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24, 28, 32 and 41
Witness: Guy E. Miller, III
Sponsoring Party: CenturyTel of Missouri, LLC
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CENTURYTEL OF MISSOURI, LLC
REBUTTAL TESTIMONY OF GUY E. MILLER, III
CASE NO. TO-2009-0037

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1 **REBUTTAL TESTIMONY OF GUY E. MILLER, III**

2 **CASE NO. TO-2009-0037**

3 **BACKGROUND INFORMATION**

4 **Q. Please state your name and business address.**

5 A. My name is Guy E. Miller, III. My business address is 100 CenturyTel Drive, Monroe,
6 LA 71203.

7 **Q. Are you the same Guy Miller who submitted direct testimony in this case?**

8 A. Yes.

9 **Q. On whose behalf are you submitting rebuttal testimony?**

10 A. CenturyTel of Missouri, LLC (hereinafter referred to as “CenturyTel”).¹

11 **PURPOSE OF TESTIMONY**

12 **Q. What is the purpose of your rebuttal testimony for this arbitration?**

13 A. The purpose of my rebuttal testimony is to provide CenturyTel’s positions in response to
14 the contentions and arguments set forth in the testimony of the witnesses representing
15 Charter Fiberlink-Missouri, LLC (“Charter”) regarding the issues identified on the cover
16 page of this rebuttal testimony. I provided testimony regarding each of these issues in my
17 Direct Testimony, which was filed with the Missouri Public Service Commission (the
18 “Commission”) on September 30, 2008.

19 **Q. Have you read the direct testimonies of the Charter witnesses who filed testimony**
20 **regarding the issues in this proceeding that you address below?**

¹ The Parties have continued to negotiate since the filing of the Petition and it is anticipated that the Parties will continue negotiations. If there are any discrepancies between this testimony and CenturyTel’s Disputed Points List filed in this Docket on August 25, 2008 (the “CenturyTel DPL”), this rebuttal testimony and my prior direct testimony are intended to be controlling as they represent the most current state of CenturyTel’s positions. In an effort to assist the Panel with the status of the proceeding, CenturyTel retains the right to file an updated and current interconnection agreement and DPL prior to submission of this matter for decision.

1 A. Yes, I have.

2 **Q. After reading the direct testimony of the Charter witnesses relating to your issues,**
3 **do you have any general impression regarding the testimony?**
4

5 A. Yes. In my opinion, much of Charter's testimony attempts to advance arguments and
6 outcomes that are disconnected from Charter's proposed contract language. In an attempt
7 to color the arbitration in its favor, the Charter witnesses have advanced arguments that
8 are not relevant to the issues as presented. Further, I also find that the Charter witnesses
9 often rely on unfounded or inaccurate assertions in advancing their positions.

10 **Q. Have there been any changes to the Parties' positions since the filing of your Direct**
11 **Testimony?**

12 A. Not that have come to my attention. However, to the extent that there is any variation
13 between the CenturyTel positions or statements as set forth in the Revised Statement of
14 Unresolved Issues or in the CenturyTel DPL attached to the Response, my Direct
15 Testimony² and this Rebuttal Testimony represent the most current positions of
16 CenturyTel based on the continuing negotiations between the Parties and should be
17 regarded as superseding any previously filed positions of CenturyTel to the contrary.

18 **DISCUSSION OF THE ISSUES**

19 **Issue 2 How should the Interconnection Agreement define the term Network**
20 **Interface Device or "NID"?**

21 **Issue 24 (a) Should Article IX, § 3.4 clarify that the End User controls Inside Wire**
22 **except in those multi-tenant properties where CenturyTel owns and**
23 **maintains such Inside Wire?**

² It should be recognized that an Errata making a correction to my Direct Testimony was filed on Monday, October 06, 2008, with the Commission.

1 **(b) Is Charter required to submit an order to and pay CenturyTel for**
2 **accessing CenturyTel's NID when Charter connects its loop to the End**
3 **User's Inside Wiring through the customer access side of the CenturyTel**
4 **NID?**

5 **Q. Have you read the testimony of Saccona Blair and Timothy Gates?**

6 A. Yes.

7 **Q: What is CenturyTel's desired outcome for Issues 2 and 24?**

8 A: CenturyTel requests that the Commission adopt its proposed language for the Agreement
9 (as used in this Rebuttal Testimony, the term "Agreement" is intended to refer to the
10 Parties' Interconnection Agreement) regarding Charter's use of CenturyTel's NIDs.
11 With this outcome, Charter would face a simple choice each time it wins a customer
12 formerly served by CenturyTel. After Charter opens the NID to disconnect the customer
13 from CenturyTel service, Charter could then either choose the convenience of using
14 CenturyTel's NID to house its own interconnection with the customer and pay the
15 required charge, or it could accomplish the interconnection using solely its own facilities.
16 This is precisely the choice required by the 1996 Telecommunications Act (the "Act")
17 and the relevant FCC regulations.

18 **Q. Mr. Gates summarizes the NID issue by saying CenturyTel is attempting to "control**
19 **Charter's access to the customer's inside wiring."³ Is that true?**

20 A. No. CenturyTel's position would not in any way affect such access. CenturyTel simply
21 requires Charter to pay the UNE price for using a NID if Charter chooses to house its
22 interconnection with the customer inside the weather-protected NID owned by

³ Gates Direct at 5, lines 7-9.

1 CenturyTel. FCC rules require CenturyTel to make the NID available to Charter as a
2 UNE for a price.

3 **Q. Mr. Blair⁴ and Mr. Gates⁵ refer to the “customer side” of the NID in their**
4 **testimony. In your opinion, is this proper?**

5 A. No, it is not. These references to a “customer side” of the NID are how Charter chooses
6 to incorrectly refer to the customer *access* side of the NID. As I discussed in detail in my
7 Direct Testimony,⁶ there is no “customer side” of a NID, only a “customer access” side
8 of the NID. Customer access is granted only for the limited purposes set forth in
9 CenturyTel’s contractual relationship with its end user customers.

10 **Q. Mr. Blair provides a photograph of a NID on page 5 of his testimony. How are**
11 **NIDs labeled on the outside cover?**

12 A. I have seen many styles of actual and photographed NIDs including the style shown in
13 Mr. Blair’s photograph. All are clearly labeled “Telephone Company Access” or “Telco
14 Access” on one side and “Customer Access” on the other side.

15 **Q. Is Mr. Gates’ reference to the “demarcation between the carrier’s network and the**
16 **customer’s inside wiring”⁷ relevant to the issues at hand?**

17 A. No. FCC regulations are quite clear that the NID is a UNE and that CLECs must pay a
18 fee for use of the NID. I would submit that Charter is attempting to confuse that clarity
19 by claiming that a portion of the NID (the customer access side) is actually owned or
20 controlled by the customer. This is an incorrect concept.

21 **Q. So when Mr. Gates describes the demarcation as “a point within the small grey box**
22 **placed on the side of a single family dwelling that is referred to as the Network**

⁴ Blair Direct at 5, line 11.

⁵ Gates Direct at 9-10.

⁶ Miller Direct at 12-13.

