

EXHIBIT A

Letter from Charter Requesting Negotiations of a New Interconnection Agreement
Pursuant to Section 252



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August 14, 2007

VIA OVERNIGHT MAIL

CenturyTel, Inc.
Attn: Carrier Relations
100 CenturyTel Drive
Monroe, Louisiana 71203

**Re: Request for Renegotiation of Interconnection Agreement Between
CenturyTel and Charter Fiberlink for the State of Missouri**

Dear Sir or Madam:

This letter will serve to provide you Charter Fiberlink-Missouri, LLC's ("Charter") notice of termination and request to renegotiate the current interconnection agreement, pursuant to 47 U.S.C. §§ 251 and 252 and applicable provisions of the agreement, between Charter and CenturyTel of Missouri ("CenturyTel") in the state of Missouri. Pursuant to Section 2 of the parties' interconnection agreement; Charter requests that the arrangements under the current agreement remain in place until the agreement has been replaced by a new negotiated or arbitrated agreement.

For purposes of these negotiations, Charter will be represented by its in-house counsel and myself. To ensure a prompt and timely start to the renegotiation process please contact me at your earliest convenience to discuss how the parties can exchange proposed contract language and begin renegotiations. I look forward to hearing from you soon. Thank you.

Sincerely,

K.C. Halm

Counsel for Charter Fiberlink

cc: Mr. Guy Miller, CenturyTel
Manager, Carrier Relations, CenturyTel
Ms. Carrie Cox, Charter
Mr. Michael Moore, Charter

EXHIBIT C

Disputed Issues List (Matrix) Showing Parties' Respective Positions, and
Proposed Contract Language, on All Disputed Issues

Exhibit C
to Charter Fiberlink, LLC MISSOURI Arbitration Petition
Charter – CenturyTel Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues</u>	<u>§</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>CenturyTel’s Language</u>	<u>CenturyTel’s Position</u>
ART. II, DEFINITIONS						
1.	Should the parties’ Agreement use the definition of Interconnected VoIP Service traffic as defined, and codified in federal regulations? <i>See also</i> Art. V, (Term used therein to be inserted following resolution of this issue.)	2.80	Interconnected VoIP Service Traffic is traffic that is provisioned via a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.	The parties should utilize the FCC definition of the term “interconnected VoIP” service to define certain traffic that may be exchanged between the Parties. The FCC has formally adopted the term “interconnected VoIP” for purposes of establishing certain regulations, and has codified the term, and its definition, at 47 C.F.R. § 9.3. This Commission should utilize the FCC’s definition because it accurately describes the nature and characteristics of traffic that is provisioned over the Charter network. Moreover, using a definition that is codified under federal law, and used by the federal expert agency, will ensure that the term that can be interpreted more clearly and consistently.	<u>IP-Enabled Voice Traffic means any IP-enabled, real-time, multi-directional voice call, including, but not limited to, service that mimics traditional telephony. IP-Enabled Voice Traffic includes: voice traffic originating on Internet Protocol Connection (IPC), and which terminates on the Public Switched Telephone Network (PSTN); and voice traffic originated on the PSTN, and which terminates on IPC, and voice traffic originating on the PSTN, which is transported through an IPC, and which ultimately, terminates on the PSTN.</u>	The Parties should utilize the term IP-enabled voice traffic to refer to voice traffic delivered over facilities using the Internet Protocol.
2.	How should the Agreement define the term Network Interface Device or “NID”?	2.103	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 definition of Network Interface Device (NID) should be consistent with FCC rules, in that it should not: alter or modify the location of the demarcation point; imply that CenturyTel always owns and maintains control over inside wire; or imply that end users do not own inside wire on the customer side of the NID. CenturyTel’s proposed definition contravenes FCC definitions in several ways, and attempts to establish new substantive rights and obligations for Century Tel under the Agreement that do not exist under federal law. The definitions should not be used as a	A means of interconnecting Inside Wiring to CenturyTel’s distribution plant, such as a cross-connect device used for that purpose. The NID houses the protector, <u>the point from which the Point of Demarcation is determined between the loop (inclusive of the NID and the End User Customer’s Inside Wire pursuant to 47 CFR 68.105. For purposes of this definition, the phrase “End User Customer’s side of the NID” is descriptive and does not convey any ownership or usage rights.</u>	The NID definition accurately reflects the NID architecture, and applicable regulations concerning ownership and control of inside wire, and the demarcation point.

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				means to impose new substantive rights and obligations, but instead should be used simply to define terms consistent with FCC rulings.		
3.	How should the Agreement define, and incorporate, provisions from the tariffs used by both parties?	2.140 and Art. 1, § 3	<p>Any applicable filed and effective Federal or state tariff (and/or State Price List) of a Party, as amended from time-to-time, that the Parties have specifically and expressly identified in this Agreement for the purpose of incorporating specific rates or terms set forth in such document by mutual agreement.</p> <p>Article I, Section 3:</p> <p>Unless otherwise specifically determined by the Commission, in case of conflict between the Agreement and either Party’s Tariffs relating to ILEC and CLEC’s rights or obligations under this Agreement, then the rates, terms and conditions of this Agreement shall prevail. In no event shall a Tariff alter, curtail, or expand the rights or obligations of either Party under this Agreement, except by mutual consent. Either Party’s Tariffs and/or State Price Lists shall not apply to the other Party except to the extent that this Agreement expressly incorporates specific rates or terms set forth in such Tariffs by reference or to the extent that the other Party expressly</p>	<p>The definition of a tariff should establish that the Parties intend to incorporate only those provisions that are specifically and expressly identified in the Agreement. Without a specific, and express, statement by both Parties of their mutual intent to incorporate provisions from either parties’ tariffs, the Agreement may not be construed as incorporating such provisions. Therefore, where the Parties intend to incorporate specific provisions from an external document, including a specific tariff, then the statement of incorporation should be clear and unequivocal.</p> <p>Furthermore, the Parties should incorporate only those specific tariff provisions that they intend to be operative under this Agreement. The Commission should not approve an Agreement that simply purports to incorporate any “applicable” tariff. Doing so will inevitably lead to interpretive disputes as to which tariffs are in fact “applicable” in any given circumstance, and lead to potential conflicts that can be resolved only with burdensome litigation.</p> <p>Consistent with its position concerning the definition of a tariff (above), the Parties Agreement should include specific language to reflect their intent to incorporate only those tariff provisions that are specifically and</p>	<p>Any applicable filed and effective Federal or state tariff (and/or State Price List) of a Party, as amended from time-to-time. <u>Either Party’s Tariffs and/or State Price Lists shall not apply to the other Party except to the extent that this Agreement expressly incorporates such Tariffs by reference or to the extent that the other Party expressly orders services pursuant to such Tariffs.</u></p> <p>Article I, Section 3:</p> <p>Unless otherwise specifically determined by the Commission, in case of conflict between the Agreement and either Party’s Tariffs relating to ILEC and CLEC’s rights or obligations under this Agreement, then the rates, terms and conditions of this Agreement shall prevail. In no event shall a Tariff alter, curtail, or expand the rights or obligations of either Party under this Agreement, except by mutual consent. Either Party’s Tariffs and/or State Price Lists shall not apply to the other Party except to the extent that this Agreement expressly incorporates such Tariffs by reference or to the extent that the other Party expressly orders services pursuant to such</p>	<p>The definition of a tariff should include the concept that no tariff is incorporated except where expressly incorporated, or when a Party “orders services” out of the other Party’s tariffs.</p>

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			orders services pursuant to such Tariffs and/or State Price Lists. NOTE: Additional tariff incorporation language proposed by Charter, and disputed by CenturyTel, is shown attached hereto as Exhibit C-1.	expressly identified in the Agreement.	Tariffs and/or State Price Lists.	
ART. III, GENERAL TERMS AND CONDITIONS						
4.	Termination of Agreement (Sub-Issues 4(A) and (B))					
4(a)	Should the Agreement include terms that allows one Party to terminate the Agreement without any oversight, review, or approval of such action, by the Commission?	2.6	<p><u>Suspension or Termination Upon Default.</u> Either Party may suspend or terminate this Agreement, in whole or in part, in the event of a Default (defined below) by the other Party; <i>provided, however</i>, that the non-defaulting Party has complied with the dispute resolution provisions of this Agreement, including Section 20.</p> <p>“Default” is defined to include:</p> <p>(a) A Party’s insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or</p> <p>(b) The final revocation by the Commission of a Party’s Certificate of Operating Authority and transition of End Users to another</p>	<p>Termination of the agreement should be subject to either Party’s right to invoke dispute resolution procedures of the agreement, and only after this Commission specifically authorizes such action. Because termination of the agreement could have severe potential ramifications to end user subscribers of both parties, such action should only occur under the direct supervision and oversight of this Commission.</p> <p>For that reason, Charter’s proposed language would establish that any potential action deemed to constitute a default of the Agreement would be defined as both the action constituting the failure to perform, and the resolution of a dispute proceeding arising out of such alleged failure to perform. This approach will ensure that neither Party could use these provisions to threaten termination of the Agreement on mere <i>allegations</i> of default. Where the Commission finds that a Party has in fact failed to perform, following an</p>	<p><u>Suspension or Termination Upon Default.</u> Either Party may suspend or terminate this Agreement, in whole or in part, in the event of a Default (defined below) by the other Party; <i>provided, however</i>, that the non-defaulting Party <u>notifies the defaulting Party in writing of the Default and the defaulting Party does not cure the Default within thirty (30) calendar days of receipt of written notice thereof. Following CenturyTel’s notice to **CLEC of its Default, CenturyTel shall not be required to process new service orders until the Default is timely cured.</u></p> <p>“Default” is defined to include:</p> <p>(a) A Party’s insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or</p> <p>(b) The revocation by the Commission of a Party’s Certificate of Operating Authority, or</p> <p>(c) <u>A Party’s violation of any material</u></p>	Either party should be authorized to terminate the agreement, upon the other party’s failure or refusal to perform terms of agreement, following notice of intent to terminate. Default should be defined as the violation of any material term or condition of the Agreement by either Party, and/or either Party’s failure to properly perform obligations under the Agreement. It is unnecessary for the Commission to be involved in the contract termination process.

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			<p>(c) carrier, or A decision pursuant to the Formal Dispute Resolution provisions of Section 20 of this Agreement that a Party has materially breached any of the terms or conditions hereof, except that in no event should termination occur unless so ordered by the Commission, or</p> <p>(d) Failure of a Party to pay undisputed amounts or to properly dispute unpaid amounts in accordance with Section 9, and subject to either Party invoking its rights under Section 20, Dispute Resolution, except that in no event should termination occur unless so ordered by the Commission.</p>	<p>adjudicative proceeding, it can deem such Party in default of the Agreement and approve the other Party's right to terminate the Agreement. That approach provides sufficient contractual protections for both Parties, while at the same time ensuring that neither Party will be able to improperly use the default/termination provisions of the Agreement to gain an improper advantage. Furthermore, Commission oversight and involvement will ensure that subscribers' interests are properly protected in the event that the Agreement is terminated.</p>	<p><u>term or condition of the Agreement;</u> or (d) <u>A Party's refusal or failure in any material respect properly to perform its obligations under this Agreement, including but not limited to its refusal or failure to pay undisputed charges (pursuant to Section 9) within thirty (30) calendar days after the bill date.</u></p>	
4(b)	Should the Agreement include terms that allow one party to terminate the Agreement as to a "specific operating area" without any assurance to the other party that the terms of the Agreement will continue	2.7	<p>Notwithstanding anything to the contrary contained herein, a Party may terminate this Agreement as to a specific operating area or portion thereof if such Party sells or otherwise transfers the area or portion thereof to a non-affiliate. The right of termination provided herein is expressly conditioned upon, and subject to, unconditional and prompt acceptance of the terms of this Agreement by the non-affiliated Party. The selling or transferring Party shall provide the other Party with at least ninety (90) calendar days' prior written notice of such termination, which shall be effective on the date the non-Affiliated Party provides formal, written</p>	<p>Neither Party should be authorized to terminate the Agreement in conjunction with the sale of an exchange or portion of the service area, unless the acquiring entity assumes the terms of the Agreement, and sufficient notice is provide to the other Party.</p> <p>Charter seeks a fair and equitable process to ensure that if CenturyTel sells operations with respect to a specific operating area to another entity the Parties' interconnection arrangements would continue in effect once the acquiring entity assumes operations in that area. Without such a process it is possible that the acquiring entity could simply refuse to</p>	<p>Notwithstanding anything to the contrary contained herein, a Party may terminate this Agreement as to a specific operating area or portion thereof if such Party sells or otherwise transfers the area or portion thereof to a non-affiliate. The selling or transferring Party shall provide the other Party with at least ninety (90) calendar days' prior written notice of such termination, which shall be effective on the date <u>specified in the notice.</u> Notwithstanding termination of this Agreement as to a specific operating area, this Agreement shall remain in full force and effect in the remaining operating areas. <u>The Parties agree to abide by any applicable</u></p>	<p>CenturyTel should be allowed to terminate the Agreement when it sells a single exchange, or distinct geographic area, following notice to the other Party.</p>

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	uninterrupted with the new LEC that acquires the operating area?		notice of its acceptance and assumption of the rights, obligations, and duties of the Party selling or transferring the area, and the other Party being reasonably satisfied that the Party acquiring the area is able to fulfill the obligations hereunder. Such acceptance and assumption shall be memorialized in a form mutually agreed upon by both Parties. Notwithstanding termination of this Agreement as to a specific operating area, this Agreement shall remain in full force and effect in the remaining operating areas.	interconnect and exchange traffic with Charter. Should that occur, Charter's subscribers would be unable to send and receive calls to the public switched telephone network. That result would be contrary to the public interest, and inequitable. Accordingly, the Commission should require that the Parties engage in a fair process to ensure that any acquiring entity assumes the terms of this Agreement, or agrees to some other equitable process.	<u>Commission Order regarding such sale or transfer.</u>	
5.	Should the Agreement allow either party to assign the Agreement to a third-party in connection with a sale, without having to first obtain the other party's consent?	5	Any assignment, in whole or in part, by either Party of any right, obligation, duty or interest arising under the Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, shall be null and void, except that either Party may assign, in conjunction with the sale of all or substantially all assets, and to the extent consistent with Applicable Law, all of its rights, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a subsidiary or Affiliate of that Party without consent, upon ninety (90) calendar days' written notification. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party,	Assignment upon sale of all or substantially all assets shall not be unreasonably withheld, conditioned or delayed. Either Party should be permitted to assign all of its rights, and delegate its obligations, liabilities and duties under this Agreement, to a third party without being required to seek the consent of the other Party. There is no reason for either Party to have the right to withhold consent to the assignment of this Agreement in a manner that will have the effect of undermining the other Party's ability to freely contract with third Parties for the purposes of the sale or all, or substantially all, assets.	Any assignment, in whole or in part, by either Party of any right, obligation, duty or interest arising under the Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, shall be null and void, except that either Party may assign, and to the extent consistent with Applicable Law, all of its rights, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a subsidiary or Affiliate of that Party without consent, upon ninety (90) calendar days' written notification. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party, and the other Party being reasonably satisfied that the	Assignment upon sale of all, or substantially all, assets should be subject to the other Party's prior consent.

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			and the other Party being reasonably satisfied that the assignee is able to fulfill the assignor’s obligations hereunder. Any attempt to make an assignment or delegation in violation of this section shall constitute a default of this Agreement.		assignee is able to fulfill the assignor’s obligations hereunder. Any attempt to make an assignment or delegation in violation of this section shall constitute a default of this Agreement.	
6.	Under what conditions may one party demand that the other Party provide deposits, or assurance of payments?	6.1-6.3	<p>6.1.1 <u>When a Deposit/Assurance of Payment Is Requested.</u> Such deposit or assurance of payment of charges may be requested by CenturyTel when Charter fails to timely pay (as defined by Section 9 of this Agreement, an undisputed invoice rendered by CenturyTel) or if Charter has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization, winding-up composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding. Upon the conclusion of this review, if CenturyTel continues to require an additional security deposit, at Charter’s request, CenturyTel will provide a written explanation to Charter.</p> <p>6.1.2 The Parties will work together to determine the need for or amount of a reasonable initial or increase in deposit. If the Parties are unable to agree, then either Party may initiate dispute resolution proceedings</p>	<p>Charter should only be required to provide a deposit upon a specific, pre-defined event, not simply when CenturyTel deems it necessary. CenturyTel should not be allowed to draw upon the deposit at will, but may only do so after pre-defined events have occurred. Under CenturyTel’s proposal there is no apparent standard by which a deposit could be required of Charter. Instead, whether a deposit is necessary rests solely within CenturyTel’s discretion. That process leaves open the possibility of potential abuse, or arbitrary demands, by CenturyTel. Instead, the Commission should adopt Charter’s proposal that seeks to identify those specific instances upon which a deposit may be required.</p> <p>Any disputes regarding the need for, or amount of, a deposit should be resolved via the Agreement’s dispute resolution process, upon either Party’s initiative. However, the burden for initiating a dispute should not rest entirely</p>	<p>6.1.1 <u>When a Deposit/Assurance of Payment Is Requested.</u> Such deposit or assurance of payment of charges may be requested by CenturyTel <u>based on CenturyTel’s analysis of the CenturyTel Credit Application (“Credit Application”) and other relevant information regarding Charter’s credit and financial condition. In determining whether an additional security deposit is required, CenturyTel may request an updated Credit Application and will review Charter’s credit rating and report details, any documentation relative to bankruptcy, insolvency or similar proceeding, Charter’s payment history with CenturyTel affiliates, and to the extent available, Charter’s financial information.</u> Upon the conclusion of this review, if CenturyTel continues to require an additional security deposit, at Charter’s request, CenturyTel will provide a written explanation to Charter.</p> <p>6.1.2 The Parties will work together to determine the need for or amount of a reasonable initial or increase in deposit. If the Parties are unable to agree, then <u>Charter must file a petition for resolution of the dispute.</u></p>	<p>Charter should be required to provide a deposit based upon CenturyTel’s analysis of Charter’s creditworthiness, and other “relevant information” regarding Charter’s credit and financial condition.</p> <p>Charter is required to initiate dispute resolution if the Parties can not agree upon the proper amount, or need for, a deposit.</p>

