in Case No. TO-2006-0299,
10 the Commission adopted Socket's language, because that language allowed a
11 party to choose indirect interconnection, which the Commission determined to be
12 most consistent with the requirement under Section 251(a). More specifically, the
13 Commission, quoting a 2005 decision, explained that "[a] CLEC may choose to
14 indirectly interconnect with SBC Missouri by using the facilities of another
15 carrier. Such indirect interconnection does not release the CLEC from any of the
16 obligations to which it is held under the agreement."²⁹ Using that standard, the
17 Commission found that CenturyTel's language attempted to place conditions on
18 Socket's choice of indirect interconnection; and that such limitations are not
19 consistent with Section 251(a)(1) and this Commission's previous interpretation
20 of that section.

21 **Q. IS CHARTER'S POSITION THAT THERE SHOULD BE NO**
22 **LIMITATIONS TO THE USE OF INDIRECT INTERCONNECTION?**

²⁹ *Petition of Socket Telecom, LLC for Compulsory Arbitration of Interconnection Agreements with CenturyTel of Missouri, LLC and Spectra Communications, LLC, pursuant to Section 251(b)(1) of the Telecommunications Act of 1996, Case No. TO-2006-0299, 2006 Mo. PSC LEXIS 1380 (Mo. PSC 2006).*

1 A. No, not at all. In fact, Charter recognizes that indirect interconnection may not be
2 ideal where certain traffic volume thresholds are satisfied. For that reason,
3 Charter has proposed language that would allow for indirect interconnection until
4 the total volume of traffic exchanged between the parties' network exceeded
5 240,000 minutes per month, for three (3) consecutive months. See Charter
6 Proposed § 3.3.1.2. Article V, and Joint Statement of Unresolved Issues, p. 74
7 (Charter proposed language). Thus, Charter is not seeking unlimited indirect
8 interconnection rights. Instead, its proposal should be viewed as an attempt to
9 establish a more reasonable traffic volume threshold for determining when the
10 parties should move away from indirect interconnection arrangements.

11 **Q. GIVEN THAT CHARTER AND CENTURYTEL ARE ALREADY**
12 **INTERCONNECTED USING DIRECT CONNECTIONS, WHY DOES**
13 **CHARTER SEEK INDIRECT INTERCONNECTION RIGHTS IN THIS**
14 **AGREEMENT?**

15 A. For several reasons. First, there may be circumstances in the future that require
16 the use of indirect interconnection arrangements to exchange certain types of
17 traffic. For example, it is possible that Charter and CenturyTel may be providing
18 service in two different exchanges that are located adjacent to one another. In that
19 instance, if Charter and CenturyTel are not already directly interconnected, then
20 indirect interconnection arrangements would provide an efficient and expeditious
21 method of exchanging traffic between the parties' respective networks. Second,
22 Charter seeks indirect interconnection rights in the agreement because
23 circumstances change, and it may be necessary to move away from the current

1 direct interconnection arrangements to an indirect arrangement in the future.
2 Although I do not know of any company plans to move away from current
3 arrangements, it is not unreasonable to include terms in the agreement to cover the
4 potential that such a situation could arise. For instance, it is conceivable that
5 Charter may initiate service in an exchange that includes mandatory EAS (or
6 “extended local calling”) arrangements to a contiguous exchange served by
7 CenturyTel. In that situation, indirect interconnection would be an efficient
8 method of exchanging such EAS traffic between Charter and CenturyTel.

9 **Q. ARE THERE OTHER INSTANCES IN THE AGREEMENT WHERE**
10 **TERMS ARE INCLUDED THAT MAY NOT REFLECT THE CURRENT**
11 **ARRANGEMENTS BETWEEN THE PARTIES?**

12 A. Yes. Under Sections §§ 4.2.1.2 and 4.2.3 of Article V (Interconnection), the
13 parties have agreed to certain compensation arrangements for ISP-bound traffic,
14 even though the parties do not currently exchange such traffic.

15 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION ON**
16 **THIS ISSUE?**

17 A. I recommend that the Commission adopt Charter’s proposed language on this
18 issue as it is consistent with the Commission’s prior decisions, and Section 251(a)
19 of the Act. CenturyTel’s position is inconsistent with the Commission’s prior
20 decisions on this issue, and impedes competition by imposing impermissibly
21 restrictive limitations on the use of indirect interconnection arrangements.

Issue 20 - Should Charter be entitled to lease interconnection facilities from CenturyTel at cost-based rates pursuant to Section 251(c)(2) of the Act?

Q. PLEASE EXPLAIN THE SCOPE OF THE DISPUTE ON THIS ISSUE.

A. There are two fundamental questions that are raised by this issue. First, is CenturyTel obligated to lease “interconnection facilities” (also known as “entrance facilities” used for interconnection) to Charter at TELRIC rates pursuant to Section 251(c)(2)? And, second, if the answer to the previous question is yes (as Charter contends), then how will the rate for such facility be established?

Q. WITH RESPECT TO THE FIRST QUESTION, DOES CENTURYTEL CONTEND THAT IT DOES NOT HAVE THE OBLIGATION TO LEASE INTERCONNECTION FACILITIES TO CHARTER AT TELRIC RATES PURSUANT TO SECTION 251(c)(2)?

A. I understand that during negotiations, originally CenturyTel took the position that it did not have the obligation to lease such facilities to Charter at TELRIC rates pursuant to Section 251(c)(2), arguing instead that Charter would have to lease such facilities from CenturyTel pursuant to tariffed rates. However, after Charter’s counsel provided to CenturyTel the Eighth Circuit’s decision affirming this Commission’s ruling requiring ILECs to provide such facilities at TELRIC rates, it now appears that CenturyTel concedes that it does have that obligation, or something close. In its position statement in the parties’ Statement of Unresolved Issues, CenturyTel states that the parties have agreed to “develop mutually agreeable” cost-based rates...” Parties’ Joint Statement of Unresolved Issues, p. 78. Assuming that CenturyTel does concede that it has this obligation, then the

question is how will that rate be established? Each party's proposed contract language on that question illustrates the differences between the parties.

Q. PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE FOR ISSUE 20.

A. Charter's proposed language for Issue 20 is as follows:

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 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.

Q. PLEASE PROVIDE CENTURYTEL'S PROPOSED LANGUAGE FOR ISSUE 20.

A. CenturyTel's proposed language for Issue 20 is as follows:

Where facilities exist, Charter may lease facilities from CenturyTel. 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. Charter also may lease facilities from a third party, or may construct or otherwise self-provision facilities.