⁷ Gates Direct at 4, line 23

1 **Interface Device or ‘NID’,”⁸ and when he makes a similar claim later in his**
2 **testimony,⁹ is he accurately describing the demarcation?**

3 A. No. As I stated in my Direct Testimony,¹⁰ the FCC describes the demarcation quite
4 differently. In 47 C.F.R. § 68.105, the FCC states:

5 (a) Facilities at the demarcation point. Carrier-installed facilities at, ***or***
6 ***constituting***, the demarcation point shall consist of ***wire or*** a jack
7 conforming to the technical criteria published by the Administrative
8 Council for Terminal Attachments.

9 (c) Single unit installations. For single unit installations existing as of
10 August 13, 1990, and installations installed after that date the demarcation
11 point shall be a point ***within 30 cm (12 in) of the protector*** or, where there
12 is no protector, ***within 30 cm (12 in) of where the telephone wire enters***
13 ***the customer's premises***, or as close thereto as practicable.

14 (d) Multiunit installations. (1) In multiunit premises existing as of August
15 13, 1990, the demarcation point shall be determined in accordance with
16 the local carrier's reasonable and non-discriminatory standard operating
17 practices. Provided, however, that where there are multiple demarcation
18 points within the multiunit premises, a demarcation point for a customer
19 shall not be further inside the customer's premises than a point ***twelve***
20 ***inches from where the wiring enters the customer's premises***, or as close
21 thereto as practicable. [Emphasis added]

22 The FCC further defines the demarcation point as “the point on the loop where the
23 telephone company’s control of the wiring ceases and the subscriber’s control of wire
24 begins. Thus the demarcation point is defined by control; it is not a fixed location on the
25 network, but rather a point where an incumbent’s and property owner’s responsibilities
26 meet.” (UNE Remand Order at ¶ 169). A local exchange carrier’s NID does not
27 represent the demarcation point, as indicated by the FCC’s comment that it “find(s) the
28 demarcation point preferable to the NID in defining the termination point of the loop

⁸ Gates Direct at 4, lines 23-26.

⁹ Gates Direct at 8, lines 19-21.

¹⁰ Miller Direct at 11-12.

1 because, in some cases, the NID does not mark the end of the incumbent's control of the
2 loop facility.” (UNE Remand Order at ¶ 168).

3 **Q. Stipulating that Mr. Gates' definition of the demarcation point does not conform to**
4 **the FCC's definition, does Mr. Gates' definition even conform to Charter's own**
5 **definition of a demarcation point?**

6 A. No. Charter's local tariff in Missouri (PSC MO No. 1) gives the following definition on
7 page 7 as stated in part:

8 Demarcation Point-That point (referred to as Demarc Point or Network Interface)
9 of interconnection between the Telephone Company's facilities and the wiring at
10 the subscriber's premises. The Demarc Point **shall consist of wire or a jack**
11 **conforming to Subpart F of Part 68 of the Federal Communications**
12 **Commission's Rules and Regulations.** The Demarc Point will generally be
13 **within twelve inches of the protector** or, absent a protector, **within twelve**
14 **inches of the entry point to the customer's premises.** If conforming to the
15 twelve inches is unrealistic or technically impossible, the Demarc Point will be
16 the most practicable minimum point of **entry to** the customer's premises.
17 [Emphasis added]

18 **Q. Mr. Gates also asserts that “the customer side of the NID is part of the inside wiring**
19 **controlled by the property owner.”¹¹ Is this true?**

20 A. No. This is a most remarkable assertion by Mr. Gates, and he provides no citation to
21 authority to support it. Since the FCC defines the demarcation point as somewhere
22 within 12 inches past the protector and, in most cases, actually inside the walls of the
23 premise itself, how could any part of the NID be part of the customer's inside wiring?
24 The simple and correct answer is that the NID is not a part of the customer's inside
25 wiring. As I clarified in my Direct Testimony,¹² the NID is owned by CenturyTel in *toto*,
26 and the customer has no rights to the NID beyond those limited rights granted by
27 CenturyTel in its contractual relationship with the customer. Further, all customer rights

¹¹ Gates Direct at 9, lines 1-2.

¹² Miller Direct at 10-11.

1 to access the CenturyTel NID for any purpose cease when the property owner ceases to
2 be a CenturyTel customer.

3 I also note that Charter's own local Tariff in Missouri agrees with CenturyTel's position
4 as it states the following on page 16: "Facilities furnished by the Telephone Company to
5 provide transmission Service on the premises of a Customer (except for inside wiring and
6 inside jacks) are the property of the Telephone Company" and again on page 48: "All
7 equipment and materials installed or provided by the Telephone Company shall remain
8 the property of the Telephone Company."

9 **Q. Regarding the definition of the NID, Mr. Blair asserts Charter's definition is**
10 **consistent with FCC rulings,¹³ and Mr. Gates claims CenturyTel's definition is not**
11 **consistent with such rulings.¹⁴ Do you agree?**

12 A. No. As I stated above, the implications of Charter's definition – such as the inference of
13 customer control over CenturyTel property and the failure to adequately represent the
14 Point of Demarcation as defined by the FCC – are inconsistent with federal law.¹⁵ In my
15 opinion, Charter is advocating its definition in an attempt to obtain free use of
16 CenturyTel's NIDs when that narrow definition is used in combination with Charter's
17 positions on Inside Wiring and Point of Demarcation. As I discussed in my Direct
18 Testimony,¹⁶ CenturyTel's definition of the NID takes into account relevant FCC rulings
19 regarding the NID and is consistent with such rulings.

20 **Q. At page 9, lines 13-15 of his testimony, Mr. Blair describes Charter's need to access**
21 **the NID to disconnect the customer inside wiring. Is this type of access by Charter**
22 **permitted under applicable law?**

¹³ Blair Direct at 13, lines 28-29.

¹⁴ Gates Direct at 5, line 7.

¹⁵ Additionally, Charter's proposed Sec. 3.5.1 should be in "bold," consistent with the convention used to identify proposed, yet disputed contract provisions. Charter's proposed Sec. 3.5.1 is disputed by CenturyTel. Gates Direct at 6, lines 10-13.

¹⁶ Miller Direct at 14-16.

1 A. Yes. Accessing the NID for the sole purpose of disconnecting the customer inside wiring
2 and connecting that wiring to Charter, as Mr. Blair describes on pages 10 and 11 of his
3 testimony, is permitted and does not constitute use of the CenturyTel NID. Indeed, that
4 right of access is clearly set forth in the undisputed portion of Article IX, Section 3.5.

5 **Q. So for the purpose described by Mr. Blair on pages 9-11 of his testimony, does**
6 **CenturyTel propose to charge Charter for access to the NID for disconnection of the**
7 **customer inside wiring?**

8 A. No. However, if Charter chooses to proceed with the next step of seeking to house its
9 own facilities inside the CenturyTel NID, then Charter would be using the NID as a UNE
10 for which compensation is required to be paid to CenturyTel.

11 **Q. But Mr. Gates seems to believe that CenturyTel is not willing to let Charter access**
12 **the NID at all unless Charter pays for that access.¹⁷ How do you respond to that?**

13 A. Mr. Gates is wrong and appears unfamiliar with the history of this matter in the
14 Wisconsin NID arbitration. In any event, I have made it quite clear in my Direct
15 Testimony and I reiterate in this testimony that federal law permits Charter to access
16 CenturyTel's NID to disconnect the customer's Inside Wire and to do so without charge.
17 It is only if Charter wants to use the NID for the purpose of housing any of its (or the
18 customer's) active facilities that Charter must pay the FCC-required UNE fee to
19 CenturyTel for the use of the NID.