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			<p>pursuant to Section 20 of this Agreement. The Parties agree that any decision ordered by the Commission will be binding for the state covered by this Agreement. In the case of a disputed initial deposit, the Parties acknowledge that CenturyTel will be required to accept any orders for service during the time in which the deposit dispute is ongoing. CenturyTel may not terminate service to Charter on the basis of any dispute arising between the Parties concerning any security deposits that may be required of Charter.</p> <p>6.2 <u>Calculating the Amount of Deposit/Assurance of Payment.</u> Unless otherwise agreed by the Parties, such deposit will be calculated based on CenturyTel's actual two-month charges to Charter (including, but not limited to, both recurring and non-recurring charges) in any two consecutive month period within the last six months.</p>	<p>upon Charter (as CenturyTel proposes), but should instead be borne by either Party, depending upon the outcome of the informal dispute resolution process. CenturyTel's proposal would have the effect of forcing Charter to bear the burden of filing a formal petition; and improperly suggests that CenturyTel invoices are presumptively accurate.</p> <p>Further, during the pendency of any dispute over invoices, neither Party should take any action that could threaten the exchange of traffic, or other essential actions, between the Parties. CenturyTel's proposal that it be allowed to terminate service during that period of time is inequitable and unreasonable. Any disputes should be resolve on their terms, not based upon CenturyTel's ability to threaten to discontinue services, or terminate the Agreement.</p> <p>Because Charter and CenturyTel are already interconnected in Texas, there is a history of invoicing and payments between the Parties. Therefore, because the Parties have actual evidence of invoicing, payments and services utilized, there is no reason for the Parties to utilize projections of what may be invoiced between the two Parties, i.e. forecasts, as CenturyTel proposes. Where actual billing history and data exists, as is the case here, the Parties should use such data to determine the amount of any deposit or assurance of payment</p>	<p><u>Such petition shall be filed with the Commission.</u> The Parties agree that any decision ordered by the Commission will be binding for the state covered by this Agreement. In the case of a disputed initial deposit, the Parties acknowledge that CenturyTel will <u>not</u> be required to accept any orders for service <u>until such time as the requested deposit is paid or the dispute is settled.</u> <u>In the event Charter fails to file a petition with the Commission or pay the disputed deposit within 30 days of the request for an additional deposit, then</u> CenturyTel may terminate service to Charter <u>in accordance with Sec. 2 and</u> any security deposits <u>will be applied to Charter's account.</u></p> <p>6.2 <u>Calculating the Amount of Deposit/Assurance of Payment.</u> Unless otherwise agreed by the Parties, such deposit will be calculated based on <u>the greater of (1) CenturyTel's estimated</u> two-month charges to Charter (including, but not limited to, both recurring and non-recurring charges) <u>using Charter's forecast of interconnection facilities and any other facilities or services to be ordered from CenturyTel, or (2) \$5,000.</u> <u>If Charter does not provide a forecast of its facility or service demand under this</u></p>	<p>CenturyTel should not be required to accept any orders for service during a dispute concerning deposits, and may terminate service if Charter fails to pay the deposit or initiate a dispute.</p> <p>For purposes of calculating the deposit the Parties should use the greater of forecasts, or projections, of interconnection facilities, or \$5,000, to determine the amount of deposit that may be established under the Agreement.</p>

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			<p>6.3 <u>Modifying the Amount of Deposit/Assurance of Payment.</u> CenturyTel reserves the right to request an additional amount of the deposit or assurance of payment required of Charter if Charter is repeatedly delinquent in making its payments, or Charter is being reconnected after a disconnection of service or discontinuance of the processing of orders by CenturyTel due to Charter’s previous non-payment. "Repeatedly delinquent" means any non-disputed payment received thirty (30) calendar days or more after the bill due date, three (3) or more times during a twelve (12) month period.</p>	<p>that may be established under this Agreement.</p> <p>Should CenturyTel wish to modify the amount of deposit required of Charter, it should only be permitted to do so based upon certain specific, pre-defined, events or actions. The Agreement should not give CenturyTel the unfettered discretion to modify deposit amounts simply when CenturyTel believes “conditions otherwise justify” such action.</p>	<p><u>Agreement, Charter shall provide, upon CenturyTel’s request, a deposit or assurance of payment of charges in an amount of \$5000.</u></p> <p>6.3 <u>Modifying the Amount of Deposit/Assurance of Payment.</u> CenturyTel reserves the right to request an additional amount of the deposit or assurance of payment required of Charter if Charter is repeatedly delinquent in making its payments, or Charter is being reconnected after a disconnection of service or discontinuance of the processing of orders by CenturyTel due to Charter’s previous non-payment <u>or when conditions otherwise justify such action based on actual billing history and/or the credit rating of Charter.</u> "Repeatedly delinquent" means any non-disputed payment received thirty (30) calendar days or more after the bill due date, three (3) or more times during a twelve (12) month period.</p>	<p>CenturyTel should be allowed to modify the amount of deposit requested of Charter based upon its own discretion, when it believes “conditions otherwise justify such action” based on billing history and/or the credit rating of Charter, without consulting Charter in anyway.</p>
7.	Is Charter obligated to “represent and warrant” to CenturyTel the existence of its certification to operate in the State; or is it sufficient to simply state that such	8.4	<p><u>**CLEC Certification.</u> Notwithstanding any other provision of this Agreement, CenturyTel shall have no obligation to perform under this Agreement until such time as **CLEC has obtained such FCC and Commission authorization(s) as may be required by Applicable Law for conducting business in the State as **CLEC. **CLEC will provide a copy of its Certificate of Operating Authority or other evidence of its status to CenturyTel upon request. **CLEC shall not place any orders under this</p>	<p>Charter should not be required to “represent and warrant” to CenturyTel that it is a certified local provider of Telephone Exchange Service. There is no reason for Charter to make such assurances through the use of a “representation and warranty” clause, rather than a simple statement that it is certified.</p> <p>Indeed, Charter has already provided such proof to CenturyTel, and has contractually agreed that it will provide such proof to CenturyTel upon request. But CenturyTel’s</p>	<p><u>**CLEC Certification.</u> Notwithstanding any other provision of this Agreement, CenturyTel shall have no obligation to perform under this Agreement until such time as **CLEC has obtained such FCC and Commission authorization(s) as may be required by Applicable Law for conducting business in the State as **CLEC. <u>**CLEC must represent and warrant to CenturyTel that it is a certified local provider of Telephone Exchange Service in the State.</u> **CLEC will provide a copy of its Certificate of Operating</p>	<p>Charter should be required to “represent and warrant” to CenturyTel that it is a certified local provider of Telephone Exchange Service. CenturyTel believes that certification is a necessary condition precedent to the execution of the Agreement.</p>

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	certification exists, with Charter providing proof upon CenturyTel’s request?		Agreement until it has obtained such authorization.	request that Charter “represent and warrant” to its status is problematic because it is tied to a remedy that would allow CenturyTel to excuse itself from performing under this Agreement – in effect voiding the terms of the Agreement. That result could seriously undermine Charter’s ability to serve its subscribers, because it could eliminate Charter’s ability to interconnect with, and exchange traffic to, the PSTN. This Agreement should not include provisions that have the potential to affect subscribers in that way without prior approval from the Commission; an outcome that is not in the public’s interest.	Authority or other evidence of its status to CenturyTel upon request. **CLEC shall not place any orders under this Agreement until it has obtained such authorization.	
8.	Should the bill payment terms be equitable; and should they ensure that neither party can improperly terminate the Agreement in a manner that could impair service to the public?	9.4, 9.5	9.4.2 <u>Billing Disputes Related to Paid Amounts</u> If any portion of an amount paid to a Party under this Agreement is subject to a bona fide dispute between the Parties (“Disputed Paid Amount”), the billed Party may provide written notice to the billing Party of the Disputed Paid Amount, and seek a refund of such amount already paid, at any time prior to the date that is one (1) year after the date of the invoice containing the disputed amount that has been paid by the billed Party (“Notice Period”). If the billed Party fails to provide written notice of a Disputed Paid Amount within the Notice Period, the billed party waives its rights to dispute its obligation to pay such amount, and to seek refund of such amount. At the billed Party’s request, the billing Party will refund the entire portion of any Disputed Paid Amounts resolved in favor of the billed Party,	Following the resolution of a billing dispute the Party who prevails in the dispute should be “made whole.” Thus, if the billing party prevails the billed party should pay any amount underpaid. At the same time, if the billed party prevails, and is found to have overpaid the billing party, then the billed party should be entitled to request a refund of amounts that were overpaid. In addition, the amounts overpaid should be subject to a basic rate of interest that is fair and equitable. Such rate should be equal to the rate of interest that would be assessed by the billing Party for any late payment charges (as CenturyTel has proposed, and as Charter has agreed).	9.4.2 <u>Billing Disputes Related to Paid Amounts</u> If any portion of an amount paid to a Party under this Agreement is subject to a bona fide dispute between the Parties (“Disputed Paid Amount”), the billed Party may provide written notice to the billing Party of the Disputed Paid Amount, and seek a refund of such amount already paid, at any time prior to the date that is one (1) year after the date of the invoice containing the disputed amount that has been paid by the billed Party (“Notice Period”). If the billed Party fails to provide written notice of a Disputed Paid Amount within the Notice Period, the billed party waives its rights to dispute its obligation to pay such amount, and to seek refund of such amount.	Any billing dispute resolved in favor of the Billed Party should result in a credit on future invoices, but CenturyTel is not obligated to provide a refund.

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			<p>subject to a rate of interest equal to one and one half (1 ½%) per month or the highest rate of interest that may be charged under Applicable Law, compounded daily, for the number of days from the Bill Date until the date on which such payment is made.</p> <p>9.5 <u>Effect of Non-Payment.</u></p> <p>9.5.1 If the billed Party does not remit payment of all undisputed charges on a bill by the Bill Due Date, the billing Party may initiate dispute resolution procedures under Section 20 of this Agreement.</p>	<p>Any and all disputes about the failure to pay certain charges should be resolved through the Dispute Resolution process of the Agreement. That process allows for either Party to seek an informal resolution thru negotiations, or business discussions. In addition, that process also allows an aggrieved Party to file an appropriate action seeking relief that it believes is necessary for any alleged failures to pay. Under such circumstances, both Parties interests are preserved, and protected.</p> <p>In contrast, CenturyTel’s proposal simply seeks to impose a process which is inequitable and one-sided (in CenturyTel’s favor). For example, under CenturyTel’s proposal it would have the right to discontinue processing orders, and disconnect services and circuits unilaterally, and without Commission authorization. That result could have serious ramifications for end user subscribers, as well as for Charter’s reputation as a service provider, and is thus contrary to the public interest.</p>	<p>9.5 <u>Effect of Non-Payment.</u></p> <p>9.5.1 If the billed Party does not remit payment of all undisputed charges on a bill by the Bill Due Date, the billing Party may <u>discontinue processing orders for relevant or like services provided under this Agreement on or after the tenth (10th) calendar day following the Bill Due Date. The billing Party will notify the other Party in writing, via email or certified mail, at least five (5) Calendar Days prior to discontinuing the processing of orders for the relevant services. If the billing Party does not refuse to accept additional orders for service(s) on the date specified in such notice, and the billed Party’s non-compliance continues, nothing contained herein shall preclude the billing Party from refusing to accept any or all additional orders for service(s) from the non-complying Party without further notice or from billing and collecting the appropriate charges from the billed Party. For order processing to resume, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant</u></p>	<p>CenturyTel should have certain self-help remedies available, including suspension of service or disconnection of services under the Agreement, if Charter does not pay invoices within the period required under the Agreement.</p>

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			9.5.2 [INTENTIONALLY LEFT BLANK].		<p>services. Additionally, the billing Party may require a deposit or assurance of payment (or additional deposit or assurance of payment) from the billed Party, pursuant to Section 6. In addition to other remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief, including injunctive relief and specific performance.</p> <p>9.5.2 Notwithstanding 9.5.1 above, if the billed Party does not remit payment of all undisputed charges on a bill by the Bill Due Date, the billing Party may at its option disconnect any and all relevant or related services provided under this Agreement following written notification to the billed Party at least seven (7) Business Days prior to disconnection of the unpaid service(s). Such notification may be included in a notification to refuse to accept additional orders so long as the appropriate dates for each consequence are listed therein. If the billed Party subsequently pays all of such undisputed charges and desires to reconnect any such disconnected services, the billed Party shall pay the applicable charge set forth in this Agreement or in the applicable Tariff for reconnecting each service disconnected pursuant to this paragraph. In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due and payable. If the billing Party</p>	

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					<p><u>does not disconnect the billed Party’s service(s) on the date specified in such notice, and the billed Party’s non-compliance continues, nothing contained herein shall preclude the billing Party from disconnecting all service(s) of the non-complying Party without further notice or from billing and collecting the appropriate charges from the billed Party. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services. Additionally, the billing Party may require a deposit or assurance of payment (or additional deposit or assurance of payment) from the billed Party, pursuant to Section 6. In addition to other remedies that may be available at law or equity, the billing Party reserves the right to seek equitable relief, including injunctive relief and specific performance.</u></p>	
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?	11.6	[INTENTIONALLY LEFT BLANK]	CenturyTel should not be entitled to assess an unspecified, and undefined, “service order charge” for so-called stranded plant or facilities. To the extent that any facility is ordered by Charter, and deployed by CenturyTel, the Parties should work cooperatively to ensure that the facility is utilized based upon industry standard utilization levels. To the extent that the Parties believe that a facility is not fully utilized the Parties should work cooperatively to re-	<p><u>CenturyTel reserves the right to assess **CLEC a TBD charge for stranded interconnection plant/facility that are forecast but not used by **CLEC within six (6) months after a forecast period, to the extent that the CenturyTel built plant/facility is based on **CLEC’s order.</u></p>	Where Charter orders an interconnection facility, and CenturyTel provisions such facility, but Charter does not use the facility within six months after a forecast period, CenturyTel reserves the right to assess a charge for so-called “stranded plant.”

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				engineer the facility to ensure efficient utilization of the facility, consistent with industry-accepted standards.		
10.	Should the Agreement establish retroactive application of changes of law where the Parties do not specifically agree to such retroactive application, and where such changes only benefit one party?	12.3	If the Parties amend the terms and conditions of this Agreement to add, remove, or modify terms of the Agreement following a change in Applicable Law, and pursuant to this Section 12, such amended terms and conditions shall apply retroactively to the effective date for the change specified by Applicable Law, if so ordered by the FCC, court of competent jurisdiction, or the Commission (“Relevant Authority”). Further, to the extent a true-up of any billing or payment for existing services and/or facilities is required by the change in Applicable Law, the Parties shall include in the change in law amendment appropriate true-up terms and conditions, if so ordered by the Relevant Authority.	<p>Where a change of law requires an amendment, or modification, to the Agreement, any retroactive effect, or true up of rates, should occur upon express direction by the authority whose actions precipitated the change of law event. In other words, if the Commission, a court, or the FCC directs the Parties to give retroactive effect to its decision, then the Parties should do so. However, if those decision making bodies do not direct the Parties to give retroactive effect to the decision, the Parties should do so only where mutually agreed upon. The Agreement should not give one Party the unilateral right to establish a retroactive right or obligation where the other Party does not agree, and where the Commission, court or the FCC has not specifically directed.</p> <p>Moreover, CenturyTel’s proposal is effectively one-sided because it would apply only to those amendments which result in the removal of contractual obligations. If Charter proposed an amendment that would have the effect of imposing new, or additional, obligations upon CenturyTel, then CenturyTel’s proposal would not allow such new obligations to have any retroactive effect. Thus, CenturyTel’s proposal would have the effect of limiting Charter’s rights to seek retroactive effect of changes of law which may benefit Charter,</p>	<u>Except as set forth in Section 12.2 with respect to the addition of new services, if the Parties amend the terms and conditions of this Agreement to remove, or modify terms of the Agreement following a change in Applicable Law, such amended terms and conditions shall apply retroactively to the effective date for the change specified by Applicable Law, if so ordered by the FCC, court of competent jurisdiction, or the Commission (“Relevant Authority”). <u>If the Relevant Authority does not specify a date certain for when such change in Applicable Law shall take effect, such amended terms and conditions shall apply retroactively to the date on which the Party that first submitted a written request to amend the Agreement pursuant to Section 12.1 delivered such notice to the other Party.</u> Further, the Parties shall include in the change in law amendment appropriate true-up terms and conditions <u>for the billing or payment for existing services and/or facilities affected by the change in Applicable Law, if any.</u></u>	Where a change of law requires an amendment, or modification to the Agreement, any retroactive effect, or true up of rates, should apply retroactively to the date on which the Party first submitted the request, if the governing authority does not specify a retroactive date.

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				while at the same time giving CenturyTel the full benefit of any retroactive effect of changes in law that may benefit CenturyTel. This Commission should not accept, or endorse, a provision that favors one Party over the other in this way.		
11.	Should CenturyTel be allowed to incorporate its Service Guide as a means of imposing certain process requirements upon Charter, even though Charter has no role in developing the process and procedural terms in the Service Guide?	41	41.1 The Parties acknowledge that CenturyTel shall be adopting some industry standard practices and/or establishing its own standard practices to various requirements hereunder applicable to the CLEC industry which may be added in the CenturyTel Service Guide. Charter agrees that CenturyTel may implement such practices to satisfy any CenturyTel obligations under this Agreement. Where a dispute arises between the Parties with respect to a conflict between the CenturyTel Service Guide and this Agreement, the terms of this Agreement shall prevail. The CenturyTel Service Guide is to be used as a reference only, and is not a part of the Agreement, and is not contractually binding on **CLEC.	For purposes of establishing obligations under the Agreement, the CenturyTel Service Guide should be used as a reference only, and should not be incorporated into the Agreement. As such, the Service Guide should not be contractually binding on Charter. CenturyTel’s proposal that it be allowed to implement practices in its “Service Guide”, and in that way satisfy “any contractual obligations” under this Agreement is problematic for several reasons. First, the Service Guide is developed and written by Century Tel alone. It is a unilateral document that CenturyTel prepares without input from Charter, or any other competitive LECs. If the Service Guide is incorporated into the Agreement, as CenturyTel proposes, it will have the effect of modifying contractual obligations of both Parties. It is patently unfair, and unreasonable, to allow one Party to a contract to have the right to modify contractual obligations by amending terms of an incorporated document which is unilaterally prepared by only one Party to the Agreement; and which is not subject to oversight or review by a state Commission.	41.1 The Parties acknowledge that CenturyTel shall be adopting some industry standard practices and/or establishing its own standard practices to various requirements hereunder applicable to the CLEC industry which may be added in the CenturyTel Service Guide, <u>which is further described in Section 53</u> . Charter agrees that CenturyTel may implement such practices to satisfy any CenturyTel obligations under this Agreement. Where a dispute arises between the Parties with respect to a conflict between the CenturyTel Service Guide and this Agreement, the terms of this Agreement shall prevail.	The CenturyTel Service Guide establishes certain procedures which should govern how the Parties engage in certain activities including, placing orders, submitting bill dispute notices, and establishing rates for service order charges. The Service Guide should be contractually binding upon Charter, such that Charter should be required to follow all processes and obligations set forth in the Service Guide.

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				Furthermore, Charter’s proposal does not prohibit CenturyTel from publishing a Service Guide for use with Charter, or other LECs. CenturyTel may continue to do so if it believes that it is operationally efficient to do so. This is consistent with the traditional use of a Service Guide in the telecommunications industry, where a Guide is written and provided to facilitate the conduct of business between the parties by informally documenting business processes, but where the Guide is not itself a contract between the parties and does not contractually bind either party. Thus, while Century Tel should be permitted to write and provide a Service Guide, CenturyTel should not be able to use its Service Guide as a binding component of the Parties’ Agreement. Again, allowing one Party to bind the other by modifying a unilaterally controlled document is unreasonable and unfair. Therefore, Charter does not object to CenturyTel’s proposed use of a Service Guide, but will not agree that such document is incorporated into the Agreement, or that the document is contractually binding upon Charter.		
11. (cont’d)	Incorporation of CenturyTel Service Guide (cont’d)	53	[INTENTIONALLY LEFT BLANK]	See Charter Position Statement above, under Issue 11, Section 41.	53. CenturyTel Service Guide 53.1 <u>The CenturyTel Service Guide (“Guide”) is a handbook that contains CenturyTel’s operating procedures for service ordering, provisioning, billing, maintenance, trouble reporting and repair for wholesale services. In addition to setting forth operational procedures to facilitate the</u>	See CenturyTel Position Statement above.