1
2 **Q. WHAT ARE THE PRIMARY DIFFERENCES BETWEEN EACH**
3 **PARTY'S PROPOSED LANGUAGE?**

4 A. There are several important differences.

5 **Q. WHAT IS THE FIRST DIFFERENCE?**

6 A. First, although Charter's language and CenturyTel's language each specifically
7 reference the pricing standard under Section 251(c)(2), as that which must be the
8 basis for the rate for these interconnection facilities, CenturyTel takes the position
9 that the TELRIC standard need not apply to the interconnection facilities at issue
10 here. On pages 79 and 80 of the Joint DPL CenturyTel implies that TELRIC is
11 not the appropriate rate for pricing these facilities. *See* Parties' Joint Statement of
12 Unresolved Issues, pp. 79-80. But CenturyTel's assertion is directly contradictory
13 to the Eighth Circuit's recent decision that "CLECs must be provided access to
14 entrance facilities at TELRIC rates."³⁰ Thus, it appears that CenturyTel disputes
15 the proposition that interconnection facilities must be made available to
16 competitors, like Charter, at TELRIC rates. I must say, though, it is difficult to
17 understand why CenturyTel takes this position, given that the Eighth Circuit, this
18 Commission, and the FCC, have all stated such facilities must be made available
19 at TELRIC.³¹

³⁰ *See Southwestern Bell Telephone, L.P. v. Missouri Public Service Comm'n*, 530 F.3d 676, 684 (8th Cir. 2008)

³¹ *See Southwestern Bell Telephone, L.P. v. Missouri Public Service Comm'n*, 461 F.Supp.2d 1055 (E.D. Mo. 2006), affirming this Commission's final decision in *Southwestern Bell Telephone L.P. Petition for Compulsory Arbitration*, Case No. TO-2005-0336 (Mo. PSC 2005), when implementing the FCC's decision to require ILECs to make interconnection facilities available at TELRIC pursuant to Section 251(c)(2). *In the Matter of Unbundled Access to*

1 **Q. WHAT IS THE SECOND DIFFERENCE BETWEEN THE PARTIES**
2 **LANGUAGE?**

3 A. The second difference, after the pricing standard is determined, is that the parties
4 also disagree as to how they may agree upon a rate. CenturyTel proposes a
5 negotiations period of six months, after which either party can escalate an
6 unresolved dispute to this Commission. Charter, on the other hand, proposes a
7 negotiation period of three months, after which either party can escalate an
8 unresolved dispute to this Commission for determination of the appropriate rate
9 under Section 251(c)(2). So the period for negotiations of a new rate is another
10 issue in dispute.

11 **Q. ARE THERE ANY OTHER DIFFERENCES?**

12 A. Yes, the third significant difference is that the parties also disagree on the
13 question of how to establish an interim rate that would apply during the
14 negotiations and potential dispute resolution period. Charter proposes a rate that
15 is likely to approximate the final 251(c)(2) TELRIC rate, in that it proposes the
16 use of CenturyTel's tariffed rate, subject to the originated local traffic factor
17 (sometimes referred to as an relative use factor, or "RUF" of fifty percent (50%).
18 CenturyTel, in contrast, simply proposes to use the current tariffed rates, which
19 are, of course, significantly higher than what we would expect of a 251(c)(2) rate.
20 In addition, Charter proposes to include a "true-up" clause to ensure that
21 payments made prior to the establishment of the final rate can be trued up.
22 CenturyTel does not propose a true up clause.

Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand, 20 FCC Rcd 2533 at ¶ 140 (2005).

1 **Q. WHY DOES CHARTER SEEK ACCESS TO INTERCONNECTION**
2 **FACILITIES?**

3 A. Charter seeks access to interconnection facilities for the purpose of establishing
4 facilities between its network, and CenturyTel's network, for the exchange of
5 telephone exchange service traffic between the parties' network. Or, put simply,
6 Charter would use these facilities to interconnect and exchange local voice traffic
7 with CenturyTel.

8 **Q. IS CHARTER'S PROPOSED USE OF THESE FACILITIES CONSISTENT**
9 **WITH APPLICABLE LAW?**

10 A. Yes, as this Commission has already determined, the FCC has clearly ruled that
11 competitive LECs have the right to obtain interconnection facilities pursuant to
12 section 251(c)(2) for the transmission and routing of telephone exchange service
13 and exchange access service, and that competitive LECs are entitled to access to
14 interconnection facilities at cost-based rates to the extent that they require them to
15 interconnect with the incumbent LEC's network. *See* Final Arbitrator's Report,
16 Section V, at p. 16, Case No. TO-2005-0336 (Mo. PSC 2005).

17 **Q. WHAT IS YOUR RECOMMENDATION ON THIS ISSUE?**

18 A. I recommend that the Commission adopt Charter's proposed language because it
19 is consistent with applicable law, and provides a reasonable and equitable process
20 for CenturyTel to determine an appropriate cost-based rate for interconnection
21 facilities that it must make available to competitors like Charter.

1 **Issue 21** - Should Charter be allowed to deploy one-way trunks at its discretion; and
2 without having to assume the entire cost of interconnection facilities used to carry traffic
3 between the Parties' respective networks?
4

5
6 **Q. PLEASE EXPLAIN THE PARTIES' DISPUTE ON THIS ISSUE.**

7 A. The dispute is simple. The parties do not agree upon whether Charter should be
8 entitled to deploy its own one-way trunks under certain circumstances. Charter
9 believes that is entitled to do so, and has offered proposed language to that effect.
10 CenturyTel disagrees and attempts to undermine Charter's right to establish one-
11 way trunks by forcing interconnection costs upon Charter that would normally be
12 borne by CenturyTel.

13 **Q. BEFORE YOU ADDRESS THE DISPUTED LANGUAGE, PLEASE**
14 **PROVIDE A BRIEF EXPLANATION OF THE DIFFERENCES**
15 **BETWEEN A ONE-WAY TRUNK AND A TWO-WAY TRUNK.**

16 A. A one-way trunk is a trunk between two switching centers (either on one carrier's
17 network, or as in the case of interest in this arbitration, between two carriers'
18 interconnected networks), over which traffic may be originated from only one of
19 the two switching centers. The traffic carried on a one-way trunk may consist of
20 two-way communications once a call is established, hence, the "one-way" label
21 refers only to the origin of the demand for connection. The originating end of a
22 one-way trunk is referred to as the "outgoing trunk" while the other end is known
23 as the "incoming trunk." By comparison, a two-way trunk allows calls to
24 originate from both ends of the trunk. In this arrangement, depending upon where
25 the call originates, both ends of the trunk can serve as an "incoming trunk" and
26 "outgoing trunk," and both parties can send traffic originated from either of the

two carriers' networks back and forth on the facility. Both one-way and two-way trunks can carry the traffic that is exchanged between Charter and CenturyTel.