20 **Q. In Mr. Blair's testimony at page 13, lines 4-5, he relates that when a customer has a**
21 **star pattern inside wiring, Charter leaves the scotchlocked connection inside the**
22 **CenturyTel NID. Is leaving this connection in the NID a use of the NID?**

23 A. Yes. This situation has been specifically addressed as "use of the NID" by the FCC
24 beginning with the Local Competition Order¹⁸ where the FCC stated:

¹⁷ Gates Direct at 9, lines 7-9.

¹⁸ First Report & Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, FCC 96-325, August 8, 1996.

1 392. ...Therefore, we conclude that a requesting carrier is entitled to connect its
2 loops, via its own NID, to the incumbent LEC's NID.

3 396. ... Our requirement of a **NID-to-NID connection** addresses the most critical
4 need of competitors that deploy their own loops -- obtaining access to the inside
5 wiring of the building. We recognize, however, that **competitors may benefit by**
6 **directly connecting their loops to the incumbent LEC's NID, for example, by**
7 **avoiding the cost of deploying NIDs. ...** [Emphasis added]

8 Charter's placement of its facilities inside CenturyTel's NID for any purpose constitutes
9 use of the NID, just as CenturyTel uses the NID when it connects its own loop facilities
10 to the end user customer's Inside Wire.

11 Further clarification on this point is provided in 47 CFR § 51.307(c), which
12 indicates that any use of a UNE whatsoever is included in the UNE definition as
13 the following:

14 “. . . access to an unbundled network element, along with **all of the**
15 **unbundled network element's features, functions, and capabilities**, in a
16 manner that allows the requesting telecommunications carrier to provide
17 any telecommunications service that can be offered by means of that
18 network element. [Emphasis added]

19 **Q. If Charter uses the CenturyTel NID as described for the star configuration of**
20 **customer inside wiring, is there a charge for such use?**

21 A. Yes. Given the fact that the FCC has already clarified that Charter leaving its
22 scotchlocked connection housed within the weatherproof NID cover constitutes use of the
23 NID, § 51.509(h) indicates that a price must be established for use of the NID UNE,
24 stating:

25 An incumbent LEC ***must establish a price*** for the network interface
26 device when that unbundled network element is purchased on a stand-
27 alone basis pursuant to Sec. 51.319(c). [Emphasis added]

28 I would also point out that with regard to Issues 2 and 24, there is *no dispute as to*
29 *UNE pricing* for use of CenturyTel's NIDs by Charter. Article VI, § 12.0 states
30 that “the rates and charges applicable to UNEs and services . . . are set forth in

Article XI (Pricing).” Reference to Article XI, § II confirms that the monthly recurring rates and non-recurring rates relating to NIDs are agreed to by the Parties. Thus, CenturyTel has not, and is not required to provide any evidence or testimony relating to NID rates or charges.

Q. Mr. Gates seems concerned that Charter would be required to install its own NID if it was not allowed to use the CenturyTel NID.¹⁹ What is your opinion of his concern?

A. If the technology that Charter has chosen to utilize in its provision of competitive local exchange service to the customer requires installation of a NID, then that is a necessary part of Charter’s cost of doing business. Charter holds itself out to be a local telecommunications provider, and, as such, it must bear the costs of providing local telecommunications service. CenturyTel had to purchase, install, and maintain a NID to provide local service to the customer. Why should Charter be allowed to escape such costs for providing the same type of service or to push such costs onto CenturyTel? Regardless, I can only remind Mr. Gates of the previously cited FCC determination, which stated:

We recognize, however, that **competitors may benefit by directly connecting their loops to the incumbent LEC's NID, for example, by avoiding the cost of deploying NIDs.** ...²⁰ [Emphasis added]

However, when Charter determines to make such a direct connection to a CenturyTel NID, CenturyTel is entitled to be compensated for such use.

Q. Mr. Gates claims that if CenturyTel’s position is adopted in this proceeding, as it was in the AAA arbitration between Charter and a CenturyTel affiliate in

¹⁹ Blair Direct at 9, lines 11-22.

²⁰ First Report & Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, FCC 96-325, August 8, 1996 at 396.

1 **Wisconsin the customer will end up with multiple NIDs on its premises.²¹ Is that**
2 **necessarily true, and is it a problem?**

3 A. It is up to Charter, and presumably Charter's new customer, to decide whether a Charter
4 NID will be installed on the premises in addition to the CenturyTel NID. What Mr. Gates
5 describes as a problem is precisely the choice envisioned for CLEC service provisioning
6 under the Act; namely, that the CLEC has the choice of self provisioning network
7 interface equipment or paying for the use of such equipment owned by the ILEC. If
8 Charter is already providing cable television service to the customer, then there is already
9 a Charter box on the side of the house. All of these "boxes" – telephone, cable and
10 electric – are usually located together. A customer generally understands this need and,
11 for the most part, ignores the fact that these facilities are present. Mr. Gates' assertion
12 that this is a problem is a red herring and is of no consequence in the context of Charter's
13 obligation under applicable federal law to pay for use of CenturyTel's NID if the NID is
14 used by Charter.

15 **Q. Mr. Blair says that Charter leaves the connection in the NID to make it easier for**
16 **the next provider.²² Does this have any bearing on the matter?**

17 A. No. Use of the NID is use of the NID, and there is a charge for such use.

18 **Q. Mr. Gates states that even though CenturyTel leaves the NID on the premises after**
19 **a customer ports to Charter, CenturyTel "incurs no costs or technical obligations"**
20 **relating to the NID.²³ How do you react to that statement?**

21 A. The NID is left on the premise for the sole reason that the customer (or a subsequent
22 property owner) may return to CenturyTel as a customer. It is economically more
23 efficient to leave the NID for this purpose than to remove it and reinstall it later.

²¹ Gates Direct at 9, lines 16-19.

²² Blair Direct at 13, lines 10-12.

²³ Gates Direct at 10, lines 6-15.

1 Similarly, CenturyTel would not remove the drop wire from the backyard pole to the
2 house in such a situation.

3 **Q. Is Mr. Gates correct that an ILEC should charge a CLEC for access to equipment**
4 **only if the ILEC incurs incremental engineering costs?**²⁴

5 A. No. I have already explained that the FCC states that a charge is to be paid for any CLEC
6 use of the ILEC's NID. If the CLEC does not pay such a charge, then the CLEC is being
7 subsidized by the ILEC and its remaining customers. I would re-emphasize my earlier
8 statements in this Rebuttal Testimony that CenturyTel's UNE rates and charges for NIDs
9 are *not* at issue in this arbitration.

10 **Q. You earlier stated that the NID is left on the premises for the sole reason that**
11 **CenturyTel may win back the customer or a subsequent property owner as a**
12 **customer. Have customers left Charter to return to CenturyTel as their**
13 **telecommunications services provider?**

14 A. Yes, and CenturyTel uses its in-place NIDs to restore service to the customers it wins
15 back. However, one of our Wisconsin affiliates has just uncovered an issue that provides
16 a case in point to rebut Mr. Blair's assertion that "[t]he Charter connection is left inside
17 of the NID to make it easier for the next provider . . . to connect to the end user's
18 customer wiring" and Mr. Gates' assertion that after a customer ports to Charter, "incurs
19 no costs or technical obligations" relating to the NID. In a series of recent win backs
20 from Charter in Wisconsin, a CenturyTel affiliate recently found Charter using the
21 CenturyTel affiliate's NIDs and doing so without ordering and paying for the NID UNE
22 as specified by both the Wisconsin CenturyTel non-rural affiliate's interconnection
23 agreement terms and the NID arbitration award. Further, in its access to and use of

²⁴ Gates Direct at 10, lines 13-15.