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					<p><u>implementation of this Agreement, the Guide serves as a conduit for the conveyance of day-to-day information that **CLEC will need to operate under this Agreement (e.g., repository for CenturyTel’s contact and escalation lists available to **CLEC). **CLEC agrees that, where the terms of this Agreement specifically reference the Guide, **CLEC will abide by the Guide with respect to such specifically-referenced matters. **CLEC may receive email notification of any changes made to the Guide so long as **CLEC subscribes to such electronic notification procedure, which subscription is at no cost to **CLEC.</u></p> <p><u>53.2 The Guide is intended to supplement the terms of this Agreement where specifically referenced in the Agreement; however, the Guide shall not be construed as contradicting or modifying the terms of this Agreement, nor shall it be construed as imposing a substantive term unrelated to operational procedure (e.g., payment terms) upon **CLEC that is not otherwise contained in this Agreement. Where a dispute arises between the Parties with respect to a conflict between the Guide and this Agreement, the terms of this Agreement shall prevail. If Charter believes that a change to the Guide materially and adversely impacts its business, the implementation of such change, upon Charter’s written request, will be delayed as it relates to Charter for no longer than sixty (60)</u></p>	

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					<p><u>days to provide the Parties with an opportunity to discuss a resolution to the alleged adverse impact, including but not limited to other potential modifications to the Guide. If the Parties are unable to resolve the dispute regarding the change to the Guide, the Parties will resolve the dispute pursuant to the Dispute Resolution procedures set forth in Section 20.3.</u></p> <p><u>53.3 The Parties acknowledge that, under their prior interconnection agreement, they have or have had disputes pertaining to the applicability and effect of certain provisions in the Guide (“prior Guide disputes”). Section 53.2 is intended to prevent such disputes on a going-forward basis under this Agreement. Nevertheless, neither this Section 53 nor any of the concessions reflected therein shall be considered an admission by either Party with respect to any prior Guide dispute, and neither Party will attempt to use Section 53.2 for that purpose. To that end, each Party expressly reserves it rights with respect to any position taken in any prior Guide dispute, and nothing in this Agreement shall be deemed or construed to limit or prejudice any position a Party has taken or may take before the Commission, the FCC, or a court of applicable jurisdiction regarding any prior Guide dispute.</u></p>	

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11. (cont'd)	Should the Century Tel Service Guide be incorporated for: establishing bill dispute processes	9.4.1	<p>If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party may withhold payment of such Disputed Amounts only if it gives written notice to the billing Party of the amounts it disputes and includes in such notice the specific details and reasons for disputing each item. Such written notice shall be submitted in accordance with the following agreed upon procedures; as set forth in Attachment 1 to the Interconnection Agreement.</p> <p>[NOTE: Charter's proposed Attachment 1 sets forth bill dispute processes that are intended to mirror those processes in the current CenturyTel Service Guide.] <i>[excerpt – remaining language not included...]</i></p>	The Parties should specifically agree upon mutually acceptable processes for submitting bill disputes to the other Party. To that end, Charter has proposed to use the current process that is outlined in the Service Guide, with several minor modifications. Charter proposes to include the process in Attachment 1 to the Agreement, such that both Parties will be contractually obligated to follow that process, unless a new process is developed and implemented, by mutual agreement.	<p>If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party may withhold payment of such Disputed Amounts only if it gives written notice to the billing Party of the amounts it disputes and includes in such notice the specific details and reasons for disputing each item. Such written notice shall be submitted in accordance with the <u>guidelines for submitting billing dispute claims set forth in CenturyTel's CLEC Service Guide.</u></p> <p><i>[excerpt – remaining language not included...]</i></p>	See CenturyTel Position Statement above.
11. (cont'd)	Should the Century Tel Service Guide be incorporated for: providing escalation lists	16.	Each Party shall update its own contact information and escalation list and shall provide such information to the other Party for purposes of inquiries regarding the implementation of this Agreement. Each Party shall accept all inquiries from the other Party and provide a timely response.	With respect to the provision of contact and escalation lists, Charter believes that the Parties should be obligated to provide such lists to the other Party, directly, rather than publishing those lists in the Service Guide or some other document (as CenturyTel proposes). That approach ensures that the Parties have current, updated, information should the need for contact or escalation of problems arise. Moreover, Charter believes that CenturyTel's proposal fails to contemplate the exchange of information for contacts which may be necessary on weekends and evenings, should a service outage, or other service-	Each Party shall update its own contact information and escalation list and shall provide such information to the other Party for purposes of inquiries regarding the implementation of this Agreement. Each Party shall accept all inquiries from the other Party and provide a timely response. <u>CenturyTel will provide and maintain its contact and escalation list in its CenturyTel Service Guide ("Guide") as amended and updated from time to time. The Guide is provided to **CLEC on CenturyTel's Website, and any updates also will be provided on the Website in the event such</u>	See CenturyTel Position Statement above.

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				affecting problem arise. In the event of such a problem, Charter would need CenturyTel to provide contact information for purposes of contacting persons responsible for addressing such issues on weekends, and in the evenings.	<u>information changes. Information contained in the Guide will include a single contact telephone number for CenturyTel’s CLEC Service Center (via an 800#) that **CLEC may call for all ordering and status inquiries and other day-to-day inquiries between 8 a.m. and 5 p.m., Monday through Friday (except holidays). In addition, the Guide will provide **CLEC with contact information for the personnel and/or organizations within CenturyTel capable of assisting **CLEC with inquiries regarding the ordering, provisioning and billing of interconnection, UNE and resale services. Included in this information will be the contact information for a person or persons to whom **CLEC can escalate issues dealing with the implementation of the Agreement and/or for assistance in resolving disputes arising under the Agreement.</u>	
11. (cont’d)	Should the Century Tel Service Guide be incorporated for: reporting and resolving circuit troubles or repairs (cont’d)	Art. VIII, 2.4	Art. VIII §2.4 **CLEC agrees to follow the process and procedures for reporting and resolving circuit trouble or repairs as may be agreed to by the Parties . Before contacting CenturyTel’s Trouble Maintenance Center (CTMC), **CLEC must first conduct trouble isolation to ensure that the trouble does not originate from **CLEC’s own equipment or network or the equipment of **CLEC’s customer.	See Charter Position Statement above, under Issue 11, Section 41.	Art. VIII § 2.4 **CLEC agrees to follow the process and procedures for reporting and resolving circuit trouble or repairs set forth in the CenturyTel Service Guide <u>set forth in the CenturyTel Service Guide, or as otherwise agreed to by the Parties</u> . Before contacting CenturyTel’s Trouble Maintenance Center (CTMC), **CLEC must first conduct trouble isolation to ensure that the trouble does not originate from **CLEC’s own equipment or network or the equipment of **CLEC’s customer.	See CenturyTel Position Statement above.

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11. (cont'd)	Should the Century Tel Service Guide be incorporated for: submitting LNP requests (cont'd)	Art. IX § 1.2.2	A Party requesting a number to be ported must send the other providing Party a Local Service Request (LSR). If **CLEC requests that CenturyTel port a number, the Parties shall follow the “Local Number Portability Ordering Process” set forth in CenturyTel Service Guide. **CLEC’s consent to follow the Local Number Portability Ordering Process in the CenturyTel Service Guide shall not be deemed as consent that the Service Guide is incorporated into, or otherwise made a part of, this Agreement. Further, **CLEC’s consent to follow the Local Number Portability Ordering Process in the CenturyTel Service Guide shall not establish any liability upon **CLEC, nor shall CenturyTel assess any charges on **CLEC for number porting, or service order charges associated with such requests.	See Charter Position Statement above, under Issue 11, Section 41.	A Party requesting a number to be ported must send the other providing Party a Local Service Request (LSR). If **CLEC requests that CenturyTel port a number, the Parties shall follow the “Local Number Portability Ordering Process” set forth in CenturyTel Service Guide, <u>which will comply with applicable FCC rules, regulations and orders.</u>	See CenturyTel Position Statement above.
11. (cont'd)	Should the Century Tel Service Guide be incorporated for: “service ordering, provisioning, billing and maintenance processes and procedures” (cont'd)	Art. X § 6.3	Except as specifically provided otherwise in this Agreement, service ordering, provisioning, billing and maintenance processes and procedures shall be governed by the CenturyTel Service Guide. Notwithstanding the foregoing, the CenturyTel Service Guide is to be used as a reference only, and is not a part of the Agreement, and is not contractually binding on CLEC. The service order charges set forth pursuant to this agreement shall apply to all orders placed via OSS or pre-OSS services, except as specifically	See Charter Position Statement above, under Issue 11, Section 41.	Except as specifically provided otherwise in this Agreement, service ordering, provisioning, billing and maintenance processes and procedures shall be governed by the CenturyTel Service Guide. <u>The standard service order charges set forth pursuant to this agreement shall apply to all orders placed via OSS or pre-OSS services.</u>	See CenturyTel Position Statement above.

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			provided otherwise in this Agreement.			
12.	Should the Agreement allow one party to force the other Party into commercial arbitration under certain circumstances?	20.3	<p><u>Formal Dispute Resolution.</u> If the negotiations referenced in Section 20.2 above fail to produce an agreeable resolution within thirty (30) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction. In addition, upon mutual agreement of the Parties such disputes may also be submitted to binding commercial arbitration before a mutually agreed upon arbitrator.</p>	<p>Disputes arising out of this Agreement should be resolved and litigated before the Commission, the FCC, or a court of competent jurisdiction. <i>Only</i> where both Parties mutually agree, should the dispute be submitted to binding commercial arbitration. Commercial arbitration can be used as an alternative form of dispute resolution, but only upon mutual agreement. This Commission should be the primary forum for interpreting and enforcing the terms of this Agreement. <i>See Sw. Bell Tel. Co. v. Pub Util Comm’n of Texas</i>, 208 F.3d 475, 479-80 (5th Cir. 2000). For that reason, there should not be any language in the Agreement that could be construed as depriving this Commission of the jurisdiction to interpret and enforce agreements established pursuant to 47 U.S.C. 252.</p> <p>CenturyTel’s proposal contemplates that some disputes will not be heard by this Commission. But the Fifth Circuit, and every federal appellate court to consider the issues has determined or assumed that state commissions have the authority to hear interpretation and enforcement actions regarding approved interconnection agreements. Therefore, it is very unlikely, if not impossible, that this Commission would simply refuse to hear disputes arising out of this Agreement, as CenturyTel’s proposal contemplates. Indeed, because it is not clear when, or whether, this</p>	<p><u>Formal Dispute Resolution.</u> If the negotiations referenced in Section 20.2 above fail to produce an agreeable resolution within thirty (30) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction. <u>However, if neither the FCC nor the Commission accepts jurisdiction over the dispute, either Party may submit such dispute to binding commercial arbitration before a mutually agreed upon arbitrator.</u></p>	<p>Disputes arising out of this Agreement should be resolve and litigated before the Commission, the FCC, or a court of competent jurisdiction. However, if neither the FCC nor the Commission accepts jurisdiction, then either Party should be able to submit the dispute to binding commercial arbitration.</p>

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				<p>Commission would ever decline to accept jurisdiction (as CenturyTel suggests), over a dispute arising out of this Agreement, CenturyTel’s proposal is without merit.</p> <p>Furthermore, even if the Commission or the FCC did not accept jurisdiction over a dispute arising from this Agreement, the appropriate forum may then be federal or state courts. Neither Party should be constrained in its right to pursue relief before federal or state courts, if both the Commission and FCC decline jurisdiction over a dispute arising from this Agreement.</p>		
13.	Should the parties agree to a reasonable limitation as to the period of time by which claims arising under the Agreement can be brought?	9.4, and 20.4	<p>9.4 <u>Disputed Amounts.</u> The following shall apply where a Party disputes, in good faith, any portion of an amount billed under this Agreement (“Disputed Amounts”). Both **CLEC and CenturyTel agree to expedite the investigation of any Disputed Amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested by the other Party, and work in good faith in an effort to resolve and settle the dispute through informal means prior to initiating formal dispute resolution</p>	<p>The Parties should agree to limit the time period by which either Party can bring a claim arising under the Agreement. Charter proposes that period of time be established as two years from the date of the occurrence of the action that gives rise to the dispute.</p> <p>This proposal benefits both Parties to the contract because it provides a specific time frame by which either Party can make a claim against the other. Upon the expiration of that time period, all potential claims that arose prior to that time would be waived. One benefit of this approach is that it provides both Parties certainty as to when, or if, claims will be brought. That, in turn, provides the business and operations units of each company greater assurance in the resolution of intercompany disputes.</p>	<p>9.4 <u>Disputed Amounts.</u> The following shall apply where a Party disputes, in good faith, any portion of an amount billed under this Agreement (“Disputed Amounts”). Both **CLEC and CenturyTel agree to expedite the investigation of any Disputed Amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested by the other Party, and work in good faith in an effort to resolve and settle the dispute through informal means prior to initiating formal dispute resolution. <u>If the Parties cannot resolve the dispute through established billing dispute procedures within 180 days of the billed Party providing written notice of Disputed Amounts to the billing Party, the billed Party shall file a petition for formal dispute resolution pursuant to Section 20.3 of this</u></p>	<p>Charter’s proposed limits on claims is overly broad. However, CenturyTel believes that the “billed Party” (which is more often the CLEC) should bear the burden of having to escalate and litigate bill disputes submitted to CenturyTel, or risk losing its rights to submit such disputes after one year.</p>

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			<p>20.4 Except as otherwise specifically provided in this Agreement, no Claims will be brought for disputes arising from this Agreement more than twenty-four (24) months from the date of the occurrence which gives rise to the dispute. Notwithstanding the foregoing, Claims for indemnification will be governed by the applicable statutory limitation period.</p> <p>[NOTE: ACCOMPANYING PROPOSED DEFINITIONS, ART. II, § 2.26.1:</p> <p>“CLAIMS” The term Claims means any pending or threatened claim, action, proceeding or suit.</p>		<p><u>Article (without regard for any further informal dispute resolution negotiations that may be referenced in Section 20.3). If the billed Party fails to seek formal dispute resolution pursuant to Section 20.3 within one (1) year of the billed Party providing written notice to the billing Party of such Disputed Amounts, the billed Party waives its alleged entitlement to and/or right to withhold such Disputed Amount.</u></p> <p>20.4 <u>[INTENTIONALLY LEFT BLANK]</u></p>	

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14.	Should CenturyTel be allowed to assess charges upon Charter for as yet unidentified, and undefined, potential "expenses" that CenturyTel may incur at some point in the future?	22, and Art. I, § 3	<p>22.1 [INTENTIONALLY LEFT BLANK]</p> <p>Art. I, § 3 Notwithstanding any other provision of this Agreement, neither Party will assess a charge, fee, rate or any other assessment (collectively, for purposes of this provision, "charge") upon the other Party except where such charge is specifically authorized and identified in this Agreement, and is (i) specifically identified and set forth</p>	<p>The costs incurred by each Party in performing under this Agreement are a consequence of their respective obligations to one another under Section 251 of the Communications Act, and other applicable law. Neither Party should be allowed to recover its costs or "expenses" from the other Party unless specifically authorized to do so, as evidenced by the inclusion of rates in the price list.</p> <p>Should CenturyTel conclude at some point in the future that it incurs some costs for which it is entitled to compensation, there is already a process under this Agreement for which it can seek to recover such costs. Specifically, pursuant to Sections 4 and 12 of the current draft Agreement, CenturyTel can propose an amendment to the Agreement which specifically details the costs and expenses it seeks to recover, and the basis for requiring Charter to compensate CenturyTel. Under that scenario Charter will be required to engage in negotiations to amend the Agreement to incorporate CenturyTel's proposed cost recovery scheme. For that reason, there is no need to include CenturyTel's ambiguous proposed language in the current Agreement. Accordingly, because CenturyTel has sufficient opportunity to address the potential issue of unrecovered costs through the contract amendment process, the Commission should reject its proposed language here.</p>	<p>22.1 <u>In performing under this Agreement, if **CLEC makes a request not already provided for in this Agreement, CenturyTel may be required to make expenditures or otherwise incur costs that are not otherwise reimbursed under this Agreement. In such event, CenturyTel is entitled to reimbursement from **CLEC for all such reasonable and necessary costs to the extent pre-approved by **CLEC. For all such costs and expenses, CenturyTel shall receive through nonrecurring charges ("NRCs") the actual costs and expenses incurred, including labor costs and expenses, overhead and fixed charges, and may include a reasonable contribution to CenturyTel's common costs. If **CLEC makes a request that involves expenditures or costs not otherwise covered under this Agreement, CenturyTel will provide a quote to **CLEC in a timely manner and **CLEC must agree to accept the quoted charges prior to CenturyTel's initiation of work.</u></p> <p>Art. I, § 3 Notwithstanding any other provision of this Agreement, neither Party will assess a charge, fee, rate or any other assessment (collectively, for purposes of this provision, "charge") upon the other Party except where such charge is specifically authorized and identified in this Agreement, and is (i) specifically identified and set forth</p>	<p>CenturyTel should be able to recover its "reasonable and necessary" costs if Charter requests for a service or facility not already provide for under the Agreement. Prior to initiating such work CenturyTel will provide a quote to Charter, which Charter must agree to in order for the work to be performed.</p>

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			in the Pricing Article, or (ii) specifically identified in the Pricing Article as a “TBD” charge. Where this Agreement references a Tariff rate or provides that a specific service or facility shall be provided pursuant to a Tariff, the Tariff rates associated with such specifically referenced service or facility shall be deemed a charge that has been specifically authorized under this provision. The Parties do not intend for this provision to be construed to create any obligation upon CenturyTel to provide, or for **CLEC to pay, for a service that is not otherwise identified in this Agreement.		in the Pricing Article, or (ii) specifically identified in the Pricing Article as a “TBD” charge. Where this Agreement references a Tariff rate or provides that a specific service or facility shall be provided pursuant to a Tariff, the Tariff rates associated with such specifically referenced service or facility shall be deemed a charge that has been specifically authorized under this provision. <u>If a service or facility otherwise offered under the Agreement does not have a corresponding charge specifically set forth in the Pricing Article, or is not specifically identified in the Pricing Article as being subject to “TBD” pricing, such service and/or facility is not available to **CLEC under this Agreement.</u>	
15.	Indemnity, Warranties and Limitation of Liability Issues					
15(a)	Should Charter be required to indemnify CenturyTel even where CenturyTel’s actions are deemed to constitute negligence, gross negligence, intentional or willful misconduct; or if CenturyTel	30.1, and 30.4. 3	30.1 <u>Indemnification Against Third-Party Claims.</u> Each Party (the “Indemnifying Party”) agrees to indemnify, defend, and hold harmless the other Party (the “Indemnified Party”) and the other Party’s Subsidiaries, predecessors, successors, Affiliates, and assigns, and all current and former officers, directors, members, shareholders, agents, contractors and employees of all such persons and entities (collectively, with Indemnified Party, the “Indemnatee Group”), from any and all Claims, except to the extent that such Claims arise from the Indemnified Party’s negligence, gross negligence, intentional or willful misconduct. For purposes of this Section 30, “Claim” means any action, cause	Each Party’s obligations to indemnify the other Party should be limited where the indemnified Party bears some responsibility for the alleged harms which are the basis for the action for relief. Put simply, where one Party has caused the harm, whether due to negligent actions or intentional misconduct, then that Party should not be indemnified against any losses arising from an action against that Party. Charter’s proposal with respect to Section 30.1 in particular, and elsewhere in Section 30, introduces a concept of contributory negligence in to the indemnity obligations, such that indemnity obligations are limited where the indemnified Party has contributed to the alleged harm. The Commission should	30.1 <u>Indemnification Against Third-Party Claims.</u> Each Party (the “Indemnifying Party”) agrees to indemnify, defend, and hold harmless the other Party (the “Indemnified Party”) and the other Party’s Subsidiaries, predecessors, successors, Affiliates, and assigns, and all current and former officers, directors, members, shareholders, agents, contractors and employees of all such persons and entities (collectively, with Indemnified Party, the “Indemnatee Group”), from any and all Claims. “Claim” means any action, cause of action, suit, proceeding, claim, or demand of any third party (and all resulting judgments, bona fide settlements, penalties, damages, losses, liabilities, costs, and	Each Party should indemnify the other against all losses arising from any claims against the indemnified Party, regardless of whether the indemnified Party contributes to the harm by its own negligence or intentional misconduct.