Q. PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE FOR ISSUE

21.

A. 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 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.**

Q. PLEASE PROVIDE CENTURYTEL'S PROPOSED LANGUAGE FOR ISSUE 21.

A. 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. Regardless of whether one-way or two-way facilities are provisioned each Party is individually responsible to provide facilities to the POI. The Parties will negotiate 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.

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

A. Charter expects that it will routinely utilize two-way trunks, which are often more efficient for this type of interconnection. However, as I understand it, FCC rules place the selection of one-way versus two-way trunks in the hands of the connecting CLEC, subject to issues of technical feasibility. Charter therefore

1 proposes to include language in the agreement that maintains its federal-law right,
2 under 47 C.F.R. § 51.305(f) to select one-way trunks if in particular instances this
3 is appropriate.

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

5 A. CenturyTel asserts that two-way trunking is the "appropriate" architecture, and
6 that it is the most efficient method of trunking. Further, CenturyTel concedes that
7 Charter may have the right to use one-way trunks, but only where both parties
8 agree that such trunks are mutually agreeable (thus giving CenturyTel a "veto"
9 power over Charter). But even in those circumstances, CenturyTel also asserts
10 that if Charter uses one-way trunks then Charter, and Charter alone, should be
11 responsible for the cost of facilities that CenturyTel would need to deploy to get
12 *CenturyTel's* traffic to Charter.

13 **Q. DO YOU DISAGREE WITH CENTURYTEL'S ASSERTIONS?**

14 A. Yes. If the circumstances arise such that Charter determines it is necessary, and
15 appropriate, to use one-way trunks then CenturyTel should not be able to
16 undermine that decision by forcing Charter to pay for facilities that CenturyTel
17 would need to deploy to get its traffic to Charter. That simply is not equitable or
18 reasonable. Nor is it consistent with this Commission's prior rulings on the same
19 question.³²

20 **Q. WHAT IS YOUR RECOMMENDATION ON THIS ISSUE?**

³² See *Petition of Socket Telecom, LLC*, Case No. TO-2005-0299, 2006 Mo. PSC LEXIS 1380 at
* 50 (Mo. PSC 2006).

1 A. I recommend that the Commission adopt Charter's proposed contract language
2 and reaffirm that Charter may, consistent with federal law, elect to deploy either
3 one-way or two-way trunks when interconnecting with CenturyTel.

1 **Issue 22** – What threshold test should be used to determine when the Parties will
2 establish Direct End Office Trunks?
3

4 **Q. PLEASE INTRODUCE THE DISPUTE BETWEEN THE PARTIES ON**
5 **THIS ISSUE.**

6 A. Importantly, Charter and CenturyTel agree that the appropriate threshold for
7 establishing a direct end office trunk (“DEOT”) is 24 or more trunks (which is
8 equivalent to a DS1 or higher level of traffic). Hence, the threshold itself is not in
9 debate. What the parties disagree on is how to determine whether the threshold is
10 met. Charter’s proposal calls for a DEOT to be established when *actual* traffic
11 volumes meet the DS1 level for three consecutive months. CenturyTel proposes
12 to require a DEOT when actual *or projected* traffic volumes meet the DS1 level
13 for either three consecutive months or three months of any five consecutive month
14 period. CenturyTel’s language is vague and subject to traffic projections that may
15 or may not materialize.

16 **Q. PLEASE PROVIDE CHARTER’S PROPOSED LANGUAGE.**

17 A. Charter’s proposed language is as follows:

18 **The Parties shall establish** a direct End Office primary high usage
19 Local Interconnection Trunk Groups for the exchange of Local
20 Traffic, where actual traffic **volume reaches** twenty four (24) or
21 more trunks, **for three consecutive months.**

22
23 **Q. PLEASE PROVIDE CENTURYTEL’S PROPOSED LANGUAGE.**

24 A. CenturyTel’s proposed language is as follows:

25 As described in 3.3.1.1, the Parties have established a direct End
26 Office primary high usage Local Interconnection Trunk Groups for
27 the exchange of Local Traffic, where actual or projected traffic
28 demand is or will be twenty four (24) or more trunks, as described
29 in Section 3.3.2.5 of this Article.

1
2 **Q. CENTURYTEL HAS EXTENSIVE PROPOSED LANGUAGE UNDER**
3 **SECTION 3.3.2.5. WILL YOU ADDRESS THAT AS WELL?**

4 A. Not in this part of the testimony. Those issues are addressed in my testimony on
5 Issue 18 and will not be repeated here.

6 **Q. PLEASE EXPLAIN WHY CENTURYTEL'S LANGUAGE IS**
7 **INAPPROPRIATE AND SHOULD BE REJECTED.**

8 A. The problem with CenturyTel's language is that, by referring to "projected"
9 traffic, it could require DEOTs to be established when traffic does not actually
10 meet the agreed-upon DS1 threshold. Obviously, if the projection is incorrect and
11 traffic volumes do not reach the threshold level, DEOTs would be unnecessary –
12 yet the potential for this outcome exists under CenturyTel's language. The
13 threshold test for determining when Parties will establish DEOTs must be based
14 on actual traffic volumes to ensure that DEOTs are not established based on
15 speculative volumes or volumes that may or may not exist in the future.

16 In addition, basing the threshold on projected demand as CenturyTel proposes
17 could lead to disputes between the parties as to which party's projected traffic
18 volumes are accurate and should be used to determining whether the threshold has
19 been met. In effect, CenturyTel's language would provide incentives for
20 CenturyTel to attempt to argue that traffic volumes "will be" a DS1 level in the
21 future so that Charter must establish DEOTs, which would increase Charter's
22 costs. Basing the threshold on actual traffic volumes as Charter proposes would
23 avoid these potential disputes and incentives by using data that is objective and

1 verifiable.

2 **Q. WHAT IS YOUR RECOMMENDATION FOR ISSUE 22?**

3 A. Charter's proposed language for Section 3.4.2.1.1 of Article V: Interconnection &
4 Transport & Termination should be adopted.