1 certain of the CenturyTel affiliate's NIDs, Charter damaged the NIDs and loop facilities
2 to such an extent that the CenturyTel affiliate cannot resume provision of service to the
3 customer without incurring the costs of replacing the NIDs and drops. Contrary to Mr.
4 Blair's testimony, Charter's actions not only did not make it "easier" for CenturyTel to
5 re-connect to the customer's wiring, but to the contrary, required additional expenditures
6 to replace damaged facilities in order to make such connections. (See Rebuttal Schedule
7 GEM-1)

8 **Q. In Mr. Blair's Direct Testimony at page 12, line 5 through page 13, line 5, he**
9 **describes how a Charter technician would use the CenturyTel NID to house the**
10 **Charter connection to the customer's inside wire. In addition to CenturyTel's**
11 **position that applicable law requires Charter to order the NID as a UNE and to pay**
12 **both service order and recurring rates for that use, do you have any other concerns**
13 **regarding Mr. Blair's testimony on Charter's use of the NID?**

14 A. Yes. In his Direct Testimony, Mr. Blair fails to reference Charter's proposed language for
15 Article XI, § II of the Agreement. Such proposed language provides that Outside Facility
16 Connection charges may only be assessed by CenturyTel, ". . . when incremental
17 fieldwork is required, **and where **CLEC specifically requests that CenturyTel**
18 **perform such incremental fieldwork.**" [Emphasis added] While incremental field
19 work should not be required for most NID UNE orders if Charter follows the proper
20 installation procedures, field work will be required in those instances that (a) Charter
21 damages CenturyTel's NID while accessing the NID, (b) Charter's troubleshooting of a
22 new installation requires access to the CenturyTel side of the NID to perform
23 disconnections of CenturyTel facilities or (c) CenturyTel discovers Charter has not
24 properly disconnected the customer inside wire from the CenturyTel facilities and
25 CenturyTel's network is therefore at risk of overvoltage damage. As a CLEC, Charter's
26 access to the CenturyTel's side of the NID for any purpose is specifically denied under

1 applicable law. It is improper for Charter to condition its obligation to pay CenturyTel
2 for field work caused by Charter's acts or omissions, especially repair work due to
3 Charter's damage to or improper use of CenturyTel's facilities, based upon Charter
4 specifically requesting such work. I need only point to the recently damaged CenturyTel
5 Wisconsin NIDs as an illustration of why CenturyTel must be allowed to perform and
6 charge for such work without Charter's specific prior request. (*See, Rebuttal Schedule*
7 *GEM-1)*

8 I would make the same point in rebuttal to Mr. Gates' Direct Testimony at page 10, lines
9 3-15 regarding whether Charter should be required to compensate CenturyTel for
10 accessing the customer side of the NID. As I have described in my Direct Testimony, the
11 FCC requires that a CLEC should compensate an ILEC for accessing the NID for the
12 purpose of using that NID or its functionally in any manner. This applies to both
13 recurring and nonrecurring charges and would include an Outside Facility Connection
14 charge in the event Charter damages or misuses the NID in its access or if any work is
15 required to be performed on the CenturyTel side of the NID.

16 **Q. One last question on the NID issues. Mr. Gates claims that CenturyTel's position**
17 **would "impose inefficiencies and additional costs on competitors."²⁵ Is that a valid**
18 **argument?**

19 **A.** No. The FCC has already decided that competitors like Charter can use parts of
20 CenturyTel's network on an unbundled basis, but not for free. As Charter has attempted
21 to do in Wisconsin, Charter is simply seeking to obtain use of CenturyTel's NIDs for free
22 contrary to FCC requirements that CenturyTel be compensated by Charter for such use.

23 **Issue 3 (a) How should the Agreement define the term "Tariff"?**

²⁵ Gates Direct at 10, line 21.

(b) How should the Tariffs be referenced and incorporated into the Agreement?

Issue 41 How should specific Tariffs be incorporated into the Agreement?

(a) If Charter requests that CenturyTel provide a service or perform an act not otherwise provided for under the Agreement, and Charter pre-approves the quoted costs of CenturyTel's performance, should the Agreement include a provision requiring Charter to pay such costs as pre-approved by Charter?

(b) If a service or facility is offered under the Agreement but does not have a corresponding charge set forth in the Pricing Article, should such service or facility be subject to "TBD" pricing pursuant to Article III, § 46.

Q. Did you review Mr. James Webber's testimony related to the definition of "Tariff", tariff incorporation, and charges for functions not identified in the Agreement?

A. Yes.

Q. What is your general assessment of Mr. Webber's testimony?

A. For the most part, Mr. Webber simply restates Charter's position on these issues with little additional substance. I believe that my Direct Testimony already sufficiently rebuts most of Mr. Webber's assertions, and I would respectfully direct the Commission to that testimony as it relates to these issues.²⁶

Q. With the understanding that you have already refuted most of Mr. Webber's points in your Direct Testimony, do you agree with Mr. Webber's belief that Charter's definition of "Tariff" would help minimize disputes.²⁷

A. No. In my opinion, just the opposite is true. I can foresee Charter claiming that because a tariff or specific terms are not referenced in the Agreement, Charter does not have to

²⁶ Miller Direct at 19-29.

1 pay the tariff charges or abide by the tariff terms. Such a claim is not acceptable, and the
2 number of disputes will increase because Charter might purchase a service in a tariff that
3 was not specifically and expressly identified in this Agreement. A service might not be
4 specifically and expressly identified because, for example, the service is new or is a
5 service Charter had not previously identified as a possible need.

6 **Q. How could Charter purchase a tariffed service that is not identified in the**
7 **Agreement?**

8 A. If Charter submits an order for a tariffed service that is not covered in the Agreement,
9 CenturyTel's Customer Service team would process the order on the basis that it is
10 covered by a filed tariff, and Charter would be billed for that service pursuant to the filed
11 rate. However, under its language, Charter would likely argue that it does not have to
12 pay the filed rate for the tariff because the particular tariff terms were not expressly
13 incorporated into the Agreement. Also, if Charter is allowed to pick and choose what
14 tariff terms are incorporated into the Agreement, CenturyTel's order processing time
15 would be significantly affected. CenturyTel would be forced to hold open every order for
16 a service covered by a filed tariff to first verify and interpret the Agreement terms that
17 differed from the tariff.

18 **Q. Does Mr. Webber correctly claim that CenturyTel "prefer[s] general references to**
19 **their tariff(s) to allow them to use any of the terms and conditions in the applicable**
20 **tariff that may benefit them rather than the negotiated and/or arbitrated provisions**
21 **of the interconnection agreement"?²⁸**

22 A. No. Services should be taken either under the Tariff, in which case all terms and
23 conditions of the Tariff apply, or under the Agreement, in which case the terms and
24 conditions of the Agreement apply. Regarding who might "benefit," Charter is the entity

²⁷ Webber Direct at 7, lines 4-7.

²⁸ Webber Direct at 6, lines 1-4.