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	otherwise contributes to the harm that is the subject of the cause of action?		of action, suit, proceeding, claim, or demand of any third party (and all resulting judgments, bona fide settlements, penalties, damages, losses, liabilities, costs, and expenses (including, but not limited to, reasonable costs and attorneys’ fees)), (a) based on allegations that, if true, would establish (i) the Indemnifying Party’s breach of this Agreement; (ii) the Indemnifying Party’s misrepresentation, fraud or other misconduct; (iii) the Indemnifying Party’s negligence; (iv) infringement by the Indemnifying Party or by any Indemnifying Party product or service of any patent, copyright, trademark, service mark, trade name, right of publicity or privacy, trade secret, or any other proprietary right of any third party; (v) the Indemnifying Party’s liability in relation to any material that is defamatory or wrongfully discloses private or personal matters; or (vi) the Indemnifying Party’s wrongful use or unauthorized disclosure of data; or (b) that arises out of (i) any act or omission of the Indemnifying Party or its subcontractors or agents relating to the Indemnifying Party’s performance or obligations under this Agreement; (ii) any act or omission of the Indemnifying Party’s customer(s) or End User(s); (iii) the bodily injury or death of any person, or the loss or disappearance of or damage to the tangible property of any person, relating to the Indemnifying Party’s performance or obligations under this Agreement; (iv) the	recognize that reasonable limitation and order the Parties to incorporate the principle in to the Agreement.	expenses (including, but not limited to, reasonable costs and attorneys’ fees)), (a) based on allegations that, if true, would establish (i) the Indemnifying Party’s breach of this Agreement; (ii) the Indemnifying Party’s misrepresentation, fraud or other misconduct; (iii) the Indemnifying Party’s negligence; (iv) infringement by the Indemnifying Party or by any Indemnifying Party product or service of any patent, copyright, trademark, service mark, trade name, right of publicity or privacy, trade secret, or any other proprietary right of any third party; (v) the Indemnifying Party’s liability in relation to any material that is defamatory or wrongfully discloses private or personal matters; or (vi) the Indemnifying Party’s wrongful use or unauthorized disclosure of data; or (b) that arises out of (i) any act or omission of the Indemnifying Party or its subcontractors or agents relating to the Indemnifying Party’s performance or obligations under this Agreement; (ii) any act or omission of the Indemnifying Party’s customer(s) or End User(s); (iii) the bodily injury or death of any person, or the loss or disappearance of or damage to the tangible property of any person, relating to the Indemnifying Party’s performance or obligations under this Agreement; (iv) the Indemnifying Party’s design, testing, manufacturing, marketing, promotion, advertisement, distribution, lease or sale of services and/or products to its customers, or	

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			<p>Indemnifying Party’s design, testing, manufacturing, marketing, promotion, advertisement, distribution, lease or sale of services and/or products to its customers, or such customers’ use, possession, or operation of those services and/or products; or (v) personal injury to or any unemployment compensation claim by one or more of the Indemnifying Party’s employees, notwithstanding any protections the Indemnifying Party might otherwise have under applicable workers’ compensation or unemployment insurance law, which protections the Indemnifying Party waives, as to the Indemnified Party and other persons and entities to be indemnified under this Section 30.1 (other than applicable employee claimant(s)), for purposes of this Section 30.1. “Reasonable costs and attorneys’ fees,” as used in this Section 30.1, includes without limitation fees and costs incurred to interpret or enforce this Section 30.1. The Indemnified Party will provide the Indemnifying Party with reasonably prompt written notice of any Claim. At the Indemnifying Party’s expense, the Indemnified Party will provide reasonable cooperation to the Indemnifying Party in connection with the defense or settlement of any Claim. The Indemnified Party may, at its expense, employ separate counsel to monitor and participate in the defense of any Claim.</p> <p>Notwithstanding anything to the contrary in this Section 30.1, a Party may not seek</p>		<p>such customers’ use, possession, or operation of those services and/or products; or (v) personal injury to or any unemployment compensation claim by one or more of the Indemnifying Party’s employees, notwithstanding any protections the Indemnifying Party might otherwise have under applicable workers’ compensation or unemployment insurance law, which protections the Indemnifying Party waives, as to the Indemnified Party and other persons and entities to be indemnified under this Section 30.1 (other than applicable employee claimant(s)), for purposes of this Section 30.1. “Reasonable costs and attorneys’ fees,” as used in this Section 30.1, includes without limitation fees and costs incurred to interpret or enforce this Section 30.1. The Indemnified Party will provide the Indemnifying Party with reasonably prompt written notice of any Claim. At the Indemnifying Party’s expense, the Indemnified Party will provide reasonable cooperation to the Indemnifying Party in connection with the defense or settlement of any Claim. The Indemnified Party may, at its expense, employ separate counsel to monitor and participate in the defense of any Claim.</p> <p>Notwithstanding anything to the contrary in this Section 30.1, a Party may not seek indemnification with respect to any Claim by that Party’s customer(s) or End User(s), but rather shall be the Indemnifying Party with respect to all Claims by its customer(s) and</p>	

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			<p>indemnification with respect to any Claim by that Party's customer(s) or End User(s), but rather shall be the Indemnifying Party with respect to all Claims by its customer(s) and End User(s).</p> <p>The Indemnifying Party agrees to indemnify, defend, and hold harmless the Indemnitee Group and any third-party provider or operator of facilities involved in the provision of products, services or facilities under this Agreement from all Claims suffered, made, instituted, or asserted by the Indemnifying Party's End User Customer(s) arising from or relating to any products, services or facilities provided by or through the Indemnified Party or such third-party provider or operator, except to the extent that any such Claims were caused by the Indemnified Party's or other third-party provider's or operator's negligence, gross negligence, intentional or willful misconduct. The Indemnifying Party further agrees to indemnify, defend, and hold harmless the Indemnitee Group from all Claims, suffered, made, instituted, or asserted by any third party against an Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by the Indemnifying Party's End User Customer(s).</p>		<p>End User(s).</p> <p>The Indemnifying Party agrees to <u>release</u>, indemnify, defend, and hold harmless the Indemnitee Group and any third-party provider or operator of facilities involved in the provision of products, services or facilities under this Agreement from all Claims, <u>losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever</u>, including, but not limited to, <u>costs and attorneys' fees</u>, suffered, made, instituted, or asserted by the Indemnifying Party's End User Customer(s) arising from or relating to any products, services or facilities provided by or through the Indemnified Party or such third-party provider or operator. The Indemnifying Party further agrees to <u>release</u>, indemnify, defend, and hold harmless the Indemnitee Group from all Claims <u>losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever</u>, including, but not limited to, <u>costs and attorneys' fees</u>, suffered, made, instituted, or asserted by any third party against an Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by the Indemnifying Party's End User Customer(s).</p>	

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15(b)	Should the Agreement include language whereby CenturyTel purports to disclaim warranties that have no application, either potential or actual, to the exchange of traffic under this interconnection agreement?	30.2	30.2 <u>Disclaimer of Warranties</u> . EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY STATUTE, EACH PARTY ON BEHALF OF ITSELF AND ITS AFFILIATES AND SUPPLIERS DISCLAIMS ALL WARRANTIES AND DUTIES, WHETHER EXPRESS OR IMPLIED, AS TO THE SERVICES, PRODUCTS AND ANY OTHER INFORMATION OR MATERIALS EXCHANGED BY THE PARTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY STATUTE, THERE IS NO WARRANTY OF TITLE, AUTHORITY, OR NON-INFRINGEMENT WITH RESPECT TO THE SERVICES, PRODUCTS, AND ANY OTHER INFORMATION OR MATERIALS EXCHANGED BY THE PARTIES UNDER THIS AGREEMENT.	The Parties should not disclaim any conceivable warranty that may exist under the law, but should limit their disclaimer of warranties to those that have some plausible relationship to the actions and obligations of both Parties under the Agreement. Consistent with that principle Charter proposes to delete CenturyTel’s proposed language that the Parties mutually disclaim certain warranties listed in this provision, such as the warranties of “reasonable care”, “lack of negligence”, and “accuracy of completeness or responses.” Such warranties are not expressly contemplated by either Party, and more importantly, have no relation to each Party’s obligations with respect to the interconnection and exchange of traffic contemplated under this Agreement.	30.2 <u>Disclaimer of Warranties</u> . EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY STATUTE, EACH PARTY ON BEHALF OF ITSELF AND ITS AFFILIATES AND SUPPLIERS DISCLAIMS ALL WARRANTIES AND DUTIES, WHETHER EXPRESS OR IMPLIED, AS TO THE SERVICES, PRODUCTS AND ANY OTHER INFORMATION OR MATERIALS EXCHANGED BY THE PARTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, <u>REASONABLE CARE, WORKMANLIKE EFFORT, RESULTS, LACK OF NEGLIGENCE, OR ACCURACY OR COMPLETENESS OF RESPONSES</u> . EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY STATUTE, THERE IS NO WARRANTY OF TITLE, <u>QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION</u> , AUTHORITY, OR NON-INFRINGEMENT WITH RESPECT TO THE SERVICES, PRODUCTS, AND ANY OTHER INFORMATION OR MATERIALS EXCHANGED BY THE PARTIES UNDER THIS AGREEMENT.	CenturyTel has not articulated a basis for its proposed inclusion of the following warranties in this disclaimer provision: <ol style="list-style-type: none"> 1. reasonable care 2. workmanlike effort 3. lack of negligence 4. accuracy or completeness of responses 5. quiet enjoyment 6. quiet possession 7. correspondence to description Nor has CenturyTel offered any explanation as to how these potential warranties may relate, if at all, to the duties and obligations associated with the exchange of traffic in this interconnection agreement.

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15(c)	How should the Agreement: (a) limit, and define, direct damages ; and (b) otherwise limit the liability of each party in an equitable manner?	30.3, and 30.4	<p>30.3 <u>Limitation of Liability; Disclaimer of Consequential Damages; Exceptions.</u></p> <p>30.3.1 Except as provided in Section 30.3.3, each Party’s liability to the other, whether in contract, tort or otherwise, shall be limited to direct damages.</p>	<p>The Parties should not limit their damages in a way that would preclude one Party from obtaining meaningful relief. Although Charter agrees that damages should be limited to “direct damages”, it does not agree with CenturyTel’s proposal that damages be further limited to the monthly charges, plus expenses, that either Party may recover from the other Party. Because this Agreement contemplates primarily the exchange of traffic, without significant liabilities for leasing, resale or other services, the amount of monthly charges that the Parties are subject to is relatively small. For that reason, CenturyTel’s proposal to limit direct damages to no more than an amount equal to such monthly charges could effectively preclude recovery of the amount of direct damages that arise from a significant harm or error that occurred to one Party’s network, employees, or other assets.</p>	<p>30.3 <u>Limitation of Liability; Disclaimer of Consequential Damages; Exceptions.</u></p> <p>30.3.1 Except as provided in Section 30.3.3, each Party’s liability to the other, whether in contract, tort or otherwise, shall be limited to direct damages, <u>which shall not exceed the monthly charges, plus any related costs/expenses the other Party may recover, including those under Section 22.1 above, and plus any costs/expenses for which the Parties specify reimbursement in this Agreement for the services or facilities for which the claim of liability arose. Except as provided in Section 30.3.3, each Party’s liability to the other during any Contract Year resulting from any and all causes will not exceed the total of any amounts charged to **CLEC by CenturyTel under this Agreement during the Contract Year in which such cause accrues or arises. For purposes of this Section 30.3.1, the first Contract Year commences on the first day this Agreement becomes effective, and each subsequent Contract Year commences on the day following the anniversary of that date.</u></p>	<p>Each Party’s liability to the other should be limited to direct damages. Such damages shall be defined as not exceeding the total monthly charges, plus costs and expenses, that the other Party may recover from the other Party.</p>
			<p>30.3.3 Section 30.3.1 and Section 30.3.2 do not apply to the following:</p> <p><i>[excerpt:</i></p> <p>30.3.3.7 Liability for gross negligence, and intentional or willful misconduct;</p> <p>30.3.3.9 Liability arising under any</p>	<p>The Parties agree that for some types of claims their potential liability should not be limited. Although the Parties agree as to the majority of such claims, there are two instances in which they do not agree. Charter’s position is that neither Party should limit their liability for claims arising out of either Party’s acts which are deemed to be grossly negligent, or which constitute intentional or willful misconduct. In</p>	<p>30.3.3 Section 30.3.1 and Section 30.3.2 do not apply to the following:</p> <p><i>[excerpt:</i></p> <p>30.3.3.7 Liability for intentional or willful misconduct;</p> <p>30.3.3.9 Liability arising under any</p>	<p>The Parties should limit their liability with respect to gross negligence, and with respect to the indemnity obligations of other contractual documents, but not under this Agreement.</p>

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			<p>indemnification provision contained in this Agreement or any separate agreement or in Section(s) [insert] of [insert relevant Tariff] on file with the Missouri Public Service Commission related to provisioning of 911/E911 services</p> <p>30.3.3.13 Liability arising under any indemnification provision contained in this Agreement, a separate agreement or in Section(s) [insert] of [insert relevant Tariff] on file with the Missouri Public Service Commission related to provisioning of Directory Listing or Directory Assistance Services.</p> <p>30.4 <u>Liability of Each Party.</u></p> <p>In addition to the general limitation of liability in this Section 30, the following shall also limit each Party's liability under this Agreement.</p> <p>30.4.1 <u>Inapplicability of Tariff Liability.</u> CenturyTel's general liability, as described in its local exchange or other Tariffs, does not extend to **CLEC, **CLEC's End User Customer(s), suppliers, agents, employees, or any other third parties. Liability of CenturyTel to **CLEC resulting from any</p>	<p>such circumstances, the Party engaging in such acts should be liable, and responsible for, the entire cost of any damages which arise. Further, Charter also proposes that liability not be limited in those instances where liability arises under the indemnity provisions of this Agreement.</p> <p>Additional liability limitations, whether arising out of tariffs, other contracts, or errors, are generally appropriate. However, where the Agreement includes such additional limitations they should be operative as to both Parties, not unilateral, as to only protect CenturyTel. For that reason, Charter proposes to make mutual the additional limitations set forth in this Section 30.4, in recognition of the fact that such limitations should apply mutually, not simply to the benefit of CenturyTel alone.</p>	<p>indemnification provision contained in this Agreement or any separate agreement or in <u>the applicable provisions of the</u> Section(s) [insert] of [insert relevant Tariff] on file with the Missouri Public Service Commission related to provisioning of 911/E911 services</p> <p>30.3.3.13 Liability arising under any indemnification provision contained in a separate agreement or in <u>the applicable provisions of the</u> [insert relevant Tariff] on file with the Missouri Public Service Commission related to provisioning of Directory Listing or Directory Assistance Services.</p> <p>30.4 <u>Liability of CenturyTel.</u></p> <p>In addition to the general limitation of liability in this Section 30, the following shall also limit <u>CenturyTel's</u> liability under this Agreement.</p> <p>30.4.1 <u>Inapplicability of Tariff Liability.</u> CenturyTel's general liability, as described in its local exchange or other Tariffs, does not extend to **CLEC, **CLEC's End User Customer(s), suppliers, agents, employees, or any other third parties. Liability of CenturyTel to **CLEC resulting from any</p>	<p>Additional liability limitations that CenturyTel has proposed, and which would only benefit CenturyTel, should not apply to Charter. There is no need to make these provisions mutual such that both Parties are covered by these provisions.</p>

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			<p>and all causes arising out of services, facilities or any other items relating to this Agreement shall be governed by the liability provisions contained in this Agreement and no other liability whatsoever shall attach to CenturyTel. **CLEC's general liability, as described in its local exchange or other Tariffs, does not extend to CenturyTel, CenturyTel's End User Customer(s), suppliers, agents, employees, or any other third parties. Liability of **CLEC to CenturyTel resulting from any and all causes arising out of services, facilities or any other items relating to this Agreement shall be governed by the liability provisions contained in this Agreement and no other liability whatsoever shall attach to **CLEC.</p> <p>30.4.2 <u>**CLEC Tariffs or Contracts.</u> Nothing in this Agreement shall be deemed to create a third-party beneficiary relationship between CenturyTel and any of **CLEC's End User Customers, suppliers, agents, employees, or any other third parties. Nothing in this Agreement shall be deemed to create a third-party beneficiary relationship between **CLEC and any of CenturyTel's End User Customers, suppliers, agents, employees, or any other third parties.</p>	<p>Furthermore, with respect to Section 30.4.3, Charter does not use CenturyTel signaling networks or calling databases that are identified in Section 30.4.3. For that reason, there is no reason to specifically carve out such databases and networks for unique treatment under this Section 30. Instead, the provision should be eliminated from the Agreement because it is not relevant to the Parties respective operations, as they relate to the interconnection and exchange of traffic.</p>	<p>and all causes arising out of services, facilities or any other items relating to this Agreement shall be governed by the liability provisions contained in this Agreement and no other liability whatsoever shall attach to CenturyTel. <u>CenturyTel shall not be liable for any loss, claims, liability or damages asserted by **CLEC, **CLEC's End User Customer(s), suppliers, agents, employees, or any other third parties where **CLEC combines or commingles such components with those components provided by CenturyTel to **CLEC.</u></p> <p>30.4.2 <u>**CLEC Tariffs or Contracts.</u> Nothing in this Agreement shall be deemed to create a third-party beneficiary relationship between CenturyTel and any of **CLEC's End User Customers, suppliers, agents, employees, or any other third parties.</p>	<p>Charter should accept some indemnity obligations related to CenturyTel's signaling networks or calling databases, even though Charter does not use such networks or databases.</p>

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			<p>30.4.3 <u>No Liability for Errors</u>. If **CLEC uses the signaling networks and call-related databases identified herein, then CenturyTel is not liable for mistakes in CenturyTel's signaling networks (including but not limited to signaling links and Signaling Transfer Points (STPs) and call-related databases (including but not limited to the Line Information Database (LIDB), Toll Free Calling database, Local Number Portability database, Advanced Intelligent Network databases, Calling Name database (CNAM), 911/E911 databases, and OS/DA databases). If **CLEC uses the signaling networks and call-related databases identified herein, then **CLEC shall indemnify, defend and hold harmless CenturyTel and CenturyTel's Indemnatee Group from any and all Claims incurred on account thereof, by or to **CLEC's End User Customer(s), suppliers, agents, employees, or any other third parties. For purposes of this Section 30.4.3, mistakes shall not include matters arising out of the gross negligence, intentional or willful misconduct of CenturyTel or its employees or agents.</p>		<p>30.4.3 <u>No Liability for Errors</u>. If **CLEC uses the signaling networks and call-related databases identified herein, then CenturyTel is not liable for mistakes in CenturyTel's signaling networks (including but not limited to signaling links and Signaling Transfer Points (STPs) and call-related databases (including but not limited to the Line Information Database (LIDB), Toll Free Calling database, Local Number Portability database, Advanced Intelligent Network databases, Calling Name database (CNAM), 911/E911 databases, and OS/DA databases). **CLEC shall indemnify, defend and hold harmless CenturyTel and CenturyTel's Indemnatee Group from any and all claims, demands, causes of action and liabilities whatsoever, including costs, expenses and reasonable attorneys' fees incurred on account thereof, by or to **CLEC's End User Customer(s), suppliers, agents, employees, or any other third parties based on any reason whatsoever. For purposes of this Section 30.4.3, mistakes shall not include matters arising exclusively out of the willful misconduct of CenturyTel or its employees or agents.</p>	
16.	Should both parties be allowed to modify, and upgrade, their networks; and	47	Notwithstanding any other provision of this Agreement, each Party shall have the right to deploy, upgrade, migrate and maintain its network at its discretion. Nothing in this Agreement shall limit CenturyTel's ability to modify its network through the incorporation	Both Parties should be able to modify their network through the incorporation of new equipment or software, assuming such modifications do not materially affect the other Party, consistent with 47 U.S.C. sections 255 and 256. Those provisions of the	Notwithstanding any other provision of this Agreement, <u>CenturyTel</u> shall have the right to deploy, upgrade, migrate and maintain its network at its discretion. Nothing in this Agreement shall limit CenturyTel's ability to modify its network through the incorporation	Charter should not have the right to upgrade its network through the incorporation of new equipment or software or otherwise.