1 **Issue 23** - Should Charter pay CenturyTel a tariffed access charge for transiting traffic
2 where CenturyTel end office switches perform a transit functionality for unqueried calls
3 that have been ported to another carrier?
4

5
6 **Q. PLEASE EXPLAIN THE PARTIES' DISPUTE ON THIS ISSUE.**

7 A. I believe that the dispute here is narrower than may be apparent from a review of
8 the parties' positions in the Joint DPL. The dispute revolves around a situation
9 that does not arise very often: when Charter sends an "unqueried" call to
10 CenturyTel's network, what are the parties' respective obligations concerning
11 routing the call? Charter simply wants to ensure that in those circumstances
12 CenturyTel does *in fact* route the call to the called party's service provider.
13 CenturyTel wants to be compensated for the functionality associated with routing
14 that call, and transporting it across its network.

15
16 **Q. IS CHARTER OPPOSED TO COMPENSATING CENTURYTEL FOR**
17 **ROUTING THESE "UNQUERIED" CALLS?**

18 A. No, and Charter is willing to compensate CenturyTel at that transit rate that
19 CenturyTel has set forth in its position statement in the Joint DPL, i.e., the
20 combined tandem switching and tandem transport and termination rates.
21 Although Charter's position statement references a rate of \$.005, Charter is not
22 advocating the use of that rate, and as I have explained, will agree to use
23 CenturyTel's rates provided they are not more than that amount.

24 **Q. PLEASE PROVIDE CHARTER'S PROPOSED LANGUAGE FOR ISSUE**
25 **23.**

26 A. Charter's proposed language for Issue 23 is as follows:
27

1 When CenturyTel receives an unqueried call from **CLEC to a telephone number that
2 has been ported to another local service provider, **CenturyTel will complete such calls**
3 **to the new local service provider and** Charter shall pay CenturyTel the applicable
4 transit rate(s) and NP query charge set forth in Article XI (Pricing).

5
6 **Q. PLEASE PROVIDE CENTURYTEL'S PROPOSED LANGUAGE FOR**
7 **ISSUE 23.**

8 A. CenturyTel's proposed language for Issue 23 is as follows:

9
10 When CenturyTel receives an unqueried call from **CLEC to a telephone number that
11 has been ported to another local service provider, Charter shall pay CenturyTel the
12 applicable transit rate and NP query charge set forth in Article XI (Pricing).

13
14 **Q. FROM THIS LANGUAGE IT DOES NOT SEEM THAT THE PARTIES**
15 **ARE VERY FAR APART ON THIS ISSUE, IS THAT RIGHT?**

16 A. Yes, I think so. Although I won't presume to speak for CenturyTel, it appears
17 that the parties are not very far apart. In its position statement in the Joint DPL
18 CenturyTel makes the point that Charter "should be required to perform its N-1
19 [query] obligations for calls to ported numbers of third party carriers." Parties'
20 Joint Statement of Unresolved Issues, at p. 86. What this point misses, however,
21 is that Charter has never disclaimed this obligation, and there is no language in
22 dispute on that point. The fact is Charter routinely performs its N-1 query
23 obligations, and this issue only comes up in very limited circumstances. And,
24 further, all that Charter seeks is an affirmative statement that when CenturyTel
25 charges Charter for routing this unqueried call, CenturyTel will, in fact, route the
26 unqueried call.

27 **Q. WHAT IS YOUR RECOMMENDATION ON THIS ISSUE?**

1 A. I recommend that the Commission adopt Charter's proposed language on this
2 issue given that Charter has already agreed to compensate CenturyTel for routing
3 these types of calls.
4
5

Issue 27 – Should CenturyTel be allowed to assess a charge for administrative costs for porting telephone numbers from its network to Charter’s network?

Issue 40 -- Should the Pricing Article include Service Order rates and terms?

Q. WHY HAVE YOU IDENTIFIED TWO ISSUES ABOVE?

A. Issue 27 and Issue 40 both deal with proposed charges for local number portability (“LNP”) activities. Issue 27 addresses whether any charge would apply for such activities, and Issue 40 addresses the types of charges that CenturyTel proposes. Because the parties agree that the two issues are interrelated, it seems appropriate and efficient to address them together.

Q. PLEASE INTRODUCE ISSUE 27 AND ISSUE 40.

A. This dispute relates to charges for porting numbers from one carrier to the other. More specifically, CenturyTel proposes to charge Charter when a Charter customer wants his or her number ported to Charter. As will be shown below, CenturyTel should not be charging Charter for any LNP activities.

Q. WHAT LANGUAGE IS CHARTER PROPOSING ON THESE TWO ISSUES?

A. Charter’s proposed language for Issue 27 is as follows:

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 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.

Charter has not proposed any language for Issue 40 since, as discussed below, no charge is appropriate under the industry standards and guidelines.

1 **Q. WHAT LANGUAGE IS CENTURYTEL PROPOSING ON THESE TWO**
2 **ISSUES?**

3 A. CenturyTel's proposed language for Issue 27 is as follows:

4 1.2.3 The Party receiving the LSR will bill the service order charges set forth in the
5 Pricing Article XI for each LSR received. The Party receiving the LSR will bill an Initial
6 Service Order Charge for each initial LSR submitted. A Subsequent Service Order
7 Charge applies to any modification to an existing LSR.
8

9 CenturyTel's proposed language for Issue 40 is as follows:

10 2.70 **Initial Service Order**

11 An order submitted by **CLEC to CenturyTel initially ordering a port or other
12 service required by this Agreement.

13
14 [NOTE: This dispute also encompasses whether to include the following
15 language in Article XI (Pricing):]
16

17
18 Article XI (Pricing), § III(B):
19

20 Initial Service Order

21 Simple \$ 14.02

22 Complex \$ 65.77
23

24 Subsequent Service Order \$ 7.53

25 Manual Ordering Charge \$ 12.17
26
27

28 "Initial Service Order" (ISO) applies to every Local Service Request (LSR).

29 A "Simple" ISO charge applies to every LSR submitted that contains 1 – 9 numbers.

30 A "Complex" ISO charge applies to every LSR submitted that contains in excess of
31 10 or more numbers.

32 "Subsequent Service Order" applies to any modification to an existing LSR.