1 that is seeking to pick and choose among the provisions of the Tariff and to avoid
2 incorporation into the Agreement of those Tariff terms that it does not like and that it
3 does not want to be applicable to the Parties' service arrangements.

4 **Q. Mr. Webber appears to be concerned that CenturyTel can do an “end run” around**
5 **its Agreement obligations through the use of a tariff filing. Is that a valid concern?**

1 A. No. First, should CenturyTel make a tariff filing that Charter believes will impact
2 CenturyTel's obligations under the Agreement, Charter can file its concerns and
3 comments on such a filing with the Commission prior to any approval of the proposed
4 tariff revision. Next, the Agreement contains dispute resolution provisions that afford
5 Charter a neutral venue in which to resolve any issues. Finally, and most tellingly, the
6 Agreement in Article I, § 3 specifically states that its provisions cannot be overturned by
7 any change in the Tariff, so Charter has no basis to claim that such can happen. Mr.
8 Webber claims that CenturyTel is trying to create loopholes to exploit later, but it is the
9 other way around.

10 **Q. Do you agree with Mr. Webber's point that, "with respect to the obligations that are**
11 **addressed by the parties' negotiated and arbitrated Agreement, . . . it must be the**
12 **Agreement, not unilaterally-filed tariffs, that controls the parties' obligations?"**²⁹

13 A. Yes, but the reverse of that statement is also true. If Charter wants to order a service
14 under the Tariff, it is the Tariff terms and not the Agreement terms that control.

15 **Q. Mr. Webber devotes a significant portion of his testimony to his view of the filed**
16 **rate doctrine.**³⁰ **What is your opinion of his testimony on this point?**

17 A. I believe Mr. Webber's opinion that Charter's position "reduces any remote possibility
18 that the filed rate doctrine would come into question"³¹ is misinformed. Rather, as
19 opposed to generally referencing the entirety of the Tariff, incorporating only select
20 portions of a Tariff increases the possibility that there will be an impermissible
21 inconsistency between the Tariff and the Agreement under the filed rate doctrine. In
22 addition, whenever an attempt is made to specifically incorporate only limited, select
23 portions of one document into another document, there is a risk of missing an applicable

²⁹ Webber Direct at 8, lines 24-26.

³⁰ Webber Direct at 11-12.

³¹ Webber Direct at 12, lines 9-11.

1 provision or of being “out of date” when the original document is modified. Neither
2 individuals nor telecommunications companies can predict today which sections of a
3 particular tariff may change in the future.

4 **Q. Regarding Issue 14, Mr. Webber believes that “allowing CenturyTel to have the**
5 **discretion to impose charges upon Charter for performing functions not otherwise**
6 **provided for in the Agreement is problematic because it creates uncertainty as to**
7 **Charter’s contractual obligations.”³² What is your response to this assertion?**

8 A. This statement by Mr. Webber supports my point on this subject; namely, that Charter
9 intends to argue that it does not have to pay for services it orders that are not covered
10 under the Agreement. Mr. Webber says that allowing CenturyTel to impose charges
11 upon Charter for performing functions not provided for in the Agreement is a problem for
12 Charter. Mr. Webber apparently believes that Charter should be allowed to make
13 requests of CenturyTel but CenturyTel should not be allowed to charge Charter for the
14 subsequent work performed on behalf of Charter.

15 **Q. Does Mr. Webber believe that the amendment terms of the Agreement should be**
16 **used to establish charges for functions not provided for in the Agreement?**³³

17 A. Yes. Mr. Webber asserts that the Parties should be required to go through an expensive
18 and time-consuming amendment process to address a Charter request that may be a one-
19 time need. However, he offers no convincing rationale for this position. Mr. Webber’s
20 contention would make more sense if he limited the context to that of a Charter request
21 for CenturyTel to provide a new Section 251 obligation, such as a previously unrequested
22 UNE. CenturyTel would agree that the Agreement’s terms addressing the amendment
23 process would and should apply to just such a request. For some requests, however,
24 negotiating and filing amendments makes no sense. Rather, it is common industry

³² Webber Direct at 21, lines 29-31.

³³ Webber Direct at 23, lines 1-13.

1 practice for the requested party to develop a price and for the requesting party to agree to
2 that price in writing prior to any execution of the request. Nothing more is required or
3 needed. Moreover, CenturyTel's language makes clear that the Parties must first agree
4 that the charges are reasonable prior to undertaking any such effort.³⁴

5 **Q. If Charter's language were to be adopted, how would CenturyTel ask the**
6 **Commission to clarify CenturyTel's responsibilities for responding to a request by**
7 **Charter for something that is not already provided for in the Agreement?**

8 A. If Charter's language is adopted, CenturyTel would request that the Commission confirm
9 that CenturyTel could refuse to perform in response to Charter's request until the Parties
10 agree to an amendment of the Agreement. CenturyTel's concern is that Charter would
11 attempt to force CenturyTel to perform on an "emergency basis" or "interim basis" prior
12 to such an amendment, leaving CenturyTel high and dry if and until an amendment is
13 finalized. I have the same concern on the "TBD issue" if Charter's language is adopted.

14 **Q. Mr. Webber makes the claim that CenturyTel could use a "TBD" charge to force an**
15 **unreasonable charge upon Charter.³⁵ Did you already anticipate and address this**
16 **claim in your Direct Testimony?**

17 A: Yes. I stated that Charter could make such a claim, but it would be without basis.³⁶
18 Given the terms of Article III, § 20 of the Agreement, any disputes over TBD rates would
19 be resolved through the dispute resolution process. As a result, the dispute provisions act
20 as a "safety net."

21 **Q. How should the Commission resolve Issues 3, 41, and 14?**

22 A. The Commission should decide that CenturyTel's proposed provisions for the Agreement
23 relating to these issues are necessary and reasonable, and should be adopted.

³⁴ See, CenturyTel Proposed Article III, § 22.1 of the Agreement.

³⁵ Webber Direct at 23-24.

³⁶ Miller Direct at 27, lines 8-13.

1 **Issue 4(a) Should a Party be allowed to suspend performance under or terminate the**
2 **Agreement when the other Party is in default and the defaulting Party**
3 **refuses to cure such default within thirty (30) days after receiving notice of**
4 **such default? How should “default” be defined in the Agreement?**³⁷

5 **Q. Was Charter’s direct testimony on this issue provided by Peggy Giaminetti?**

6 A. Yes.

7 **Q. Does Ms. Giaminetti characterize this dispute accurately?**

8 A. No. On page 5, lines 28-29 of her testimony, she accurately states that this issue is about
9 whether a Party may terminate "upon one of several pre-defined events of default," but
10 then she inaccurately states that "where a bill dispute has arisen" (line 30) is one of those
11 pre-defined events of default. CenturyTel is **not** defining a simple billing dispute as an
12 event of default; but rather, the non-payment of "undisputed charges."

13 **Q. On page 5, lines 31 and 36 of that testimony, Ms. Giaminetti references a**
14 **“unilateral” termination of the Agreement. Is this reference an accurate description**
15 **of what can take place under CenturyTel’s proposed terms?**

16 A. No. I believe Ms. Giaminetti is making an implication that is not accurate. To
17 me, the word “unilateral” means one Party can impose a result on another Party without
18 giving that other Party any opportunity to respond. Such is not the case here. Ms.
19 Giaminetti characterizes the primary dispute as whether a Party should be allowed to
20 "unilaterally" determine whether there's been a material default and then to "unilaterally"
21 terminate the agreement "without intermediary steps."³⁸ This claim is misleading and
22 inaccurate. CenturyTel's language does provide for "intermediary steps," expressly

³⁷Charter’s formulation of Issue 4 (a) is: “Should the Agreement include terms that allow one party to terminate the Agreement without any oversight, review, or approval of such action, by the Commission.”