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	should the other Party be responsible for assuming the costs of such network upgrades or modifications?		of new equipment or software or otherwise. **CLEC shall be solely responsible for the cost and activities associated with accommodating such changes in its own network. Nothing in this Agreement shall limit **CLEC’s ability to modify its network through the incorporation of new equipment or software or otherwise. CenturyTel shall be solely responsible for the cost and activities associated with accommodating such changes in its own network. Notwithstanding the foregoing, both Parties have the duty not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256 of the Act.	Communications Act specifically and expressly contemplate that entities will update their networks, and coordinate their actions in so doing. Thus the Telecommunications Act already ensures that the parties must update their networks, and coordinate their upgrades, in a manner that optimally maintains interconnection with interconnecting carriers. Furthermore, both Parties should be responsible for the costs associated with accommodating changes made by the other Party. This principle of cost responsibility is consistent with CenturyTel’s original proposal, and principles of equitable allocation of cost obligations with respect to the cost of network upgrades.	of new equipment or software or otherwise. **CLEC shall be solely responsible for the cost and activities associated with accommodating such changes in its own network. Notwithstanding the foregoing, both Parties have the duty not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256 of the Act.	
17.	Should Charter be contractually bound by terms concerning liability for carrier change requests that exceed its obligations under existing law?	50	50. <u>Unauthorized Changes</u> 50.1 The Parties agree that each Party is required to comply with End User subscriber carrier change requests, as set forth in 47 C.F.R. § 64.1100, et. seq. (“Changes in Preferred Telecommunications Service Providers”), and any applicable rules or regulations promulgated by the Commission. As such, each Party will comply with such rules and regulations to ensure that End User subscribers are not changed without required authorizations.	This provision should not apply to Charter because FCC regulations establish the liability and remedy obligations if a subscriber is changed without necessary authorization. In addition if necessary, the Parties can agree upon procedures to exchange any necessary letters of authorization, which would ensure that Charter has necessary authorization before submitting a carrier change requests on behalf of a subscriber. Moreover, federal regulations, 47 C.F.R. 64.1100 et. seq., already establish liability obligations where one Party fails to obtain proper authorization prior to submitting a carrier change request on behalf of a potential new subscriber.	50. <u>Unauthorized Changes</u> 50.1 <u>Procedures. If **CLEC submits an order under this Agreement in order to provide service to an End User Customer that at the time the order is submitted is obtaining its local services from CenturyTel or another LEC using CenturyTel resold services or Unbundled Network Elements, and the End User Customer notifies CenturyTel that the End User Customer did not authorize **CLEC to provide local Telephone Exchange Services to the End User Customer, **CLEC must provide CenturyTel with written documentation of authorization from</u>	The Parties should agree to include certain anti-slamming terms in the Agreement which apply only to Charter, and which may not be consistent with applicable federal and/or state regulations.

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			50.2 Any compensation that may be due either Party for the other Party’s actions associated with unauthorized subscriber changes will be established by FCC regulations governing subscriber change procedures at 47 C.F.R. § 64.1100, et. seq.		<p><u>that End User Customer within thirty (30) calendar days of notification by CenturyTel. If **CLEC cannot provide written documentation of authorization within such time frame, **CLEC must, within three (3) Business Days thereafter:</u></p> <p><u>(a) direct CenturyTel to change the End User Customer back to the LEC providing service to the End User Customer before the change to **CLEC was made;</u></p> <p><u>(b) provide any End User Customer information and billing records **CLEC has obtained relating to the End User Customer to the LEC previously serving the End User Customer; and</u></p> <p><u>(c) notify the End User Customer and CenturyTel that the change back to the previous LEC has been made.</u></p>	
					50.2 <u>CenturyTel will bill **CLEC fifty dollars (\$50.00) per affected line in lieu of any additional charge in order to compensate CenturyTel for switching the End User Customer back to the original LEC.</u>	

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ART. V, INTERCONNECTION						
18.	Should Charter be entitled to interconnect with CenturyTel at a single point of interconnection (POI) within a LATA?	2.2.2, 3.3.2 & 2.3.2. 4.4	<p>A Point of Interconnection (POI) is a point in the network where the Parties deliver Local Traffic to each other, and also serves as a demarcation point between the facilities that each Party is responsible to provide. **CLEC may interconnect at any single technically feasible point on the CenturyTel network within a LATA. The technically feasible point at which **CLEC elects to interconnect will be the established POI for such LATA.</p>	<p>Charter is entitled, under federal law, to establish a single point of interconnection (POI) per LATA with CenturyTel as the point at which it will exchange all traffic with CenturyTel in that LATA.</p> <p>The governing statutory standard on this issue is 47 U.S.C. § 251(c)(2). Interpreting this statute, current FCC rules permit Charter to insist on a single POI per LATA, if that is Charter’s preference. As the FCC has explained, an ILEC “must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA.” <i>In the Matter of Developing a Unified Intercarrier Compensation Regime</i>, Notice of Proposed Rulemaking, FCC 01-132 (released April 21, 2001) at ¶ 112 (footnote omitted). <i>See also</i>, 47 C.F.R. § 51.321; <i>and In the Matter of Application by SBC Communications Inc. et al. to Provide In-Region, InterLATA Services in Texas</i>, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238 at ¶ 78, n.174 (rel. June 30, 2000).</p> <p>Notably, these authorities establish that a competing carrier, like Charter, is entitled to establish a single POI per LATA, subject only to limits where such arrangement is not technically feasible. However, CenturyTel proposes to limit Charter’s right to establish a</p>	<p>A Point of Interconnection (POI) is a point in the network where the Parties deliver Local Traffic to each other, and also serves as a demarcation point between the facilities that each Party is responsible to provide. <u>Requirements for a Local POI are set forth in Section 3.3.2 of this Article. In some cases, multiple POI(s) may be necessary to provide the best technical implementation of Interconnection requirements to each End Office within a CenturyTel company’s service area.</u></p> <p><u>3.3.2. Direct Network Connection and Point of Interconnection (POI)</u></p> <p><u>3.3.2.1 Unless the Parties mutually agree otherwise, a Direct Network Connection and a POI shall be established upon occurrence of any of the triggers set forth in Section 3.3.2.4 of this Article.</u></p> <p><u>3.3.2.2 A Direct Network Connection shall be established by connecting **CLEC’s network to CenturyTel’s network at a technically feasible point on CenturyTel’s network within the CenturyTel local exchange. The connection can be established in any of the manners described in Section 2 of this Article.</u></p> <p><u>3.3.2.3 The Direct</u></p>	<p>Charter should not be allowed to establish a single POI on CenturyTel’s network. Instead, Charter should be required to establish multiple POIs on CenturyTel’s network, at every local exchange area in which it provides service, or exchanges traffic with CenturyTel. Further, Charter should be required to establish a so-called “Local POI” where transiting charges exceed a de minimis threshold of charges.</p>

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				<p>single POI per LATA in several ways, none of which are supported by the statutory standard, and the FCC’s orders. For this reason, CenturyTel’s suggestion that the POI will be “negotiated” based upon criteria that include its network architecture, potential costs, future capacity needs, etc., is not consistent with federal law. Furthermore, CenturyTel’s proposal is inconsistent with federal law in that it contemplates the establishment of a so-called “Local POI.” Although the term is not well defined, CenturyTel’s language suggests that Charter would be obligated to establish multiple POIs in each local exchange area in which it provides service, or exchanges traffic. Further, Charter should be required to establish a so-called “Local POI” where transiting charges exceed a <i>de minimis</i> threshold of charges. Each of these limitations are, again, inconsistent with the clear federal rule on this issue, which establishes Charter’s right to establish a single POI per LATA.</p>	<p><u>Network Connection point established in Section 3.3.2.2 of this Article shall also be the POI. Each Party shall be responsible for establishing and maintaining all facilities on its side of the POI. Each Party is responsible for the appropriate sizing, operation, and maintenance of the transport facility to the POI.</u></p> <p><u>3.3.2.4 Unless the Parties agree otherwise, a Direct Network Connection and POI shall be established upon the occurrence of either of the following:</u></p> <p><u>3.3.2.4.1 **CLEC has begun serving End Users within a CenturyTel local exchange, or has assigned to any End User numbers that are rated to a Rate Center that is within the Local Calling Area of a CenturyTel exchange and the resulting Local Traffic that is to be exchanged between the Parties is equal to or greater than a DS-1 trunk equivalency as described in Section 3.3.2.5 of this Article.</u></p> <p><u>3.3.2.4.2 Either Party is assessed transiting costs by a third party and such charges associated with a single traffic exchange route exceed \$200.00 for one month.</u></p> <p><u>3.3.2.5 A DS-1 trunk equivalency is deemed established in any the following instances:</u></p> <p><u>3.3.2.5.1 Traffic studies of peak busy CCS indicate that the number of trunks necessary</u></p>	

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					<p><u>to achieve a .001 Grade of Service based upon application of the Erlang B table is equal to or exceeds twenty-four (24) for three (3) consecutive months, or for three (3) months of any consecutive five (5) month period.</u></p> <p><u>3.3.2.5.2 Combined two-way traffic between two single Switches of each Party reaches 200,000 combined minutes of use per month for two (2) consecutive months, or for any two (2) months in a consecutive three-month period.</u></p> <p><u>3.3.2.5.3 At any point where a traffic forecast prepared pursuant to requirements of Article III, Section 11 or Article V, Section 3.5 indicates that combined two-way traffic between two single Switches of each Party will exceed 200,000 minutes of use per month.</u></p> <p><u>3.3.2.5.4 In any instance where **CLEC has requested to port a number or numbers associated with an End User Customer and it is known that local trunks previously associated with that customer and those numbers equaled or exceeded 24. In any other instance where it can be shown that a customer that **CLEC is about to serve previously had 24 or more local trunks associated with the service that the customer will disconnect or has disconnected in migrating its service to **CLEC.</u></p>	

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			<p>2.3.2.4.4 Design Four: Upon mutual agreement of the Parties, both **CLEC and CenturyTel may each provide two fibers between their respective locations. This design may only be considered where existing fibers are Currently Available and there is a mutual benefit to both Parties. ILEC will establish, deploy, maintain, and assume responsibility for the fibers associated with the “working” side of the system. **CLEC will establish, deploy, maintain, and assume responsibility for the fibers associated with the “protection” side of the system. The Parties will work cooperatively to terminate each other’s fiber in order to provision this joint SONET ring, or point-to-point linear system. Both Parties will work cooperatively to determine the appropriate technical handoff for purposes of demarcation and fault isolation. For purposes of this fiber meet design option, the POI will be defined as located at the POI location established by</p>		<p><u>3.3.2.5.5 In any instance where **CLEC is providing a tandem function then **CLEC must direct connect to CenturyTel pursuant to the terms of this section. In such situations, **CLEC also shall record and provide billing records for that traffic transiting its Switch and terminating to CenturyTel.</u></p> <p><u>3.3.2.6 The Parties may mutually agree to establish a Direct Network Interconnection even where none of the conditions set forth in Section 3.3.2.4 of this Article has occurred.</u></p> <p>2.3.2.4.4 Design Four: Upon mutual agreement of the Parties, both **CLEC and CenturyTel may each provide two fibers between their respective locations. This design may only be considered where existing fibers are Currently Available and there is a mutual benefit to both Parties. ILEC will establish, deploy, maintain, and assume responsibility for the fibers associated with the “working” side of the system. **CLEC will establish, deploy, maintain, and assume responsibility for the fibers associated with the “protection” side of the system. The Parties will work cooperatively to terminate each other’s fiber in order to provision this joint SONET ring, or point-to-point linear system. Both Parties will work cooperatively to determine the appropriate technical handoff for purposes of demarcation and fault isolation. For purposes of this fiber meet design option, the POI will be defined as</p>	

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			the Parties pursuant to this Section 2 of Article V. Notwithstanding the Parties' decision to define the POI in the manner described above, the Parties agree that each Party will be solely responsible for all of the deployment and ongoing maintenance costs associated with the fibers that it establishes and deploys under this design option.		located at <u>CenturyTel's switch location</u> . Notwithstanding the Parties' decision to define the POI in the manner described above, the Parties agree that each Party will be solely responsible for all of the deployment and ongoing maintenance costs associated with the fibers that it establishes and deploys under this design option.	
19.	Should Charter's right to utilize indirect interconnection as a means of exchanging traffic with CenturyTel be limited to only those instances where Charter is entering a new service area, or market?	3.3	<p>3.3.1.1 Either Party may deliver Local Traffic and ISP-bound Traffic indirectly to the other for termination through any carrier to which both Parties' networks are interconnected directly or indirectly. The Originating Party shall bear all charges payable to the transiting carrier(s) for such transit service with respect to Local Traffic and ISP-bound Traffic.</p> <p>3.3.1.2 Unless otherwise agreed, the Parties shall exchange all Local Traffic and ISP-bound Traffic indirectly through one or more transiting carriers until the total volume of Local Traffic and ISP-bound Traffic being exchanged between the Parties' networks exceeds 240,000 minutes per month for three (3) consecutive months, at which time either Party may request the establishment of Direct Interconnection. Notwithstanding the foregoing, if either Party is unable to arrange for or maintain transit service for</p>	<p>Charter has the right to avail itself of indirect interconnection pursuant to Section 251(a). There are no limitations on such right, and Charter should be entitled to utilize indirect interconnection as a means of exchanging EAS, and other traffic, with CenturyTel's network.</p> <p>To break down barriers to competition in the local phone market, the Act requires all carriers to "interconnect, directly or indirectly" with other carriers. <i>See</i> 47 U.S.C. § 251(a)(1). The FCC and the courts have both reaffirmed that a competing carrier has the right to choose to avail itself of either the right of indirect interconnection under Section 251(c), or the right of indirect interconnection under Section 251(a). Further, the use of direct interconnection in one instance does not preclude the use of indirect interconnection in another instance. <i>See Atlas Tel. v. Okla. Corp. Comm'n</i>, 400 F.3d 1256, 1268 (10th Cir. 2005).</p>	<p><u>3.3.1.1 Indirect Network Connection is intended only for de minimis traffic associated with **CLEC "start-up" market entry into a CenturyTel local exchange. Therefore Indirect Network Interconnection will be allowed only on routes between CenturyTel End Offices and a **CLEC Switch in instances where, and only so long as, none of the triggers set forth in Section 3.3.2.4 of this Article have been reached.</u></p> <p><u>3.3.1.2 Indirect Network Connection shall be accomplished by CenturyTel and **CLEC each being responsible for delivering Local Traffic to and receiving Local Traffic at the Tandem Switch serving the CenturyTel End Office. Each Party is responsible for the facilities to its side of the Tandem. Each Party is responsible for the appropriate sizing, operation, and maintenance of the transport facility to the Tandem.</u></p> <p><u>3.3.1.3 The Parties agree to enter into their</u></p>	Charter should only be allowed to avail itself of indirect interconnection methods if it agrees that it will establish direct interconnection arrangements where certain triggers or traffic thresholds set by CenturyTel, are met.

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			<p>its originated Local Traffic upon commercially reasonable terms before the volume of Local Traffic and ISP-bound Traffic being exchanged between the Parties' networks exceeds 240,000 minutes per month, that Party may unilaterally, and at its sole expense, utilize one-way trunk(s) for the delivery of its originated Local Traffic to the other Party.</p> <p>3.3.1.3 After the Parties have established Direct Interconnection between their networks, neither Party may continue to transmit its originated Local Traffic and ISP-bound Traffic indirectly except on an overflow basis to mitigate traffic blockage, equipment failure or emergency situations.</p> <p>3.3.1.4 Local Traffic and ISP-bound Traffic exchanged by the Parties indirectly through a transiting carrier shall be subject to the same Reciprocal Compensation, if any, as Local Traffic and ISP-bound Traffic exchanged through Direct Interconnection.</p>	<p>If Charter desires to exchange local traffic with CenturyTel from an existing point of interconnection, and the indirect traffic exchange threshold for the switch serving that POI has been satisfied, Charter may elect to establish a direct interconnection arrangement between such switch and CenturyTel's network or to interconnect its switch to another Charter switch in order to utilize an existing direct interconnection arrangement already established between Charter Fiberlink and CenturyTel.</p>	<p><u>own agreements with third-party providers. In the event that **CLEC sends traffic through CenturyTel's network to a third-party provider with whom **CLEC does not have a traffic interexchange agreement, then **CLEC agrees to indemnify CenturyTel for any termination charges rendered by a third-party provider for such traffic.</u></p> <p><u>3.3.1.4 To the extent a Party combines Local Traffic and Jointly-Provided Switched Access Traffic on a single trunk group for indirect delivery through a Tandem, the originating Party, at the terminating Party's request, will declare quarterly Percentages of Local Use (PLUs). Such PLUs will be verifiable with either call summary 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.</u></p>	
20.	Should Charter be entitled to lease interconnection facilities from CenturyTel at cost-based rates pursuant to	2.3.1	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	The FCC has ruled that competitive carriers, like Charter, are entitled to lease those facilities used to interconnect two LEC networks for the exchange of traffic) at cost-based rates pursuant to Section 251(c)(2). The FCC reaffirmed this ruling in its Triennial Review Order. In that order the FCC explained that interconnection facilities must	Where facilities exist, Charter may lease facilities from CenturyTel. <u>Such facilities shall be provided pursuant to the CenturyTel Tariff identified in Section II, Article XI (Pricing), which currently governs Charter's leasing of such facilities pursuant its prior interconnection agreement with CenturyTel. The rates set forth in such Tariff shall be</u>	Charter is entitled to lease interconnection facilities from CenturyTel. However, Charter must pay for such facilities at the rates established in CenturyTel's access tariff, rather than at rates established pursuant to Section 251(c)(2).