33 "Manual Ordering Charge" applies in addition to the ISO charge for every LSR that
34 is submitted manually where an electronic interface for such LSR is available.
35

1 **Q. BEFORE ADDRESSING THE COMPETING PROPOSALS, PLEASE**
2 **DEFINE NUMBER PORTING AND LNP GENERALLY.**

3 A. Number portability, or “porting,” is the term used to describe a telephone
4 subscriber’s ability to maintain his or her existing telephone number when the
5 customer changes providers. Porting occurs where the two telephone companies
6 work together, at the customer’s request, to transfer the telephone number from
7 the “old” service provider to the “new” service provider. The process ensures that
8 customers can transition from their old provider to their new provider, without
9 having to change their telephone number. Naturally, porting can and does go both
10 ways – to and from the incumbent.

11 **Q. WHY IS LNP IMPORTANT TO CONSUMERS?**

12 A. LNP is important because consumers want to be able to retain their existing
13 telephone numbers when switching providers. Retaining your telephone number
14 is important for obvious reasons: consumers do not want to have to alert their
15 friends and family of new telephone numbers, and change billing statements,
16 stationery, business cards, and other items every time they switch telephone
17 providers. For these reasons (and others), number porting is very important to
18 customers. Indeed, without number portability consumers may choose not to
19 change their providers because of the impact on their personal and business lives.

20 **Q. WHY IS NUMBER PORTING IMPORTANT TO COMPETITORS?**

21 A. As noted above, getting customers to change providers can be difficult. The
22 customer inertia for a service is difficult to overcome in the first place, but
23 without number portability consumers may not even consider an alternative

1 provider. Even though providers like Charter now offer competitive alternatives
2 by competing vigorously on rates, terms and conditions with the incumbents,
3 experience shows that without number portability, competition will not develop.
4 In other words, the goals and mandates of the Act will be frustrated absent the
5 availability of local number portability.³³ The inconvenience of losing a
6 telephone number that has become identified with the consumer is, as noted
7 above, simply too great. In other words, essentially all of Charter's efforts to
8 compete with incumbents are moot if the customer can not port their telephone
9 number.

10 **Q. ABOVE YOU CITED TO THE TELECOMMUNICATIONS ACT**
11 **REGARDING LNP. PLEASE PROVIDE THE RELEVANT LANGUAGE**
12 **FROM THE ACT.**

13 A. Section 251(b) of the Act identifies the general duties of all LECs which include
14 resale, number portability, dialing parity, and reciprocal compensation. Section
15 251(b) is reproduced below:

16 **SEC. 251. [47 U.S.C. 251] INTERCONNECTION.**

17 (b) Obligations of All Local Exchange Carriers.--Each local exchange
18 carrier has the following duties:

19 (1) Resale.--The duty not to prohibit, and not to impose
20 unreasonable or discriminatory conditions or limitations on, the
21 resale of its telecommunications services.

22 (2) Number portability.--The duty to provide, to the extent
23 technically feasible, number portability in accordance with
24 requirements prescribed by the Commission.

³³ Congress recognized the importance of number portability not only to consumers, but to the development of competition. The Act identified LEC responsibilities for LNP at Section 251(b)(2) and Section 251(e)(2).

1 (3) Dialing parity.--The duty to provide dialing parity to
2 competing providers of telephone exchange service and
3 telephone toll service, and the duty to permit all such providers
4 to have nondiscriminatory access to telephone numbers, operator
5 services, directory assistance, and directory listing, with no
6 unreasonable dialing delays.

7 (4) Access to rights-of-way.--The duty to afford access to the
8 poles, ducts, conduits, and rights-of-way of such carrier to
9 competing providers of telecommunications services on rates,
10 terms, and conditions that are consistent with section 224.

11 (5) Reciprocal compensation.--The duty to establish reciprocal
12 compensation arrangements for the transport and termination of
13 telecommunications.

14 Obviously, Section 251(b)(2) above relates to the dispute in this case.

15 **Q. IS CENTURYTEL REFUSING TO PROVIDE NUMBER PORTABILITY**
16 **AS REQUIRED UNDER SECTION 251(b)(2) ABOVE?**

17 A. No. CenturyTel is not refusing to provide LNP functionality but it is proposing
18 charges for LNP that are prohibited by the Act the FCC orders mentioned above.

19 **Q. PLEASE EXPLAIN.**

20 A. Section 251(e)(2) of the Act provides the FCC with authority to require carriers to
21 bear the costs of LNP on a competitively neutral basis. That language is as
22 follows:

23 (e) Numbering Administration –

24 (2) Costs – The cost of establishing telecommunications
25 numbering administration arrangements and number portability shall be
26 borne by all telecommunications carriers on a competitively neutral basis
27 as determined by the Commission.

28
29 This portion of the Act was implemented by the FCC as described in the LNP
30 orders identified above.

1 **Q. WHY DOES CHARTER OPPOSE CENTURYTEL'S SERVICE ORDER**
2 **CHARGES FOR PORTING TELEPHONE NUMBERS FROM ITS**
3 **NETWORK?**

4 A. While the Act recognized the importance of number portability, the FCC --
5 pursuant to Section 251(e)(2), the numbering administration portion of the Act --
6 prescribed specific ways for the LECs to recover the costs of providing this
7 important functionality. CenturyTel's proposal is inconsistent with the FCC's
8 regulations on cost recovery for number portability.

9 **Q. HOW IS CENTURYTEL'S PROPOSAL FOR LNP RATES**
10 **INCONSISTENT WITH THE FCC'S ORDERS?**

11 A. In several orders implementing Section 251(e)(2), the FCC held that carriers are
12 required to recover their costs of implementing LNP through tariffed end-user
13 charges.³⁴ In these orders the FCC determined that ILECs may recover through
14 *end-user charges* their carrier-specific costs directly related to providing number
15 portability. The FCC concluded that this framework for cost recovery (from end
16 users rather than other carriers) best serves the statutory goal of competitive
17 neutrality.

18 **Q. HAVE THOSE RULINGS BEEN CODIFIED INTO THE FCC'S RULES?**

³⁴ The FCC's rulings were set forth in several orders: *Telephone Number Portability*, Third Report and Order (the "Cost Recovery Order"), 13 FCC Rcd 11701 (1998), *aff'd*, *Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review (the "Cost Recovery Reconsideration Order"), 17 FCC Rcd 2578 (2002); and *Telephone Number Portability Cost Classification Proceeding*, Memorandum Opinion and Order, 13 FCC Rcd 24495 (CCB 1998).

1 A. Yes, upon implementation of the Cost Recovery Order the FCC promulgated its
2 current rule, codified at 47 C.F.R. § 52.33, entitled "Recovery of carrier specific
3 costs directly related to providing long-term number portability."