³⁸Giaminetti Direct at 7, lines 21-22.

1 conditioning the right to suspend or terminate on (1) the defaulting party's receipt of a
2 written default notice, and (2) providing the defaulting party with 30 days in which to
3 cure the alleged default. If, during that time, Charter really believes that it has not
4 materially defaulted or has already cured the alleged default, nothing prevents Charter
5 from seeking redress or an injunction against termination. Thus, any termination is not
6 unilaterally imposed but done only because the defaulting Party refuses or otherwise fails
7 to cure the breach after notice.

8 **Q. Ms. Giaminetti asserts that a termination would impact subscribers.³⁹ Is that**
9 **possible?**

10 A. No. Termination of the Agreement, for any reason, means that the Parties would cease
11 accepting and providing for new service requests and would terminate any unpaid non-
12 interconnection service provided to the defaulting party. It has been CenturyTel's
13 experience that the Commission will not allow service to existing customers, including
14 the traffic exchanged with another carrier, to be interrupted without Commission
15 approval (usually requiring customer notification and the ability of customers to make
16 appropriate service arrangements). CenturyTel has never implied that it would disrupt
17 any existing traffic exchange capability under its termination provisions, and Charter's
18 contrary assertion is nothing more than an alarmist tactic by Charter.

19 **Q. Ms. Giaminetti says CenturyTel does not believe that the Commission should be**
20 **involved in any termination.⁴⁰ Is this true?**

21 A. No. I have already addressed how the Commission would be involved in the service
22 continuity issue under any termination for default, and Ms. Pam Hankins, another
23 CenturyTel witness, addresses this point in greater detail in her rebuttal testimony.

³⁹ Giaminetti Direct at 6, line 5 to 9, line 7.

⁴⁰ Giaminetti Direct at 5, lines 33-34.

1 Additionally, there may be reasons unique to an individual case relating to default that
2 would require the Commission's involvement.

3 **Q. If Charter is concerned about termination of the Agreement adversely affecting its**
4 **customers, does it have the ability to dispute such termination?**

5 A. Yes. Charter can file a dispute with the Commission and can seek a temporary injunction
6 if need be.

7 **Q. Do you agree with Ms. Giaminetti that Charter's proposed approach to termination**
8 **of the Agreement is "consistent with the practice in the industry, and the actual**
9 **experience of both parties?"**⁴¹

10 A. No. My experience is just the opposite. Rather, CenturyTel's position is consistent with
11 industry practice. The problem with Charter's proposal to simply rely on active
12 Commission involvement in lieu of an ability to terminate for material default is that it
13 creates little to no incentive for a Party to live up to its contractual obligations. If the
14 threat of suspension or termination is viable in the Agreement, a defaulting Party will
15 have the proper incentive to either cure the default, or seek redress from the Commission
16 on its own to resolve the issue. In other words, the Parties will resolve disputes on their
17 own and only escalate serious disputes to the Commission for resolution. If the threat of
18 suspension or termination is not viable in the Agreement, then the defaulting Party can
19 simply lay back without curing, knowing that there is no threat of suspension or
20 termination for material default unless the non-defaulting Party incurs the expense of
21 filing a dispute claim with the Commission.

22 Further, Charter's position on this issue is inconsistent with Charter's own position on
23 default termination as stated in its Missouri Local Tariff on page 47- 48:

⁴¹ Giaminetti Direct at 11, lines 12-13.

1 ...Failure on the part of customers to observe these rules and regulations of the
2 Telephone Company automatically gives the Telephone Company the right to
3 cancel the contract and discontinue the furnishing of service.

4 ...Nothing herein, including, but, not limited to Termination, shall relieve the
5 Customers of its obligation to pay the Telephone Company all amounts due.

6 The Customer shall be in default in the event that the Customer does one (1) or
7 more of the following (each individually to be considered a separate event of
8 default) and the Customers fails to correct each noncompliance within twenty (20)
9 days of receipt of written notice in cases involving non-payment or within thirty
10 (30) days of receipt of written notice in cases involving any other noncompliance:

11 1. Customer is more than thirty (30) days past due with respect to any payment;

12 2. Customer has failed to comply with the terms of this tariff or contract;

13 ...

14 In the event Customer is in default, the Telephone Company shall have at its
15 discretion, and in addition to any other remedies it may have herein, to:

16 [No paragraph 1 in the original text.]

17 2. Suspend Services to the Customer immediately until such time the
18 noncompliance has been corrected with affecting Customer's on-going obligation
19 to pay the Telephone Company any amounts due (i.e. monthly charges) as if such
20 suspension of Services had not taken place;

21 3. Termination of Services; or

22 4. After the occurrence of two (2) such events of Customer default in any twelve
23 (12) month period of time, terminate contractual agreement and/or all of the
24 applicable service orders.

25 **Q. In summary, do you believe that Ms Giaminetti's entire argument for Charter's**
26 **position revolves around the inaccurate portrayal of a potential disruption of service**
27 **to customers?**

28 A. Yes. I believe CenturyTel has shown Charter's argument to be specious. Further,
29 Charter has offered no argument to address any of CenturyTel's valid concerns with
30 Charter's position as addressed in my Direct Testimony.⁴² I therefore believe CenturyTel

⁴² Miller Direct at 29-32.

1 not only has demonstrated why rejecting Charter's proposed terms is appropriate, but has
2 also shown why CenturyTel's language is commonly used and should thus be approved
3 by the Commission.

4 **Issue 4(b) What terms should govern the right of a Party to terminate this Agreement**
5 **upon the sale of a specific operating area?**

6 **Q. Ms. Giaminetti, at page 12, lines 15-17 of her testimony, suggests that the**
7 **appropriate "notice process" for a termination on sale is part of this issue. Is that**
8 **correct?**

9 A. No. The Parties already have agreed to a 90-day notice requirement, which is set forth in
10 the undisputed portion of Article III, § 2.7.

11 **Q. Ms. Giaminetti asserts that Charter's proposed language "reasonably conditions"**
12 **CenturyTel's right to sell an operating area.⁴³ Do you agree with that assertion?**

13 A. No. There is nothing reasonable about Charter's proffered condition that "[t]he right of
14 termination provided herein is expressly conditioned upon, and subject to, unconditional
15 and prompt acceptance of the terms of this Agreement by the non-affiliated Party."⁴⁴
16 Different LECs have different systems and capabilities. The Agreement embodies terms
17 applicable to CenturyTel's current processes and systems, and a potential purchaser may
18 not be able to step into the shoes of CenturyTel and "unconditionally" comply with the
19 terms of the Agreement. Moreover, it is unreasonable that a sale also is conditioned on
20 Charter's acceptance, effectively giving Charter a "veto" in any future CenturyTel
21 transaction.

22 **Q. What is Ms. Giaminetti's argument for Charter's position on this issue?**

⁴³ Giaminetti Direct at 14, lines 19-20.

⁴⁴ See Charter's proposed language in Article III, § 2.7 (in bold font).