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	Section 251(c)(2) of the Act?		<p>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.</p>	<p>be provided to competitive carriers, when such facilities are used for interconnection purposes (but not when used as an unbundled network element, or UNE). <i>See In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers</i>, Triennial Review Order, Report and Order and Order on Remand and Further NPRM, 18 FCC Rcd 16978 at para. 366 (2003) (the “TRO”).</p> <p>Charter’s proposed language is consistent with the FCC’s decision in this regard because Charter is proposing that the interconnection facilities deployed under this section be used for the purposes of interconnection, <i>not</i> as an UNE. Therefore, Charter is entitled to obtain such facilities at cost-based rates pursuant to Section 251(c)(2). The Seventh Circuit recently affirmed this principle in its review of an interconnection arbitration decision requiring the incumbent LEC, SBC, to provide interconnection facilities to a competitive LEC at cost-based rates pursuant to Section 251(c)(2). <i>See Illinois Bell v. Box</i>, Nos. 07-3557, 07-3683 (slip op.) (7th Cir. May 23, 2008).</p>	<p><u>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. Once such new rates are established, either by agreement or pursuant to a dispute resolution proceeding, such new rates shall apply retroactively to the Effective Date of this Agreement, and shall be trued-up accordingly.</u> Charter also may lease facilities from a third party, or may construct or otherwise self-provision facilities.</p>	
21.	Should Charter be allowed to deploy one-way trunks at its discretion; and without having	3.2.3	Notwithstanding 3.2 above, the Parties recognize that certain technical and billing issues may necessitate the use of one-way trunking for an interim period. Either Party may provision its own one-way trunks. Notwithstanding any other provision of	Charter should be allowed to establish one-way trunks, at its discretion, for the purpose of delivering its traffic to CenturyTel’s network. FCC regulations, 47 C.F.R. § 51.305(f), establishes that one-way trunks are available by default, to the competitive LEC.	Notwithstanding 3.2 above, the Parties recognize that certain technical and billing issues may necessitate the use of one-way trunking for an interim period. Either Party may provision its own one-way trunks. <u>Regardless of whether one-way or two-way</u>	The use of one-way trunks is inefficient and actually increases the total costs of interconnection. Charter should only be allowed to use one-way trunks where both Parties agree to such use.

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	to assume the entire cost of interconnection facilities used to carry traffic between the Parties’ respective networks?		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.	Specifically, the regulation requires that incumbent LECs provide two-way trunking, upon request. For that reason, it is clear that federal law establishes that one-way trunks are available by default. Or, put differently, the competitive LEC may deploy one-way trunks at its discretion. <i>See also In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration</i> , Memorandum Opinion and Order, 17 FCC Rcd 27039 at para. 147 (2002). <i>See also US West v. MFS Intelenet</i> , 193 F.3d 1112, 1124-25 (9 th Cir. 1999).	<u>facilities are provisioned</u> each Party is individually responsible to provide facilities to the POI. The Parties will <u>negotiate</u> the appropriate trunk configuration, whether one-way or two-way giving consideration to relevant factors, including but not limited to, existing network configuration, administrative ease, any billing system and/or technical limitations and network efficiency. Any disagreement regarding appropriate trunk configuration shall be subject to the dispute resolution process in Section 20 of Article III.	
22.	What threshold test should be used to determine when the Parties will establish direct end office trunks?	3.4.2.1.1	The Parties shall establish a direct End Office primary high usage Local Interconnection Trunk Groups for the exchange of Local Traffic, where actual traffic volume reaches twenty four (24) or more trunks, for three consecutive months .	The threshold test for determining when the Parties will establish direct end office trunks must be based on actual traffic volumes, rather than simply potential, or speculative, volumes of traffic that may exist in the future. Charter’s proposal ties the threshold test to the concept of actual, rather than potential, traffic. Further, Charter’s proposed language includes a consecutive three month to ensure that such traffic volume is sustained, and truly representative of consistent traffic flows, rather than simply a single month of high-volume traffic, which would represent an anomaly.	As described in 3.3.1.1, the Parties have established a direct End Office primary high usage Local Interconnection Trunk Groups for the exchange of Local Traffic, where actual <u>or projected</u> traffic <u>demand is or will be</u> twenty four (24) or more trunks, <u>as described in Section 3.3.2.5 of this Article</u> .	Direct end office trunk groups should be established where “actual or projected” traffic demand “is or will be” at a certain level. In other words, the threshold test should be tied to either forecasted traffic levels in the future, or existing traffic levels.

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23.	Should Charter pay CenturyTel a tariffed access charge for transiting traffic where CenturyTel end office switches perform a transit functionality for unqueried calls that have been ported to another carrier?	4.6.5	When CenturyTel receives an unqueried call from **CLEC to a telephone number that has been ported to another local service provider, CenturyTel will complete such calls to the new local service provider and Charter shall pay CenturyTel the applicable transit rate and NP query charge set forth in Article XI (Pricing).	Where CenturyTel routes an unqueried call on Charter’s behalf, it should be compensated for such transit service at an appropriate cost-based rate listed in this agreement. However, the Parties should use a reasonable proxy rate for the transit, or transit-like functions, in these circumstances. Charter proposes that the Parties utilize the specific rate of \$.005 per MOU, previously negotiated, and implemented, in other pending agreements between the Parties.	When CenturyTel receives an unqueried call from **CLEC to a telephone number that has been ported to another local service provider, Charter shall pay CenturyTel the applicable transit rate and NP <u>dip</u> charge set forth in Article XI (Pricing).	Charter should pay CenturyTel the transit rate and LNP dip (query) charge set forth in CenturyTel’s applicable intrastate access tariffs for all unqueried calls sent to CenturyTel for delivery to another service provider. These are calls to formerly CenturyTel customers who have subsequently ported their numbers to another local service provider.
ART. VI, UNBUNDLED NETWORK ELEMENTS						
24.	Should Charter have access to the customer side of the Network Interface Device (“NID”) without having to compensate CenturyTel for such access?	3.4, 3.5, 3.5.1	3.4 Maintenance and control of the End User Customer’s Inside Wiring (<i>i.e.</i> , on the End User Customer’s side of the NID) is under the control of the End User Customer. Conflicts between telephone service providers for access to the End User’s inside wire on the End User’s side of the NID must be resolved by the End User. 3.5 Charter may access the NID on CenturyTel’s network side or the End User	The question of who owns and maintains control over Inside Wiring is a question of federal and state law, to which the Parties can not simply contract around. CenturyTel’s language suggests that CenturyTel may in fact own and maintain control over Insider Wire within certain buildings, which is contrary to applicable law. Charter should be allowed to access the customer side of the NID, for the purpose of	3.4 <u>Except in those multi-unit tenant properties where CenturyTel owns and maintains control over Inside Wire within a building,</u> maintenance and control of the End User Customer’s Inside Wiring (<i>i.e.</i> , on the End User Customer’s side of the NID) is under the control of the End User Customer. Conflicts between telephone service providers for access to the End User’s inside wire on the End User’s side of the NID must be resolved by the End User. 3.5 Charter may access the NID on CenturyTel’s network side or the End User	This Agreement should reflect the fact that CenturyTel owns and maintains control over certain Inside Wiring within a building. Any access to the customer side of the NID by Charter constitutes a “use” of

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			<p>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, even as an ordered UNE, unless the CenturyTel network is first disconnected from the NID as set forth in this Article.</p> <p>3.5.1 Notwithstanding any other provision of this Agreement, when **CLEC is connecting a **CLEC provided loop to the inside wiring of a customer's premises through the customer side of the CenturyTel NID, **CLEC does not need to submit a request to CenturyTel and CenturyTel shall not charge **CLEC for access to the CenturyTel NID.</p>	<p>connecting its own loop facilities to the customer's inside wire. Such access does not constitute the use of the NID as an unbundled network element, and does not create any obligation for Charter to pay CenturyTel.</p>	<p>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. <u>Charter may not connect the End User Customer side of the NID except in accordance with these terms.</u> Any repairs, upgrade and/or rearrangements to the NID requested or required by Charter will be performed by CenturyTel based on the Time and Material Charges set out in Article XI (Pricing). CenturyTel, at the request of Charter, will disconnect the CenturyTel Local Loop from the NID, at charges reflected in Article XI (Pricing). Charter may elect to disconnect CenturyTel's Local Loop from the NID on the 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, even as an ordered UNE, unless the CenturyTel network is first disconnected from the NID as set forth in this Article.</p> <p>3.5.1 [INTENTIONALLY LEFT BLANK.]</p>	<p>the NID, for which Charter must pay monthly recurring charges.</p>

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			<i>UNE charge listed in Pricing Article XI: “Outside Facility Connection” applies in addition to the ISO charge when incremental fieldwork is required, and where **CLEC specifically requests that CenturyTel perform such incremental fieldwork.</i>	Finally, Charter should not be required to pay for “incremental fieldwork” unless Charter specifically requests that CenturyTel perform such work on Charter’s behalf.	<i>UNE charge listed in Pricing Article XI: “Outside Facility Connection” applies in addition to the ISO charge when incremental fieldwork is required.</i>	Charter should be required to pay for any “incremental fieldwork” that is performed by CenturyTel to Charter’s benefit, whether or not such work is requested by Charter or not.
ART. IX, ADDITIONAL SERVICES						
25.	How should the parties define certain extraordinary, and unique, port requests which may require a unique process known as “project management”?	1.2.2.3	For purposes of this Article, the Donor Party may request to use a project management approach for the implementation of LSRs for large quantities of numbers ported from a single End User location. For purposes of this provision, “large quantities” shall mean one hundred (100) or more numbers. The Donor Party also may request to use a project management approach for the implementation of LSRs for complex ports, which shall be defined as those ports that include complex switch translations (<i>e.g.</i> , Centrex, ISDN, AIN services, remote call forwarding, or multiple services on the loop). Under such managed projects (“projects”), the Parties may negotiate implementation details including, but not limited to: due dates, cutover intervals and times, coordination of technical resources, and completion notice.	The Parties should define any unique number port requests which would require special processes known as a “project management” approach as those involving the transfer of one hundred or more numbers from any single end user location. It is appropriate to define such processes in this way because that presents the appropriate threshold by which either Party should be excused from its established number porting operational obligations under this Agreement, and applicable law.	For purposes of this Article, the Donor Party may request to use a project management approach for the implementation of LSRs for large quantities of numbers ported from a single End User location. For purposes of this provision, “large quantities” shall mean <u>fifty (50)</u> or more numbers. The Donor Party also may request to use a project management approach for the implementation of LSRs for complex ports, which shall be defined as those ports that include complex switch translations (<i>e.g.</i> , Centrex, ISDN, AIN services, remote call forwarding, or multiple services on the loop). Under such managed projects (“projects”), the Parties may negotiate implementation details including, but not limited to: due dates, cutover intervals and times, coordination of technical resources, and completion notice..	The Parties should define any unique number port requests which would require special processes known as a “project management” approach as those involving the transfer of fifty or more numbers from any single end user location.

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26.	Should the Parties agree to complete number port requests pursuant to the intervals and confirmation periods required by applicable law?	1.2.2.1, 1.2.2.2	<p>1.2.2.1 The LSR will have a requested due date that is not less than the standard interval that is required by Applicable Law.</p> <p>1.2.2.2 Both Parties agree to provide a Firm Order Confirmation (FOC) to the Recipient Party within the time frame required by Applicable Law.</p>	<p>Where the Parties intend to include specific contract language concerning the specific technical and operational requirements associated with porting a number, such requirements should be guided by binding FCC precedent, which is covered under “Applicable Law” (as defined in the Agreement). Rather than refer to specific timeframes in such proposals, the Parties are better served by simply referring to Applicable Law because the FCC has recently announced its intent to modify certain rules associated with operational requirements of number porting. Specifically, in October of 2007 the FCC issued a notice of proposed rulemaking, in which it has announced its consideration of a rule that would reduce the current porting “interval” from four days to forty-eight (48) hours. <i>See In the Matter of Local Number Portability Porting Interval and Validation Requirements</i>, 22 FCC Rcd 19531, at paras. 59-63 (2007). There has been a significant amount of support for the FCC’s tentative conclusion, and there is some possibility that this conclusion could be adopted as a final rule later this year. For that reason, it is not appropriate, or wise, to adopt a specific timeframe in Section 1.2.2.1, as CenturyTel has proposed.</p> <p>Furthermore, CenturyTel’s proposal that confirmation of receipt of port requests, known as firm order confirmations (or “FOCs”), be delivered in 48 hours. However, current FCC</p>	<p>1.2.2.1 The LSR will have a requested due date that is not less than the standard interval <u>of four (4) Business Days.</u></p> <p>1.2.2.2 Both Parties agree to provide a Firm Order Confirmation (FOC) to the Recipient Party within <u>24 hours from the time a LSR is received.</u></p>	<p>The Parties should agree that they will not request that ports be completed in anything less than the “standard” interval of four business days. Furthermore, confirmation of number port requests should be provided within 48 hours of receipt of the request, despite the fact that the FCC requires such confirmation within 24 hours of receipt.</p>

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				regulations require that such confirmations be provided in 24 hours. <i>See In the Matter of Local Number Portability Porting Interval and Validation Requirements</i> , 22 FCC Rcd 19531, at para. 61 (2007). Therefore, CenturyTel’s proposal conflicts with applicable law. For that reason, CenturyTel’s proposals should be rejected and the Agreement should agree to meet these deadlines consistent with applicable law.		
27.	Should CenturyTel be allowed to assess a charge for administrative costs for porting telephone numbers from its network to Charter’s network?	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.	Neither Party should be permitted to assess charges upon requests from the other Party to fulfill a subscriber’s number porting requests. In several orders implementing 47 U.S.C. § 251(e)(2) shortly after enactment of the Telecommunications Act of 1996, the FCC held that carriers are required to recover their costs of implementing local number portability (“LNP”) through tariffed end user charges. <i>See Telephone Number Portability</i> , Third Report and Order, 13 FCC Rcd 11701 (1998) (the “Cost Recovery Order”), <i>aff’d</i> , <i>Telephone Number Portability</i> , Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002) (the “Cost Recovery Reconsideration Order”). <i>See also Telephone Number Portability Cost Classification Proceeding</i> , Memorandum Opinion and Order, 13 FCC Rcd 24495 (1998). In these orders the FCC determined that recovery by ILECs through end user charges of carrier-specific costs	<u>The Party receiving the LSR will bill the service order charges set forth in Pricing Article XI for each LSR received. The Party receiving the LSR will bill an Initial Service Order Charge for each initial LSR submitted. A Subsequent Service Order Charge applies to any modification to an existing LSR.</u>	Charter should be required to pay service order charges associated with number porting because CenturyTel incurs costs in performing this administrative service necessary to complete port requests.

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				<p>directly related to providing number portability best serves the statutory goal of competitive neutrality. <i>Cost Recovery Order</i>, at ¶¶ 8, 39 and 135.</p> <p>Accordingly, the FCC promulgated its current rule, codified at 47 C.F.R. § 52.33, entitled “Recovery of carrier-specific costs directly related to providing long-term number portability.” The rule states that ILECs may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the FCC, certain charges over a five (5) year term assessed against end users. <i>See</i> 47 C.F.R. § 52.33(a)(1)(i) & (a)(3). Rule 52.33(a)(1)(ii) also allows ILECs to assess charges on carriers that purchase switching ports as UNEs or resell the ILECs’ local services. Charter does not purchase switching ports and is not reselling CenturyTel’s services. In addition, the number portability “query service” charge described in 47 C.F.R. § 52.33(a)(2) may be assessed against carriers. Charter, however, is not requesting that CenturyTel perform a “query-service.” No other cost recovery from carriers like Charter is authorized by the rule for LNP charges. <i>See</i> Cost Recovery Reconsideration Order, ¶ 62. Consequently, under the FCC’s rules, CenturyTel cannot assess any charges, including service order charges, on Charter to process a LNP request.</p>		

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ART. X, OSS						
28.	Should CenturyTel be entitled to monitor, and audit, Charter’s use of OSS systems which Charter may use to make a service request, or other similar request, of CenturyTel?	8.3.1, 8.3.2, 8.3.3	<p>8.3.1 CenturyTel shall have the right (but not the obligation) to ascertain whether **CLEC is complying with the requirements of Applicable Law and this Agreement with regard to **CLEC’s access to, and use and disclosure of, CenturyTel OSS Information.</p> <p>8.3.2 Without in any way limiting any other rights CenturyTel may have under the Agreement or Applicable Law, CenturyTel may, upon CLEC’s consent, monitor **CLEC’s access to and use of CenturyTel OSS Information which is made available by CenturyTel to **CLEC pursuant to this Agreement, to ascertain whether **CLEC is complying with the requirements of Applicable Law and this Agreement, with regard to **CLEC’s access to, and use and disclosure of, such CenturyTel OSS Information. The foregoing right shall include, but not be limited to, the right (but not the obligation) to electronically monitor **CLEC’s access to and use of CenturyTel OSS Information which is made available by CenturyTel to **CLEC through CenturyTel OSS Facilities.</p> <p>8.3.3 Information obtained by CenturyTel pursuant to this Section 8.0 shall be treated by CenturyTel as Confidential Information of **CLEC pursuant to Section 14.0, Article III</p>	<p>Where Charter uses the CenturyTel OSS (Operations Support System) databases to submit orders, request information, or other wise communicate with CenturyTel, Charter has agreed to a number of specific limitations and restrictions with respect to the use of such databases. Indeed, Section 8 of Article X, OSS, sets forth a lengthy list of limitations of use and restrictions upon Charter with respect to access, and use of, the OSS. For example, Charter has agreed to treat all OSS information as confidential, that it has no license rights in such information, that its right of access is limited in time, and that it will destroy or return all information upon expiration or termination of the Agreement. Thus, Charter has agreed to a number of very specific terms which strictly limits its use of, and access to, CenturyTel’s OSS.</p> <p>Despite these existing safeguards, CenturyTel also proposes that it have the right to “audit” and “monitor” Charter’s use of the OSS. However, other than an ambiguous and open-ended statement in Section 8.3.2, CenturyTel has refused to define how it would propose to “monitor” Charter. Nor has CenturyTel explained precisely what would be required of any audit of Charter’s use of the OSS. For these reasons, Charter will only agree to CenturyTel’s monitoring and auditing proposals if such action is conditioned upon mutual consent. Because CenturyTel has</p>	<p>8.3.1 CenturyTel shall have the right (but not the obligation) <u>to audit **CLEC</u> to ascertain whether **CLEC is complying with the requirements of Applicable Law and this Agreement with regard to **CLEC’s access to, and use and disclosure of, CenturyTel OSS Information.</p> <p>8.3.2 Without in any way limiting any other rights CenturyTel may have under the Agreement or Applicable Law, CenturyTel <u>shall have the right (but not the obligation) to</u>, monitor **CLEC’s access to and use of CenturyTel OSS Information which is made available by CenturyTel to **CLEC pursuant to this Agreement, to ascertain whether **CLEC is complying with the requirements of Applicable Law and this Agreement, with regard to **CLEC’s access to, and use and disclosure of, such CenturyTel OSS Information. The foregoing right shall include, but not be limited to, the right (but not the obligation) to electronically monitor **CLEC’s access to and use of CenturyTel OSS Information which is made available by CenturyTel to **CLEC through CenturyTel OSS Facilities.</p> <p>8.3.3 Information obtained by CenturyTel pursuant to this Section 8.0 shall be treated by CenturyTel as Confidential Information of **CLEC pursuant to Section 14.0, Article III</p>	<p>CenturyTel has the right to “monitor” and “audit” Charter’s use of CenturyTel’s OSS systems. There should be no limitations on such rights, and they should not be subject to mutual agreement. Furthermore, CenturyTel is not under any obligation to explain, with any precision, the specific types of actions it would undertake when monitoring Charter’s use of the OSS.</p>

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			of the Agreement; provided that, CenturyTel may, upon CLEC’s consent , use and disclose information obtained by CenturyTel pursuant to this Article to enforce CenturyTel’s rights under the Agreement or Applicable Law.	failed to provide a sufficient explanation of its intent with respect to monitoring and audits, the Commission should reject its proposals.	of the Agreement; provided that, CenturyTel <u>shall have the right (but not the obligation) to</u> , use and disclose information obtained by CenturyTel pursuant to this Article to enforce CenturyTel’s rights under the Agreement or Applicable Law.	
29.	Should CenturyTel be allowed to recover certain unidentified, and undefined, costs at some point in the future?	15.2	[INTENTIONALLY LEFT BLANK.]	<p>Except as specifically set forth in the price list of this Agreement, CenturyTel does not have the right to assess any charges upon Charter for the recovery of any OSS costs that CenturyTel may incur.</p> <p>As noted above with respect to Issue 13, the costs incurred by each Party in performing under this Agreement are a consequence of their respective obligations to one another under Section 251 of the Communications Act, and other applicable law. Neither Party should be allowed to recover its costs or “expenses” from the other Party unless specifically authorized to do so, as evidenced by the inclusion of rates in the price list.</p> <p>Should CenturyTel conclude at some point in the future that it incurs some costs for which it is entitled to compensation, there is already a process under this Agreement for which it can seek to recover such costs. Specifically, CenturyTel can propose an amendment to the Agreement which specifically details the costs and expenses it seeks to recover, and the basis for requiring Charter to compensate CenturyTel. Under that scenario, Charter will</p>	<p><u>CenturyTel is entitled to recover its unrecovered costs of providing access to new, upgraded or enhanced CenturyTel Operations Support Systems via the CenturyTel OSS Services, CenturyTel Pre-OSS Services, or CenturyTel OSS Facilities, or other means pursuant to rates or other charges (“OSS charges”) determined by or otherwise approved by the Commission upon CenturyTel’s submission in accordance with Applicable Law. Should CenturyTel incur the costs of providing access to new, upgraded or enhanced CenturyTel Operations Support Systems during the Term of this Agreement, **CLEC will be responsible for paying such OSS charges under this Agreement only if and to the extent determined by the Commission.</u></p>	CenturyTel is entitled to recover its costs of providing access to the OSS in a competitively neutral manner.