4 **Q. WHAT DOES THAT RULE PROVIDE?**

5 A. The rule states that ILECs may recover their carrier-specific costs directly related
6 to providing long-term number portability by establishing in tariffs filed with the
7 FCC, certain charges over a five (5) year term assessed against end users. *See* 47
8 C.F.R. § 52.33(a)(1)(i) & (a)(3). In other words, to recover their costs associated
9 with number porting, ILECs may assess charges on their end users.

10 **Q. DOES THE RULE PERMIT ILECS TO ASSESS ANY CHARGES UPON**
11 **OTHER CARRIERS?**

12 A. Yes. Rule 52.33(a)(1)(ii) allows ILECs to assess charges on carriers that purchase
13 switching ports as UNEs, or resell the ILECs' local exchange services, "as if the
14 incumbent local exchange carrier were serving those carriers' end users." In
15 addition, the number portability "query service" charge described in 47 C.F.R. §
16 52.33(a)(2) may also be assessed against carriers.

17 **Q. DOES CHARTER PURCHASE SWITCHING PORTS FROM**
18 **CENTURYTEL?**

19 A. No. Charter is a facilities-based provider with its own switching and transmission
20 facilities. It therefore does not need to purchase switching ports from other
21 providers, including CenturyTel.

22 **Q. DOES CHARTER RESELL CENTURYTEL LOCAL SERVICES?**

1 A. No. Again, because Charter is a facilities-based provider with its own network
2 facilities, it does not need to resell CenturyTel's local services.

3 **Q. DOES CHARTER RELY UPON CENTURYTEL TO PROVIDE NUMBER**
4 **PORTING "QUERY SERVICES"?**

5 A. Generally speaking, no. A number porting "query" is required when one LEC
6 sends a telephone call to another LEC without first querying (or checking) the
7 applicable regional database that maintains a record of all ported telephone
8 numbers within such region. Such queries are necessary to ensure that the call is
9 properly routed to the LEC whose switch the number is assigned to. In other
10 words, it is necessary to check the database to make sure that the number has not
11 been ported to another LEC, and if it has been ported to another LEC, to ensure
12 that the call is routed to the correct LEC. Charter performs this query function on
13 virtually every call. In those rare instances when the call is not queried by
14 Charter, it may rely upon CenturyTel to perform the query. If Charter does rely
15 upon CenturyTel to query the call, Charter acknowledges that a query charge is
16 appropriate in that circumstance.

17 **Q. OTHER THAN THE THREE TYPES OF CARRIER CHARGES YOU**
18 **JUST DESCRIBED, ARE THERE ANY OTHER PERMISSIBLE NUMBER**
19 **PORTING CARRIER CHARGES UNDER THE FCC RULES?**

20 A. No. The FCC has prohibited ILECs from assessing any other type of charge upon
21 other carriers. Indeed, the FCC specifically ruled in the Cost Recovery
22 Reconsideration Order, at Paragraph 62, that ILECs, like CenturyTel, may not

1 recover any number portability costs through “interconnection charges or add-ons
2 to interconnection charges” to other carriers.

3 **Q. PRACTICALLY SPEAKING, WHY DOES THE FCC’S PROHIBITION**
4 **OF CHARGES ON OTHER CARRIERS MAKE SENSE?**

5 A. This determination reflects the fact that the “cost-causer” in number porting
6 situations is always the customer, not the requesting carrier. When a company
7 like Charter submits a port request to a telephone company like CenturyTel,
8 Charter is merely performing an activity on behalf of the customer, by presenting
9 the customer’s porting request to CenturyTel and facilitating the porting process.
10 In fact, FCC subscriber change rules, at 47 CFR 64.1130(e)(5), require the
11 acquiring carrier to notify the customer that there may be a charge associated with
12 a carrier change. This rule is consistent with the cost-causer bearing the burden of
13 the cost. This is consistent with long-standing FCC practice and general
14 economic theory.

15 A provider incurring a cost in porting a number must assess that cost, if any, to
16 the cost causer – the customer. Any provider can choose not to assess the cost,
17 but no provider can choose to assess the cost on a competing provider. The
18 FCC’s determination therefore recognizes that assessing charges upon those
19 competitors who “win” the customer, would effectively shift the cost burdens to
20 competitors, and thereby impose additional costs upon competitors. That result
21 would not be competitively neutral, and is therefore prohibited.

1 **Q. HAS CHARTER IMPLEMENTED PRACTICES TO ENSURE ITS**
2 **COMPLIANCE WITH THIS RULE, AND OTHER NUMBER PORTING**
3 **RULES?**

4 A. Yes. Charter has implemented internal processes and procedures to ensure that it
5 is in compliance with the FCC's regulations governing number porting.

6 **Q. PLEASE EXPLAIN.**

7 A. With respect to the implementation of number porting, there are several critical
8 steps necessary to ensure that Charter can respond to a number port request from
9 another provider in a manner that is consistent with its obligations under the
10 FCC's rules. I will describe those steps, in broad terms, to demonstrate the
11 actions that Charter undertakes to ensure that numbers are ported in a proper
12 manner.

13 First, when Charter receives a port request from another service provider, it must
14 validate the request, and ensure that the phone number that has been requested for
15 porting is a number assigned to Charter.

16 Second, the employee handling the port request enters a "disconnect port out
17 order" into the billing system with the due date indicated by the "winning" service
18 provider.

19 Third, once the port out request has been entered into the billing system, Charter
20 confirms with the requesting provider that it can accomplish the port. It will do so
21 by issuing what is known in the industry as a firm order commitment, or "FOC,"
22 to the requesting provider. The FOC will normally be provided to the requesting
23 provider within twenty-four hours of receipt of the port request.

1 Fourth, as soon as the FOC is provided to the requesting carrier, Charter then
2 submits the number release order for entry into the Number Portability
3 Administration Center ("NPAC") database.

4 Fifth, on the day that the number is scheduled to be ported, Charter sends an
5 "unlock record" to Intrado, Charter's third-party 911 vendor, for release of the
6 number in the 911 database. Charter will remove the phone number and all
7 associated features from its switch by 12:00 P.M. on the day following the port
8 request.

9 **Q. HOW LONG DOES THAT ENTIRE PROCESS USUALLY TAKE?**

10 A. It varies, depending upon the dates requested by the other provider. However,
11 Charter will provide FOC within twenty-four (24) hours of the port request, and
12 will commit to a due date request as early one business day from the time the
13 request was received.