1 A. Ms. Giaminetti appears to have the same concern and makes the same argument on Issue
2 4(b) as she did on Issue 4(a) – namely the alarmist and incorrect claim that
3 interconnection arrangements are going to terminate if the Agreement terminates—the
4 service continuity argument.⁴⁵ CenturyTel has already testified that such disruption of
5 service continuity will not happen, and the Commission will ensure that it does not
6 happen.

7 **Q. Can you give an example of where the Commission has already made a**
8 **determination that supports CenturyTel’s position on this issue?**

9 A. Yes. When CenturyTel purchased the Verizon properties in 2002, the Commission
10 required CenturyTel to temporarily perform under the existing Verizon interconnection
11 agreement terms only to the extent possible given the differences between CenturyTel
12 and Verizon and further determined that such performance was limited to no more than
13 one year to give CenturyTel and any affected CLECs the time to negotiate replacement
14 interconnection agreements.

15 **Q. Does Ms. Giaminetti make any other argument that is not already properly**
16 **addressed in your Direct Testimony?**

17 A. No. In my Direct Testimony, I addressed both CenturyTel’s concerns as the selling entity
18 and the likely constraints binding the acquiring entity.⁴⁶

19 **Q. How should the Commission decide issue 4(b)?**

20 A. The Commission should adopt and approve CenturyTel’s proposed language for Article
21 III, § 2.7 of the Agreement.

⁴⁵ Giaminetti Direct at 13, lines 25-30.

⁴⁶ Miller Direct at 34-37.

Issue 7 Should Charter be required to “represent and warrant” to CenturyTel, or simply provide proof of certification, that it is a certified local provider of Telephone Exchange Service in the State?

Q. Did Charter provide any direct testimony on this issue?

A. No. Charter does not address Issue 7 in any of its direct testimony, so I will not address this issue in my Rebuttal Testimony at this time. However, if Charter addresses this issue in Rebuttal Testimony, such rebuttal must be strictly limited to responding to my Direct Testimony, and I would respectfully refer the Commission to my Direct Testimony offered in this matter and would request the right to respond at a later time to any such testimony filed by Charter that goes beyond the scope of rebutting my Direct Testimony.

Issue 11 Should certain business and operational processes and procedures set forth in CenturyTel’s “Service Guide” be incorporated by reference into the Agreement?⁴⁷

Parties’ Agreed-to Statement of Sub-issues:

Should the CenturyTel Service Guide be incorporated for: establishing bill dispute processes?

Should the Century Tel Service Guide be incorporated for: providing escalation lists?

Should the Century Tel Service Guide be incorporated for: reporting and resolving circuit troubles or repairs?

⁴⁷Charter contends that Issue 11 should be framed as follows: “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?”

1 **Should the CenturyTel Service Guide be incorporated for: submitting LNP**
2 **requests?**

3 **Should the CenturyTel Service Guide be incorporated for: “service ordering,**
4 **provisioning, billing and maintenance processes and procedures”?**

5 **Q. Was Charter’s testimony on Issue 11 provided by Mr. Timothy Gates?**

6 A. Yes.

7 **Q. Mr. Gates begins his testimony by complaining that the Service Guide is subject to**
8 **change without Charter’s input or Commission oversight. Is this a valid complaint?**

9 A. No. As I previously testified, there is precedent in a Texas arbitration proceeding that an
10 incumbent LEC’s policies and processes may be properly referenced in an
11 interconnection agreement and may be unilaterally changed by the incumbent LEC.⁴⁸

12 *The Commission further determines that it is not reasonable for Birch/ionex to*
13 *effectively have veto power over SBC Texas’s changes in policy, process, method*
14 *or procedures. [Emphasis added.]*

15 In that arbitration, the Texas Public Utility Commission (“Texas PUC”) acknowledged
16 the ILEC’s need to maintain control over its operational policies and procedures and
17 suggested that CLECs must follow those policies and procedures so long as they have
18 advance notice of changes. CenturyTel’s proposed language on this issue not only
19 provides for advanced notice of changes to the Guide, but also more generously allows
20 Charter to avoid application of such changes for up to 60 days where any such change
21 materially and adversely impacts Charter’s business. The purpose of this 60-day period
22 is to jointly resolve such material and adverse impact. (*See CenturyTel’s proposed*
23 *Agreement, Article III, Section 53.2).*

⁴⁸ See, Miller Direct at 45-46 citing Texas PUC Docket No. 28821, Issue No. 4.

1 **Q. On page 17, lines 8-10 of his testimony, Mr. Gates asserts that CenturyTel could use**
2 **changes to the Service Guide to modify the terms of the Agreement. Did you**
3 **already address this issue in your Direct Testimony?**

4 A. Yes. The following quoted terms of Article III, § 53 state that the Service Guide will
5 only supplement and shall not contradict or modify the terms of the Agreement:

6 The Guide is intended to supplement the terms of the this Agreement . . . the
7 Guide **shall not** be construed as contradicting or **modifying** the terms of this
8 Agreement, **nor shall it be construed as imposing a substantive term**
9 **unrelated to operational procedure** . . . that is not otherwise contained in this
10 Agreement. [Emphasis added]

11 Therefore, CenturyTel cannot “unilaterally modify a binding contract” as Mr. Gates
12 asserts.⁴⁹

13 **Q. Mr. Gates claims that CenturyTel admitted in its response to Data Request 13 that**
14 **the Commission does not review or approve the Service Guide. Is this correct?**

15 A. No, CenturyTel did not so admit. In fact, Data Request 13 actually addressed “generally
16 accepted principles of cost causation,” not the Service Guide. CenturyTel’s actual
17 answer to the Service Guide Data Request 15 (which Mr. Gates apparently intended to
18 reference) is as follows:

19 CenturyTel is unable to admit or deny. CenturyTel is not required to submit its
20 Service Guide to the Commission for approval because the Service Guide is
21 specifically for processes with CenturyTel. However, CenturyTel has no way of
22 knowing if the Commission has reviewed the posted and publicly available
23 Service Guide. Further, to the extent that the Service Guide includes processes
24 that follow established industry standards or includes standards that are specified
25 by applicable law, federal order or state order then those parts may be deemed
26 approved [by the Commission].

⁴⁹ Gates Direct at 17, lines 8-10.

1 **Q. Mr. Gates claims that CenturyTel was unable to point to a single modification to the**
2 **Service Guide that was offered by a CLEC.⁵⁰ Is it true that CenturyTel has never**
3 **modified the Guide based on a CLEC's comments or recommendations?**

4 **A.** No. That is not true. In his assertion, Mr. Gates references CenturyTel's Data Request 8
5 response. Data Request 8 was actually on the subject of modifications to the Service
6 Guide *made by CenturyTel or its affiliates*. In CenturyTel's response to Data Request 9,
7 the request that actually addresses modifications to the Service Guide based upon CLEC
8 input, we stated:

9 Although CenturyTel considers suggestions from CLECs for modification of the
10 Guide or its inclusive processes, CenturyTel does not track the attribution or
11 application of such suggestions.