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				be required to engage in negotiations to amend the Agreement to incorporate CenturyTel’s proposed cost recovery scheme. For that reason, there is no need to include CenturyTel’s ambiguous proposed language in the current Agreement. Accordingly, because CenturyTel has sufficient opportunity to address the potential issue of unrecovered costs through the contract amendment process, the Commission should reject its proposed language here.		
ART. XII , DIRECTORY SERVICES						
30.	Should CenturyTel be required to provide information to Charter concerning key dates, and deadlines, for submitting information to directory publishers?	2.1.2. 3	CenturyTel shall provide **CLEC with publication schedules, including Directory close dates (and changes to those dates) for the Directories associated with the areas where Charter is providing local service. This publication information shall include the name of the directory, the close date, and, where the close date has changed, both the original close date and the new close date. Century Tel shall provide notification of changes in close dates in a format that specifically identifies the notification as relating to Directory publication. Where Charter has not forwarded its flat file of listing information for a Directory to Century Tel two weeks prior to the date that the listing	CenturyTel currently plays a significant role in facilitating the inclusion of Charter’s directory listings in the CenturyTel published directory. Although CenturyTel subcontracts with its vendors to undertake the actual task of publication, it should continue to assume responsibility for ensuring the reasonable and accurate exchange of information between competitive LECs, like Charter, and CenturyTel’s publisher. Because CenturyTel is the entity that bears the duties under federal law, including Section 251(b)(3), it should contractually agree to facilitate the exchange of information necessary to ensure that Charter can accurately, and efficiently, convey information to the directory publisher. Such obligations should include notice of key dates,	<u>Directory Close Date. **CLEC must submit all listing information intended for publication by the applicable Directory close date. CenturyTel shall provide **CLEC with publication schedules, including Directory close dates for the Directories associated with the areas where Charter is providing local service.</u>	Because CenturyTel does not actually publish directories it is under no obligation to provide Charter with notice of the publisher’s publication schedules.

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			information is due to the publisher, Century Tel will notify Charter.	with a sufficient amount of detail to provide meaningful guidance to Charter.		
31.	How should each party's liability be limited with respect to information included, or not included, in directories?	7.1-7.3	<p>7.1 CenturyTel's liability to **CLEC or any **CLEC End User Customer for any errors or omissions in Directories published by CenturyTel and/or Publisher (including, but not limited to, any error in any End User Customer or **CLEC listing), or for any default or breach of this Article, or for any other claim otherwise arising hereunder, shall be limited to actual damages , except to the extent that such errors or omissions, default, breach, or Claims arise from the CenturyTel's, or its Publisher's negligence, gross negligence, or intentional or willful misconduct. However, notwithstanding any other provision of this Agreement, CenturyTel's liability shall not be limited in any instance in which **CLEC accurately and timely conveys to CenturyTel or its Publisher that its End User Customers desire not to be published in a directory and CenturyTel, or its Publisher, causes the publication of such End User Customer data or listings. **CLEC shall fully indemnify CenturyTel in accordance with the provisions of Section 7.2 below as to any errors or omissions in a **CLEC End User Customer listing for which CenturyTel is not liable under this Section. CenturyTel shall fully indemnify **CLEC in accordance with the provisions of Section</p>	<p>CenturyTel should be liable for its own errors or omissions that result in subscriber listing errors in CenturyTel's published directories. The Agreement should allocate risk fairly, and in a manner that is proportionate to each Party's respective obligations and responsibilities. Specifically, where one Party acts in a manner that is deemed to constitute negligence, gross negligence, or intentional or willful misconduct, then that Party should not be allowed to contract away its liability to end user subscribers, or to the other Party.</p> <p>Charter believes that CenturyTel should not be permitted to limit its liability to the extent that CenturyTel engages in behavior that is deemed to constitute negligence, gross negligence, or intentional or willful misconduct, or otherwise contributes to the events that give rise to the action for damages. If CenturyTel's actions create a problem in the listing of a Charter subscriber, then it should be liable to the extent that such actions arise from CenturyTel's failure to ensure that its employees did not act in a negligent, grossly negligent, intentional or willful manner. The Agreement should, therefore, include such concepts in any provisions limiting liability of one Party.</p>	<p><u>The following provision shall apply in addition to the Liability and Indemnity provisions set forth in Article III, Section 30.</u></p> <p><u>7.1 CenturyTel's liability to **CLEC or any **CLEC End User Customer for any errors or omissions in Directories published by CenturyTel and/or Publisher (including, but not limited to, any error in any End User Customer or **CLEC listing), or for any default or breach of this Article, or for any other claim otherwise arising hereunder, shall be limited to amounts paid by **CLEC to CenturyTel under this Article. CenturyTel shall have no liability to **CLEC's or it's End User Customers for any errors or omissions in any End User Customer or **CLEC listing published by CenturyTel, or for the publication of any End User Customer data where such End User Customer does not desire a published listing. **CLEC shall fully indemnify CenturyTel in accordance with the provisions of Section 7.2 below as to any errors or omissions in a **CLEC End User Customer listing. **CLEC expressly represents that it is authorized to enter into this provision on behalf of itself and its End User Customers.</u></p>	CenturyTel should not be liable to Charter for any errors or omissions in any subscriber or Charter listing published by Charter. Charter should indemnify CenturyTel against any claims related to such errors.

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			<p>7.2 below as to any errors or omissions in a **CLEC End User Customer listing for which CenturyTel is liable under this Section.</p> <p>7.2 ** CLEC agrees to indemnify, defend, and hold harmless CenturyTel, its directors, officers, employees, agents and their affiliates (collectively, the “Indemnified Parties”) from all losses, claims, damages, expenses, suits, or other actions, or any liability whatsoever including, but not limited to, damages, liabilities, costs and attorneys’ fees, made or asserted by any third party (including, but not limited to End User Customers) against the Indemnified Parties and arising out of any error or omission for which CenturyTel is not liable pursuant to Section 7.1 above. CenturyTel agrees to indemnify, defend, and hold harmless **CLEC, its directors, officers, employees, agents and their affiliates (collectively, the “Indemnified Parties”) from all losses, claims, damages, expenses, suits, or other actions, or any liability whatsoever including, but not limited to, damages, liabilities, costs and attorneys’ fees, made or asserted by any third party (including, but not limited to End User Customers) against the Indemnified Parties and arising out of any error or omission for which CenturyTel is liable pursuant to Section 7.1 above.</p>	<p>Where the Parties agree to limit liability for special damages, including incidental, indirect, or consequential damages, then that limitation should not include a carve-out for claims which require Charter to indemnify CenturyTel. The liability limitations provisions should apply equitably, without imposing greater obligations on one Party in favor of the other Party (as CenturyTel proposes). For that reason the Commission should adopt Charter’s proposed language, to ensure the fair and equitable application of this provision.</p>	<p><u>7.2 **CLEC agrees to indemnify, defend, and hold harmless CenturyTel, its directors, officers, employees, agents and their affiliates (collectively, the “Indemnified Parties”) from all losses, claims, damages, expenses, suits, or other actions, or any liability whatsoever including, but not limited to, damages, liabilities, costs and attorneys’ fees, made or asserted by any third party (including, but not limited to End User Customers) against the Indemnified Parties and arising out of CenturyTel’s performance under the terms of this Article, from **CLEC’s or any third party’s use of the information provided, or from **CLEC’s performance.</u></p>	<p>Indemnity obligations in this section 7.2 should be unilateral, benefiting only CenturyTel. CenturyTel should have no indemnity obligations that match those obligations agreed to by Charter.</p>

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			<p>7.3 To the maximum extent permitted by the applicable law, in no event shall CenturyTel or **CLEC be liable for any special, incidental, indirect, or consequential damages whatsoever including, without limitation, damages for loss of profits or any other pecuniary loss arising out of or in connection with this Article, even if such Party has been advised of the possibility of such damages, except where such damages occur as the result of a breach of confidentiality, or relate to an indemnity claim made against either Party that is covered by Section 7.2 above. Notwithstanding the foregoing, or any other provision of this Agreement, neither Party’s liability shall be limited in any instance in which such Party, or its Publisher, causes the publication of End User Customer data or listings, where such End User Customer requests that such data or listings not be published in a directory.</p>		<p>7.3 To the maximum extent permitted by the applicable law, in no event shall CenturyTel or **CLEC be liable for any special, incidental, indirect, or consequential damages whatsoever including, without limitation, damages for loss of profits or any other pecuniary loss arising out of or in connection with this Article, even if such Party has been advised of the possibility of such damages, except where such damages occur as the result of a breach of confidentiality, or relate to <u>a CenturyTel indemnity claim covered by Section 7.2 above.</u></p>	
32.	How should the Agreement define each party’s obligations with respect to fulfilling directory	8	<p>To ensure that each Party’s subscribers have non-discriminatory access to directory assistance listings of the other Party’s subscribers, the Parties’ agree to provide each other all necessary End User subscriber listing information for inclusion in each Party’s relevant directory assistance listing databases, as required by</p>	<p>Pursuant to Section 251(b)(3) of the Act, both Parties have the duty to ensure non-discriminatory access to directory listings and directory assistance databases.</p> <p>FCC has recognized that carriers may agree to have DA databases administered by a third party. <i>Implementation of the Local</i></p>	<p><u>Neither Party is a Directory Assistance (DA)-provider, but rather obtains DA services from a third-party vendor(s) that uses or maintains a national DA database(s) (“national database”). Nevertheless, as each Party has the obligation to ensure that its End User Customers’ DA listings are made available to the other Party’s End User Customers, the</u></p>	<p>Each Party should contract with third-party directory assistance providers to ensure that their respective subscribers’ information is included in such third party databases. The Parties do not have any need to contract with one another directly on this issue, or provide one another directory</p>

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	assistance obligations consistent with Section 251(b)(3) of the Act?		<p>Section 251(b)(3) of the Act.</p> <p>8.1 CenturyTel Obligations: CenturyTel will accept, include, and maintain, in the same manner that Century Tel treats listings of its own End Users, CLEC subscriber listings in the directory assistance databases maintained by CenturyTel or its third-party vendors. To the extent that CenturyTel’s directory assistance listings are maintained in a database administered by a third party vendor, CLEC shall cooperate with CenturyTel as needed to ensure that CLEC listings are promptly loaded into such database and accessible to CenturyTel’s End Users, upon request. CenturyTel will not charge CLEC for including and maintaining CLEC subscriber listings in the directory assistance databases maintained by CenturyTel, or its vendors.</p> <p>8.2 CLEC Obligations: CLEC authorizes CenturyTel, and its third party vendors, to include and use CLEC’s directory assistance listing information in accordance with Applicable Law, and shall provide such information to CenturyTel, or its third-party vendors, at no charge. CLEC shall provide to CenturyTel the names, addresses and telephone numbers of all End Users who wish to be listed in the directory assistance database but</p>	<p><i>Competition Provisions of the Telecommunications Act of 1996</i>, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, 11 FCC Rcd 19392 at ¶ 144 (1996) (“Local Competition Second Report and Order”), vacated in part, <i>People of the State of California v. FCC</i>, 124 F.3d 934 (8th Cir. 1997), rev. on other grounds, <i>AT&T Corp. v. Iowa Util. Bd.</i>, 119 S.Ct. 721 (Jan. 25, 1999). However, the FCC has recognized that such agreements for third party administration must still be included in interconnection agreements because entering into a side agreement for access to DA databases contravenes the FCC requirement that LECs provide DA on nondiscriminatory basis and make such provisions related thereto available to other carriers in interconnection agreements for adoption through the mechanism of 47 U.S.C. § 252. <i>Provision of Directory Listing Information under the Communications Act of 1934, As Amended</i>, FCC 01-27, 16 FCC Rcd 2736 at ¶ 36 (2001) (“SLI/DA First Report and Order”). Therefore, CenturyTel must include rates, terms and conditions of access to its DA database within the interconnection agreement despite use of a third-party DA database administrator.</p> <p>For that reason, the Agreement should include a statement that each Party is obligated to ensure that its subscribers can obtain subscriber list information of the other Party’s</p>	<p><u>Parties agree as follows:</u></p> <p><u>8.1 Each Party will promptly, upon request by the other Party, provide the requesting Party with the name of its third-party DA-provider;</u></p> <p><u>8.2 Each Party will be responsible for contracting with or otherwise making its own arrangements for services with any such third-party DA-provider, including but not limited to arrangements to provide its own End User Customers’ DA listings to such third-party DA-provider for inclusion in a national database accessible to the other Party.</u></p>	assistance listing information.

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			omitted from publication in white pages directories (i.e. non-published).	<p>subscribers, via generally available directory assistance services. Charter’s proposal includes that statement reflecting both Parties’ respective obligations, and also sets forth specific terms and obligations that each Party must satisfy to ensure that directory assistance listing information is available to the subscribers of the other Party.</p> <p>Although this obligation may seem obvious, it is necessary to include in this Agreement because of previous operational problems between the Parties. Specifically, when operating under other interconnection agreements there have been problems surrounding CenturyTel’s failure to ensure that Charter subscriber listings are properly conveyed to CenturyTel subscribers who wished to contact Charter subscribers. This problem occurred because CenturyTel’s directory assistance database vendors did not include Charter subscriber listing information in their databases. This problem meant that both Charter and CenturyTel subscribers could not utilize directory assistance in the manner that they desired. Further, the problem reflected a failure by CenturyTel to satisfy its directory assistance obligations under federal law, because it did not ensure that its vendors included Charter subscribers in the proper databases. To avoid this problem in the future the Parties should include Charter’s proposed language, which sets forth these basic obligations in clear and unequivocal terms.</p>	<p>8.3 Neither Party shall be required to directly provide its End User Customers’ DA listings to the other Party, nor shall either Party be required to accept directly from the other Party such other Party’s End User Customers’ DA listings, for the purpose of submitting the Parties’ commingled, End User Customers’ DA listings to any third-party DA-provider that maintains and/or uses a national database accessible to the other Party.</p>	

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ART. VII, 911						
33.	Should CenturyTel be required to make 911 facilities available to Charter at cost-based rates pursuant to Section 251(c)?	3.3.1	CenturyTel shall provide and maintain sufficient dedicated E911 circuits/trunks from each applicable Selective Router to the PSAP(s) of the E911 PSAP Operator, according to provisions of the applicable State authority, applicable NENA standards and documented specifications of the E911 PSAP Operator. CenturyTel will permit **CLEC to lease 911 facilities from **CLEC’s network to CenturyTel’s Selective Router(s) at the rates set forth in Article XI (Pricing). The rates for 911 facilities set forth in Section IV. B of Article XI (Pricing) are TELRIC-based rates as required under Section 251(c). **CLEC has the option to secure alternative 911 facilities from another Provider to provide its own facilities.	Century Tel is required to provide to Charter interconnection trunks and facilities for the provision of 911 services at TELRIC rates, at Charter’s requests. In a recent order concerning the provision of facilities for 911 services, the FCC has definitively ruled on this question: “We note that the Commission currently requires LECs to provide access to 911 databases and interconnection to 911 facilities to all telecommunications carriers, pursuant to sections 251 (a) and (c) and section 271(c)(2)(B)(vii) of the Act. We expect that this will include all the elements necessary for telecommunications carriers to provide 911/E911 solutions that are consistent with the requirements of this Order...” WC Docket No. 04-36, WC Docket No. 05-196, <i>In the Matters of IP-Enabled Services 911 Requirements for IP-Enabled Service Providers</i> , First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 para. 38 (2005) (footnote omitted). Century Tel’s obligation to provide interconnection trunks and facilities for 911 services is thus unambiguous. Moreover, because Century Tel’s obligations arise under sections 251(a) and (c), Century Tel is required to provide these facilities at TELRIC rates.	CenturyTel shall provide and maintain sufficient dedicated E911 circuits/trunks from each applicable Selective Router to the PSAP(s) of the E911 PSAP Operator, according to provisions of the applicable State authority, applicable NENA standards and documented specifications of the E911 PSAP Operator. CenturyTel will permit **CLEC to lease 911 facilities from **CLEC’s network to CenturyTel’s Selective Router(s) at the rates set forth in Article XI (Pricing). **CLEC has the option to secure alternative 911 facilities from another Provider to provide its own facilities.	CenturyTel will provide access to facilities necessary to interconnect to its 911 network (selective routers and related equipment), at rates set forth in CenturyTel’s access tariffs. Such rates are generally not established pursuant to the standard of Section 251(c) of the Act.