14 **Q. DOES THE PROCESS YOU HAVE DESCRIBED ABOVE REFLECT**
15 **COMMON INDUSTRY PRACTICE FOR LOCAL NUMBER**
16 **PORTABILITY?**

17 A. Yes, it does.

18 **Q. DOES CHARTER RECOVER THE COSTS ASSOCIATED WITH THAT**
19 **WORK BY ASSESSING A CHARGE ON THE OTHER PROVIDER?**

20 A. No. Charter does not charge the other provider for the costs associated with
21 responding to number port requests. Likewise, CenturyTel should not be
22 charging Charter for the costs associated with LNP.

1 **Q. HAS CENTURYTEL PROVIDED ANY RELIABLE COST SUPPORT FOR**
2 **ITS PROPOSED RATES?**

3 A. First of all, regardless of CenturyTel's costs, they are not to be recovered from
4 carriers like Charter. But despite that obvious fact, CenturyTel has not provided
5 any reliable cost support to justify its proposed number porting service charges.
6 Notably, CenturyTel has not presented any evidence that its proposed number
7 porting charges have any relation to any costs the company may incur in
8 responding to port requests transmitted by Charter. As the proponent of these
9 charges, CenturyTel has the burden to demonstrate that these charges are cost-
10 based. But they have failed to offer any cost study, or other evidence, to make
11 that showing.

12 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION ON**
13 **THESE TWO INTERRELATED ISSUES?**

14 A. I recommend that the Commission adopt the language proposed by Charter.
15 CenturyTel's language should be rejected as it is not competitively neutral or
16 consistent with standard industry practice based on the FCC's rules. In addition,
17 Century Tel has not provided the cost support for its proposed charge required by
18 this Commission. Accordingly, Century Tel may not charge Charter for
19 processing LNP requests.

1 **Issue 32** – How should the Agreement define each Party’s obligations with respect to
2 fulfilling directory assistance obligations consistent with Section 251(b)(3) of the
3 Act?
4

5 **Q. PLEASE INTRODUCE ISSUE 32.**

6 A. Issue 32 deals with the dispute between the parties over the appropriate
7 responsibilities for ensuring that directory listing information is available to the
8 other party’s subscribers. Specifically, it sets forth two competing concepts of
9 how the parties’ directory assistance obligations should be framed.

10 **Q. PLEASE PROVIDE CHARTER’S PROPOSED LANGUAGE ON THIS**
11 **ISSUE.**

12 A. Charter’s proposed language is as follows:

13 **8.0 DIRECTORY ASSISTANCE OBLIGATIONS**
14

15 To ensure that each Party’s subscribers have non-discriminatory access to directory
16 assistance listings of the other Party’s subscribers, the Parties’ agree to provide each
17 other all necessary End User subscriber listing information for inclusion in each
18 Party’s relevant directory assistance listing databases, as required by Section
19 251(b)(3) of the Act.
20

21 **CenturyTel Obligations:** CenturyTel will accept, include, and maintain, in the same
22 manner that Century Tel treats listings of its own End Users, CLEC subscriber
23 listings in the directory assistance databases maintained by CenturyTel or its third-
24 party vendors. To the extent that CenturyTel’s directory assistance listings are
25 maintained in a database administered by a third party vendor, CLEC shall
26 cooperate with CenturyTel as needed to ensure that CLEC listings are promptly
27 loaded into such database and accessible to CenturyTel’s End Users, upon request.
28 CenturyTel will not charge CLEC for including and maintaining CLEC subscriber
29 listings in the directory assistance databases maintained by CenturyTel, or its
30 vendors.
31

32 **CLEC Obligations:** CLEC authorizes CenturyTel, and its third party vendors, to
33 include and use CLEC’s directory assistance listing information in accordance with
34 Applicable Law, and shall provide such information to CenturyTel, or its third-
35 party vendors, at no charge. CLEC shall provide to CenturyTel the names,
36 addresses and telephone numbers of all End Users who wish to be listed in the
37 directory assistance database but omitted from publication in white pages
38 directories (i.e. non-published).
39

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

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

4 **8.0 DIRECTORY ASSISTANCE OBLIGATIONS**

5 Neither Party is a Directory Assistance (DA)-provider, but rather obtains DA services
6 from a third-party vendor(s) that uses or maintains a national DA database(s) ("national
7 database"). Nevertheless, as each Party has the obligation to ensure that its End User
8 Customers' DA listings are made available to the other Party's End User Customers, the
9 Parties agree as follows:

10
11 8.1 Each Party will promptly, upon request by the other Party, provide the requesting
12 Party with the name of its third-party DA-provider;

13
14 8.2 Each Party will be responsible for contracting with or otherwise making its own
15 arrangements for services with any such third-party DA-provider, including but
16 not limited to arrangements to provide its own End User Customers' DA listings
17 to such third-party DA-provider for inclusion in a national database accessible to
18 the other Party.

19
20 8.3 Neither Party shall be required to directly provide its End User Customers' DA
21 listings to the other Party, nor shall either Party be required to accept directly
22 from the other Party such other Party's End User Customers' DA listings, for the
23 purpose of submitting the Parties' commingled, End User Customers' DA
24 listings to any third-party DA-provider that maintains and/or uses a national
25 database accessible to the other Party.
26

27 **Q. WHAT ARE THE PRIMARY DIFFERENCES IN THE POSITIONS OF**
28 **CHARTER AND CENTURYTEL?**

29 A. Charter's language is consistent with the Act and the FCC orders implementing
30 the Act with respect to directory publishing/directory assistance ("DP/DA")
31 providers. CenturyTel's language is an attempt to avoid or abrogate its very
32 specific requirements under the Act. More specifically, CenturyTel is attempting
33 to shift its responsibilities under Section 251(b)(3) of the Act to a third party
34 vendor.

1 **Q. PLEASE PROVIDE SOME BACKGROUND INFORMATION ON THE**
2 **DIRECTORY LISTING FUNCTION IN ORDER TO FRAME THE**
3 **ARGUMENTS IN THIS CASE.**

4 A. In simple terms, a directory listing is the customer's name, phone number, and
5 address that are published in a directory, such as a telephone book, or included in
6 a directory database, such as that used when a caller dials "411." The FCC's
7 regulations define "Directory listings" as follows:

8 Directory listings. Directory listings are any information:

9 (1) Identifying the listed names of subscribers of a
10 telecommunications carrier and such subscriber's telephone numbers,
11 addresses, or primary advertising classifications (as such
12 classifications are assigned at the time of the establishment of such
13 service), or any combination of such listed names, numbers, addresses or
14 classifications; and
15

16 (2) That the telecommunications carrier or an affiliate has
17 published, caused to be published, or accepted for publication in any
18 directory format.³⁵
19

20 In addition, Section 251(b)(3) of the Act requires all local exchange carriers
21 ("LECs") to provide competing providers with "*nondiscriminatory* access to ...
22 directory assistance, and directory listing."³⁶ The FCC has interpreted the
23 statutory term "directory listing" to mean "the act of placing a customer's listing
24 information in a directory assistance database or in a directory compilation for
25 external use (such as a white pages)."³⁷ Among other things, Section 251(b)(3)
26

³⁵ 47 CFR § 51.5.