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34.	What obligations does Charter have to obtain certain specific routing parameters, even though Charter traffic does not utilize, or require, such parameters?	4.6.1	If **CLEC uses a third-party database provider, and provides Nomadic VoIP Service, as defined in Section 4.3.2 (above) , **CLEC shall obtain its own routable but non-dialable ESQKs for each PSAP to which CenturyTel provides or shall provide coverage, and shall supply these ESQKs to CenturyTel for the Selective Routers servicing each such PSAP. If warranted by traffic volume growth, or if upon request by a PSAP or other governmental or quasi-governmental entity, **CLEC shall promptly obtain the appropriate number of additional ESQKs to be allocated to each PSAP as may be appropriate under the circumstances. The term “ESQK” as used herein, shall be defined as an Emergency Services Query Key, which is used by the National Emergency Numbering Association (“NENA”) as a key to identify a call instance at a VoIP Positioning Center, and which is associated with a particular selective router/emergency services number combination.	Charter does not utilizes ESQK routing parameters, or codes, for its traffic. Such parameters are utilized for nomadic VoIP services, and are not applicable to Charter’s service arrangements. Therefore, CenturyTel’s proposed language is inapplicable to Charter, and unnecessary for this interconnection agreement.	If **CLEC uses a third-party database provider, **CLEC shall obtain its own routable but non-dialable ESQKs for each PSAP to which CenturyTel provides or shall provide coverage, and shall supply these ESQKs to CenturyTel for the Selective Routers servicing each such PSAP. If warranted by traffic volume growth, or if upon request by a PSAP or other governmental or quasi-governmental entity, **CLEC shall promptly obtain the appropriate number of additional ESQKs to be allocated to each PSAP as may be appropriate under the circumstances.	Where Charter uses a third-party database provider it must obtain its own routable but non-dialable ESQKs for each public safety answering point to which CenturyTel provides E911 coverage.
35.	Should both parties’ liability for errors associated with the provision of 911 services be limited by contract, in a	9.3 and 9.6	9.3 Neither Party shall be liable for civil damages, whether in contract, tort or otherwise, to the other Party for any loss or damage caused by any act or omission of its employees, agents or contractors, in the design, development, installation, maintenance, or provision of any aspect of E911 other than an act or omission	Consistent with its position on issue 15(c), above, Charter believes that the Parties should not limit their damages in a way that would preclude one Party from obtaining meaningful relief. Specifically, Charter does not agree with CenturyTel’s proposal that damages be limited to an “amount equal to the prorated allowance of the Article rate for the service or	9.3 <u>CenturyTel</u> shall <u>not</u> be liable for civil damages, whether in contract, tort or otherwise, to <u>any person, corporation, or other entity</u> for any loss or damage caused by any act or omission of CenturyTel or its employees, agents or contractors, in the design, development, installation, maintenance, or provision of any aspect of	CenturyTel’s liability should be limited in all respects, except where its actions constitute wanton or willful misconduct. Further, liability should be limited in an amount, as measured by an “amount equal to the prorated allowance of the Article rate for the service or facilities provided to

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	manner that is consistent with applicable law?		<p>constituting negligence, gross negligence, intentional or willful misconduct. . In no event shall either Party be held liable or responsible for any indirect, incidental, consequential, punitive, special, or exemplary damages associated with the provision of E911, unless caused by an act or omission of a Party constituting negligence, gross negligence intentional or willful misconduct.</p> <p>9.6 CenturyTel shall not be liable or responsible for any indirect, incidental, consequential, punitive, special, or exemplary damages associated with the provision of any aspect of E911 when there is a failure of or interruption of E911 caused by the attachment of any equipment by **CLEC to CenturyTel facilities, except to the extent caused by a CenturyTel act or omission constituting negligence, gross negligence, intentional or willful misconduct. **CLEC may, with the prior written consent of CenturyTel, which consent shall not be</p>	<p>facilities provided to **CLEC for the time such interruption to service or facilities continues.”</p> <p>Apart from the problems associated with the ambiguity of CenturyTel's language, the proposal presents another issue. Because this Agreement contemplates primarily the exchange of traffic, without significant liabilities for leasing, resale or other services, the amount of monthly charges that the Parties are subject to is relatively small. For that reason, CenturyTel's proposal to limit direct damages to no more than an amount equal to such monthly charges could effectively preclude recovery of the amount of direct damages that arise from a significant harm or error that occurred to one Party's network, employees, or other assets. Therefore, it may be improper to limit damages in this way if such limitations precludes the aggrieved Party from recovering its actual damages.</p> <p>Further, and consistent with its position in issue 15, above, CenturyTel should not be allowed to limit its liability where its actions constitute negligence, gross negligence, intentional or willful conduct. In those circumstances CenturyTel should be held liable, to the fullest extent possible, for its actions. Moreover, the liability standards under this agreement must be consistent with applicable law, including but not limited to <i>R.S. Mo.</i> § 392.350.</p>	<p>E911 other than an act or omission constituting gross negligence <u>or, wanton</u> or willful misconduct. <u>However, in no event shall CenturyTel's liability to any person, corporation, or other entity for any loss or damage exceed an amount equal to the prorated allowance of the applicable rate set forth in Article XI (Pricing) for the service or facilities provided to **CLEC for the time such interruption to service or facilities continues, after notice by **CLEC to CenturyTel. No allowance shall be made if the interruption is due to the negligence or willful act of **CLEC.</u> In no event shall <u>CenturyTel</u> be held liable or responsible for any indirect, incidental, consequential, punitive, special, or exemplary damages associated with the provision of E911.</p> <p>9.6 CenturyTel shall not be liable or responsible for any indirect, incidental, consequential, punitive, special, or exemplary damages associated with the provision of any aspect of E911 when there is a failure of or interruption E911 <u>due to</u> the attachment of any equipment by **CLEC to CenturyTel facilities. **CLEC may, with the prior written consent of CenturyTel, which consent shall not be unreasonably withheld, attach features, devices, or equipment of other vendors to the equipment or network facilities provided by CenturyTel. Said attachments,</p>	<p>**CLEC for the time such interruption to service or facilities continues.”</p> <p>CenturyTel should not be liable, under any circumstances, for any indirect, incidental, consequential, punitive, special, or exemplary damages associated with the provision of any aspect of E911 when there is a failure of or interruption E911 due to the attachment of any equipment by Charter.</p>

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			unreasonably withheld, attach features, devices, or equipment of other vendors to the equipment or network facilities provided by CenturyTel. Said attachments, devices, or equipment must meet all applicable federal and state registration or certification standards. CenturyTel reserves the right to refuse attachments if CenturyTel determines that said attachments will degrade E911 ordered by **CLEC, CenturyTel facilities, or otherwise affect its telephone operations.		devices, or equipment must meet all applicable federal and state registration or certification standards. CenturyTel reserves the right to refuse attachments if CenturyTel determines that said attachments will degrade E911 ordered by **CLEC, CenturyTel facilities, or otherwise affect its telephone operations.	
36.	Should each party be required to indemnify and hold harmless the other party except where the indemnified party has engaged in acts that constitute negligence, gross negligence, intentional or willful misconduct in connection with E911 service?	9.4	Each Party (Indemnifying Party) shall indemnify and hold harmless the other Party (Indemnified Party) from any damages, claims, causes of action, or other injuries whether in contract, tort, or otherwise which may be asserted by any person, business, governmental agency, or other entity against the Indemnified Party as a result of any act or omission of the Indemnifying Party or any of its employees, directors, officers, contractors or agents, except for the Indemnified Party’s acts of negligence, gross negligence or willful or wanton misconduct in connection with designing, developing, adopting, implementing, maintaining, or operating any aspect of E911 or for releasing subscriber information, including nonpublished or unlisted information in connection with the provision of E911 Service.	Indemnity provisions under this section should be mutual, rather than simply to the benefit of CenturyTel alone. CenturyTel proposes that this provision apply unilaterally, rather than mutually, and as such seeks undue advantage under the proposed agreement. This provision should be mutual, and run to the benefit of both Parties, contrary to CenturyTel’s proposal.	**CLEC shall indemnify and hold harmless <u>CenturyTel</u> from any damages, claims, causes of action, or other injuries whether in contract, tort, or otherwise which may be asserted by any person, business, governmental agency, or other entity against <u>CenturyTel</u> as a result of any act or omission of **CLEC or any of its employees, directors, officers, contractors or agents, except for <u>CenturyTel</u> acts of negligence, gross negligence or willful or wanton misconduct in connection with designing, developing, adopting, implementing, maintaining, or operating any aspect of E911 or for releasing subscriber information, including nonpublished or unlisted information in connection with the provision of E911 Service.	Charter should be required to indemnify CenturyTel from any and all damages claims, except where CenturyTel conduct is deemed to be willful or reckless misconduct. However, CenturyTel should not have any indemnity obligations to Charter.

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<u>Issue No.</u>	<u>Issues</u>	<u>§</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>CenturyTel’s Language</u>	<u>CenturyTel’s Position</u>
37.	Should the Agreement limit both Parties’ liability related to the release of information, including nonpublished and nonlisted information, in response to a 911 call?	9.7	Neither Party shall be liable for any civil damages, whether in contract, tort, or otherwise, caused by an act or omission of the other Party in the good faith release of information not in the public record, including nonpublished or nonlisted subscriber information to Emergency Response Agencies responding to calls placed to an E911 service using such information to provide an E911 service.	CenturyTel proposes that this provision apply unilaterally, rather than mutually, and as such seeks undue advantage under the proposed agreement. Given that the circumstances described in this provision could apply to both Parties’ release of information to emergency service providers, this provision should be mutual, and run to the benefit of both Parties, contrary to CenturyTel’s proposal.	<u>CenturyTel</u> shall <u>not</u> be liable for any civil damages, whether in contract, tort, or otherwise, caused by an act or omission of <u>CenturyTel</u> in the good faith release of information not in the public record, including nonpublished or nonlisted subscriber information to Emergency Response Agencies responding to calls placed to an E911 service using such information to provide an E911 service.	CenturyTel should never be liable for publishing, or releasing, information to 911 systems concerning persons that have requested non-publication or non-list status, when responding to calls placed to an E911 service. However, Charter should not have similar protections, and this provision should not be mutual.
38.	Should CenturyTel be permitted to limit its liability for so-called “nonregulated” telephone services in connection with 911 services – even where that term is not defined under the Agreement?	9.8	It is the obligation of **CLEC to answer, and transmit to the appropriate CenturyTel Selective Router all E911 telephone calls that originate from **CLEC’s End User Customers .	A basic purpose of any interconnection agreement under Sections 251 and 252 of the Telecommunications Act is to establish definitively the rights and obligations of the parties with respect to interconnection. The rights and obligations of the parties under this agreement must therefore be clear and unambiguous to accomplish the purposes of Sections 251 and 252. Century Tel’s proposal undermines these purposes because Century Tel’s reference to “non-regulated services” is not in any way meaningfully defined. This will invite disputes between the parties as to the meaning of this term. This is especially problematic because Century Tel seeks to limit its liability with respect to vital 911 services in connection with its undefined term. The Commission should refuse to inject such uncertainty into a critical aspect of the interconnection agreement between the parties.	<u>CenturyTel shall have no liability whatsoever to any person arising from its provision of, or failure to provide, E911 to any subscriber to a nonregulated telephone service (e.g., shared tenant service).</u> It is the obligation of **CLEC to answer, <u>respond to, transfer, terminate, dispatch, or arrange to dispatch emergency services, or otherwise handle</u> all E911 telephone calls that originate from <u>telephones within **CLEC’s service area.</u> <u>Neither **CLEC nor CenturyTel shall have any responsibility for E911 calls that carry foreign dial tone, whether they originate within or outside of **CLEC’s service area.</u>	CenturyTel’s liability should be limited, or eliminated, in those instances where it provides E911 services to so-called “non-regulated telephone services”, which are not defined under the Agreement. Further, CenturyTel should have no liability for those calls that carry so-called “foreign dial tone”, a term that is not defined under the Agreement.

Exhibit C
to Charter Fiberlink, LLC MISSOURI Arbitration Petition
Charter – CenturyTel Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues</u>	<u>§</u>	<u>Charter's Language</u>	<u>Charter's Position</u>	<u>CenturyTel's Language</u>	<u>CenturyTel's Position</u>
39.	Should CenturyTel be entitled to assess certain additional 911-related fees and assessments upon Charter?	Art. XI, § IV, Pricing	<p>A. Intentionally Left Blank.</p> <p>B. 911 Facilities from the Provider's owned or leased network to CenturyTel's Selective Router (if provided by CenturyTel)</p> <p>911 Facilities from Provider network to CenturyTel Selective Router</p> <p>Special Access Circuits Cost based rates / (MRC) and (NRC)</p> <p>C. Intentionally Left Blank.</p>	<p>As to the respective responsibilities of Charter and CenturyTel in the provision of 911 network facilities, Charter is responsible for establishing appropriate trunks and facilities from its network to the CenturyTel selective router serving the Public Safety Answering Points (PSAP) in the relevant service area. CenturyTel, in turn, is responsible for establishing trunks and facilities from its selective router to the appropriate PSAP. Therefore, because that functionality is CenturyTel's responsibility, CenturyTel may not assess Charter monthly recurring, or nonrecurring, charges for the trunks that may be provisioned over such facilities.</p> <p>Furthermore, CenturyTel is not entitled to recover from Charter every cost that may arise in the provision of its 911 service. Existing cost recovery mechanisms allow CenturyTel to recover such costs from the PSAPs, and its own end users, where appropriate. Therefore, Charter should not be required to pay CenturyTel for the miscellaneous charges proposed by CenturyTel.</p>	<p>A. <u>The following trunk charges will be paid to CenturyTel for each E911 PSAP to which the Provider connects.</u></p> <p><u>911 Trunk Charge</u> <u>Monthly Recurring \$85.00 per trunk</u> <u>Nonrecurring Channel (Each) \$170.00 per trunk</u></p> <p>B. 911 Facilities from the Provider's owned or leased network to CenturyTel's Selective Router (if provided by CenturyTel)</p> <p>911 Facilities from Provider network to CenturyTel Selective Router</p> <p>Special Access Circuits <u>Per State Access Tariff</u> <u>PSC Mo. No.2 / (MRC) and (NRC)</u></p> <p>C. <u>Automatic Location Identification</u> <u>Monthly</u> <u>Nonrecurring</u> <u>(ALI) Database</u> <u>Recurring</u></p> <p>i. <u>Per Article VII 3.4.5 – If **CLEC uses</u> <u>CenturyTel's E911 gateway</u> <u>No Charge \$ 380.00</u></p>	<p>Charter should pay CenturyTel a monthly recurring, and nonrecurring, charge for each trunk that is established between the CenturyTel selective router and the PSAP that the selective router serves.</p> <p>Charter should pay CenturyTel miscellaneous charges related to the costs arising from CenturyTel's provision of 911 service, so that CenturyTel can recover its costs of providing such services in Missouri.</p>

Exhibit C
to Charter Fiberlink, LLC MISSOURI Arbitration Petition
Charter – CenturyTel Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues</u>	<u>§</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>CenturyTel’s Language</u>	<u>CenturyTel’s Position</u>
					<p><u>ii. If **CLEC does not utilize CenturyTel’s E911 Gateway</u></p> <p><u>a. Database Administration, per database \$ 380.00 \$--</u></p> <p><u>b. Database Monthly Nonrecurring Recurring</u></p> <p><u>1) each non-CENTURYTEL subscriber record for which CENTURYTEL will verify via the MSAG .04 .35</u></p> <p><u>iii. Third Party FRAD Connectivity Third Party Frame Relay Access Device (FRAD) Connectivity provides for retrieval of ALI Database Information for wireless and competitive Local Providers using a non-CenturyTel Third Party Database Provider over a Non-Call Associated Signaling (NCAS) solution.</u></p> <p><u>1) FRAD Access 63.44 --</u></p> <p><u>2) Steerable ALI Software 71.42 1000.00</u></p> <p><u>iv. Selective Routing Port Charges for Connecting Companies</u></p>	

Exhibit C
to Charter Fiberlink, LLC MISSOURI Arbitration Petition
Charter – CenturyTel Disputed Issues / Decision Point List

<u>Issue No.</u>	<u>Issues</u>	<u>§</u>	<u>Charter’s Language</u>	<u>Charter’s Position</u>	<u>CenturyTel’s Language</u>	<u>CenturyTel’s Position</u>
					<u>1) Selective Router Port Connection,</u> <u>per trunk 47.19 150.00</u> <u>2) CMRS/VOIP Additive, per</u> <u>wireless or nomadic VOIP</u> <u>service trunk 82.54 --</u> <u>D. Additional file copy of the MSA</u> <u>-- \$250.00</u>	

Exhibit C-1

to

Charter Fiberlink-Missouri, LLC Petition for Arbitration

(Charter's Proposed Tariff Incorporation Language Raised in Disputed Issue 3)

NOTE: Charter proposed additional language shown in **bold**.

CENTURYTEL/CHARTER MISSOURI ARBITRATION FILING
TARIFF ATTACHMENT

Articles I-III – General Terms and Conditions

2.86 Local Calling Area (LCA)

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

2.79 IntraLATA Toll Traffic

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

2.89 Local Traffic

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

2.97 “Meet Point Billing (MPB)” or “Meet Point Billing Arrangement”

Refers to an arrangement whereby two LECs jointly provide the transport element of a Switched Access Service to one of the LEC’s End Office Switches, with each LEC receiving an appropriate share of the transport element revenues as defined in **Section(s) 2.7 of** CenturyTel of Missouri, LLC, PSC No. 2, Facilities for Intrastate Access, on file with the Missouri

Public Service Commission, and **in Section 5.2 of CenturyTel Operating Companies Interstate Access Tariff FCC No. 3.**

2.113(A) **Percentage Local Use (PLU)**

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

- 30.3.3.8 Liability arising under any applicable Tariff **specifically identified herein;**
 - 30.3.3.9 Liability arising under any indemnification provision contained in this Agreement or any separate agreement or in the applicable provisions of the Section(s) (I) of the 911 portion of CenturyTel of Missouri, LLC, PSC No. 10, Wholesale Tariff, on file with the Missouri Public Service Commission related to provisioning of 911/E911 services;
 - 30.3.3.13 Liability arising under any indemnification provision contained in **this Agreement**, a separate agreement or in the applicable provisions of the Section(s) (G) of the Directory Services portion of the CenturyTel of Missouri, LLC, PSC No. 10, Wholesale Tariff, on file with the Missouri Public Service Commission related to provisioning of Directory Listing or Directory Assistance Services.
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Article V - Interconnection

2.3.1.2 To the extent required by Applicable Law, traffic may be delivered to each POI through Collocation arrangements offered by CenturyTel pursuant to this Agreement or the rates, terms and conditions set forth in **CenturyTel of Missouri, LLC, PSC No. 8, Local Network Access Services, CenturyTel's Missouri Collocation Tariff**, where such Tariff is available. As set forth in Article IX (Additional Services), if no applicable Tariff is available, CenturyTel shall provide Collocation to **CLEC pursuant to a separately provided Collocation agreement.

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

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

User's local calling area will be considered toll traffic and subject to access charges.

4.6.4.4.2 Transit of IntraLATA Toll Traffic: A per-minute-of-use rate will be charged to the originating Party, as contained in **Section 4.6 of CenturyTel of Missouri, LLC, PSC No. 2, Facilities for Intrastate Access** CenturyTel's state access tariff.

Article XI Pricing

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

911 Facilities from Provider network to CenturyTel Selective Router	Monthly Recurring	Nonrecurring
Special Access Circuits	<u>Per State Access</u>	<u>Per State</u>
	<u>Access Tariff</u>	<u>Tariff PSC</u>
	<u>Mo. No. 2</u>	<u>PSC Mo. No.2</u>

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

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

V. DIRECTORY SERVICES RATES AND CHARGES

Preliminary Pages No Charge

Directory Listings
Primary Listings as Specified in_____ No Charge

Tariff Items (*e.g.*, additional listings, foreign listings, enhanced listings)
Pursuant to Rates set forth in CenturyTel of MO PSC No. 1 General and Local Exchange Tariff, Section(s) 9.C.1

D. Additional Services

NP Query Charge Rates set forth in appropriate CTOC FCC #2 or #3 Interstate Access Tariff, Section(s) TBD

[Note: LNP Query Charge not identified in CTOC No. 3 or the NECA 5 Tariff]

Article XII

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