³⁶ 47 U.S.C. § 251(b)(3) (emphasis added).

³⁷ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934 [sic], As Amended*, CC Docket

1 and 47 C.F.R. § 51.5 require that LECs “publish competitors’ business customers
2 in ... [their] director[ies] on a nondiscriminatory basis,” regardless of whether
3 LECs own those directories or not.³⁸

4 Note that the statutory obligation of Section 251(b)(3) is different from the act of
5 making “directory listings” available to entities that might want to publish a
6 directory. Section 222(e) of the Act imposes a *separate* obligation on
7 telecommunications carriers to make their “subscriber list” information available
8 to any *directory publisher* on reasonable and nondiscriminatory terms.³⁹

9 Although the market for the publication of directories is discussed below, at
10 bottom the issue in this case does not involve that market, which is governed by
11 Section 222(e). Instead, this issue relates to the separate and distinct requirement
12 under Section 251(b)(3).

13 **Q. BOTH PARTIES’ LANGUAGE REFERS TO THE USE OF A THIRD-**
14 **PARTY VENDOR FOR MAINTENANCE OF DIRECTORY ASSISTANCE**
15 **LISTINGS. IS THAT A PROBLEM?**

16 A. Not necessarily. It is common for LECs to use third-party vendors for directory
17 assistance activities. The problem arises when an ILEC, with specific
18 requirements under Section 251(b)(3) attempts to shift those responsibilities to a
19 third-party.

Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550, ¶ 160 (1999) (“SLI/DA Order”).

³⁸ See *MCI Telecomm. Corp. v. Michigan Bell Tel. Co.*, 79 F. Supp. 2d 768, 801 (E.D. Mich. 1999); see also *U.S. West Comm., Inc. v. Hix*, 93 F. Supp. 2d 1115, 1132 (D. Colo. 2000) (citing *MCI Telecomm.*).

³⁹ The FCC has held that the “subscriber list” information referred to in Section 222(e) and the “directory listing” obligation of Section 251(b)(3) refer to the same information.

1 **Q. PLEASE EXPLAIN.**

2 A. The FCC has recognized that carriers may agree to have subscriber listing
3 databases administered by a third party.⁴⁰ However, the FCC has also recognized
4 that such agreements for third party administration must still be included in
5 interconnection agreements because entering into a side agreement for access to
6 subscriber listing databases contravenes the FCC requirement that LECs provide
7 directory listing on a nondiscriminatory basis and make such provisions related
8 thereto available to other carriers in interconnection agreements for adoption
9 through the mechanism of 47 U.S.C. § 252.⁴¹ Therefore, CenturyTel must include
10 rates, terms and conditions of access to its subscriber listing databases within the
11 interconnection agreement despite use of a third-party database administrator.
12 For that reason, the Agreement should include a statement that each Party is
13 obligated to ensure that its subscribers can obtain subscriber listing information of
14 the other Party's subscribers, via generally available directory assistance services.
15 Charter's proposal includes that statement reflecting both Parties' respective
16 obligations, and also sets forth specific terms and obligations that each Party must
17 satisfy to ensure that directory assistance listing information is available to the
18 subscribers of the other Party.

⁴⁰ See, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 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, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), rev. on other grounds, *AT&T Corp. v. Iowa Util. Bd.*, 119 S. Ct. 721 (Jan. 25, 1999).

⁴¹ *Provision of Directory Listing Information under the Communications Act of 1934, As Amended*, FCC 01-27, 16 FCC Rcd 2736 at ¶ 36 (2001) ("SLI/DA First Report and Order").

1 **Q. HOW WOULD SHIFTING THE RESPONSIBILITIES -- AS**
2 **CENTURYTEL'S LANGUAGE SUGGESTS -- HARM CHARTER?**

3 A. First of all, I am told by counsel that carriers can not avoid their obligations under
4 Section 251 simply by contracting with a third party vendor those functions that
5 are required under Section 251. In this case, that means that CenturyTel, even
6 though it may use a third party vendor to support its directory assistance service,
7 is still the entity that is obligated to provide nondiscriminatory access to directory
8 assistance under Section 251(b)(3). Second, when problems occur with the
9 directory listing information, CenturyTel's language would force Charter to deal
10 with the third-party vendor. CenturyTel cannot disclaim responsibility for the
11 discriminatory handling of subscriber listing information just because it chooses
12 to use a third-party vendor.

13 **Q. WHY IS CHARTER'S LANGUAGE NECESSARY?**

14 A. Charter's language is necessary to ensure that both parties accept their respective
15 obligations to provide nondiscriminatory access to directory assistance. As
16 another Charter witness, Ms. Amy Hankins, testifies, recent problems arising
17 from CenturyTel's use of a third party vendor to provide directory assistance
18 services created significant problems for Charter's subscribers. Specifically, for a
19 period of time, CenturyTel subscribers were not able to obtain Charter
20 subscriber's listing information from CenturyTel's directory assistance service.
21 As a result, persons trying to reach Charter subscribers by telephone were unable
22 to do so.

1 **Q. WOULD CENTURYTEL'S PROPOSAL RESULT IN DISCRIMINATORY**
2 **TREATMENT OF CHARTER?**

3 A. Yes, it certainly could. We have examples of DP/DA providers attempting to get
4 Charter customer information from CenturyTel's third-party DA provider with no
5 success. When DP/DA providers have access to CenturyTel's listing information
6 but not to Charter's listing information that is discriminatory treatment which
7 harms Charter and its customers. Such a result is unacceptable and inconsistent
8 with the FCC's rules.

9 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION ON**
10 **THIS ISSUE?**

11 A. I recommend that the Commission adopt Charter's proposed language. Charter's
12 language is consistent with the Act and the FCC's rules implementing the Act.
13 CenturyTel's proposal is contrary to the Act and would inappropriately shift its
14 legislatively mandated obligations to a third party.

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

16 A. Yes, it does.
17
18