12 As the Commission can clearly see, the truth is not as Mr. Gates infers. Further, as a
13 Charter witness in the companion arbitration to this proceeding which is between Charter
14 and a CenturyTel affiliate in Texas, Mr. Gates should be well aware of the CenturyTel
15 affiliate's supplemental Data Request 8 response filing in Texas in which the affiliate
16 stated:

17 Pursuant to the Commission's [Texas PUC's] Order No. 3, CenturyTel further
18 responds that it does not track instances in which a modification to its Service
19 Guide is made at the request of another telecommunications carrier. Therefore,
20 CenturyTel is unable to identify any specific instance where it modified the
21 Service Guide at the request of another telecommunications carrier operating in
22 Texas that is not an affiliate of CenturyTel. That notwithstanding, the Service
23 Guide is applicable to states other than just Texas, and **CenturyTel has made**
24 **changes to its Service Guide either at the request of or because of feedback**
25 **received from another telecommunications carrier** (though not a
26 telecommunications carrier in Texas). **The specific instance of which**
27 **CenturyTel is aware is disclosed in the Affidavit of Pamela Hankins**
28 **("Hankins Aff."), filed on September 17, 2008 in support of CenturyTel's**
29 **Response to Charter's Motion to Compel, and CenturyTel would refer**
30 **Charter to that affidavit. The telecommunications carrier in Missouri**
31 **discussed in paragraph 4 of Ms. Hankins' affidavit is Socket Telecom, LLC**
32 **("Socket"). The feedback received from Socket during the course of**

⁵⁰ Gates Direct at 20, lines 14-17.

1 negotiations for a new interconnection agreement in Missouri served as the
2 impetus for CenturyTel's efforts to substantially rewrite and update its
3 Service Guide in the manner described in Ms. Hankins' affidavit. The
4 interconnection agreement arising out of those negotiations between CenturyTel
5 and Socket was arbitrated before the Missouri Public Service Commission in Case
6 No. TO-2006-0299. Because it does not track or keep records on which specific
7 provisions of the Service Guide were or are changed at the request of another
8 telecommunications carrier, CenturyTel is unable to specifically identify which
9 changes to the Service Guide back in 2006 were specifically attributable to a
10 request by or feedback from Socket. [Emphasis added.]

11 **Q. Mr. Gates asserts that CenturyTel uses the Service Guide to exclude language from**
12 **the Agreement “and relegate them to a forum in which it has much more control**
13 **and there is much less Commission oversight – i.e., Service Guide.”⁵¹ Is this claim**
14 **accurate?**

15 A. No. Mr. Gates himself admits on page 21, lines 1-5 of his testimony that the Service
16 Guide only informally documents “certain business processes” for CenturyTel's CLEC
17 customers,⁵² and he quotes those processes from the Service Guide on page 16, lines 10-
18 13 of his testimony. Mr. Gates' assertion also is overstated. CenturyTel's proposed
19 Article III, Section 53.1 expressly states that processes and policies set forth in the Guide
20 are only applicable to Charter to the extent they are specifically referenced in the
21 Agreement. The number of such references in the Agreement are relatively few—see the
22 list of “sub issues” identified under Issue 11—and each such reference clearly refers to a
23 necessary CenturyTel policy or procedure.

24 I further note that Mr. Gates fails to mention a single instance where the Service Guide—
25 or more importantly, the specific Service Guide provisions specifically referenced in the
26 Agreement—contradicts the Agreement, or where such a contradiction is even likely to
27 occur.

⁵¹ Gates Direct at 22, lines 13-16.

⁵² CenturyTel's CLEC customer Service Guide serves purposes similar to Charter's Business Customer Guide which addresses business processes such as billing, troubleshooting and Charter policies. Like CenturyTel's Service Guide, Charter's Business Customer Guide is posted on its customer website, and may be found at <http://www.charter-business.com/Telephone-VOIP.aspx>.

1 **Q. Doesn't Mr. Gates suggest that ILEC service guides are common but that they are**
2 **not often binding between the Parties?**⁵³

3 A. Mr. Gates does so suggest but his assertion is undermined not only by the existence of the
4 GTE Guide referenced in my Direct Testimony⁵⁴ but also by Charter's own agreement to
5 incorporate and be bound by service guides established by other ILECs; including
6 prospective changes to those guides. In Charter's existing interconnection agreement that
7 was negotiated with Verizon, Verizon incorporates various "guides" or "guidelines" as
8 binding:

9 35.2 ...any reference to a ...technical or other document (including Verizon or
10 third party guides, practices or handbooks), ... is to such document... as amended
11 and supplemented from time to time...

12 8.2.3 ...Verizon will comply with Verizon's applicable OSS Change Management
13 Guidelines, as such Guidelines are modified from time-to-time, . . . Verizon's
14 OSS Change Management Guidelines will be set out on a Verizon website.

15 2.4.4 ... Charter's trunk forecasts shall conform to the Verizon CLEC trunk
16 forecasting guidelines as in effect at that time.

17 14.3 ... All forecasts shall comply with the Verizon CLEC Interconnection
18 Trunking Forecast Guide ...

19 4.4.6 ...The standard provisioning interval for the Line Sharing arrangement shall
20 be as set out in the Verizon Product Interval Guide...⁵⁵

21 Additionally, in Charter's existing interconnection agreement terms with SBC Texas,
22 General Terms and Conditions Section 46 defines "Referenced Documents" as including
23 "SBC Texas Practices," which such definition states to be a reference to the most recent
24 version of the Practices incorporated by reference. In turn, another term of that
25 Agreement in the "White Pages Appendix" specifically says that the "SBC Texas

⁵³ Gates Direct at 21, lines 1-8.

⁵⁴ Miller Direct at 45, lines 4-20.

⁵⁵ Agreement by and between CHARTER FIBERLINK - MISSOURI, LLC and GTE MIDWEST INCORPORATED, D/B/A VERIZON MIDWEST for the State of Missouri.

Practices" applicable to the furnishing of White Pages directories are subject to change from time to time. (*See*, White Pages Appendix, § 2.1).

Q. How should the Commission decide Issue 11?

A. The Commission should recognize that CenturyTel's Service Guide sets forth common operating procedures for all CLECs and thereby ensures that CenturyTel fulfills its obligation to treat all CenturyTel CLEC customers impartially. It is appropriate, necessary, and common industry practice to refer to a service guide in an interconnection agreement. The CenturyTel Service Guide should be referenced in the Agreement as the source for processes and procedures as proposed by CenturyTel, particularly given CenturyTel's proposed Article III, § 53.0 that specifically addresses what appears to be Charter's primary concerns..

Issue 13 (a) If the Parties are unable to resolve a "billing dispute" through established billing dispute procedures, should the billed Party be required to file a petition for formal dispute resolution within one (1) year of providing written notice of such dispute, or otherwise waive the dispute?

(b) To the extent a "Claim" arises under the Interconnection Agreement, should a Party be precluded from bringing such "Claim" against the other Party more than twenty-four (24) months from the date of the occurrence giving rise to the "Claim"? ⁵⁶

Q. Could you please explain the primary dispute underlying Issue 13?

A. This issue is simply about which Party should bear the burden of pursuing claims related to billing disputes initiated by Charter. Charter asserts that it should not have to bear the

⁵⁶ Charter's framing of Issue 13 is: "Should the Parties agree to a reasonable limitation as to the period of time by which claims arising under the Agreement can be brought?"

1 burden, even though it is the Party initiating the dispute and refusing to pay CenturyTel's
2 invoice(s). In other words, Charter would have CenturyTel bear the burden of pursuing
3 resolution of Charter's disputes. CenturyTel, on the other hand, believes that if Charter
4 disputes a CenturyTel billing, Charter should be required to bring a claim within one year
5 of initially disputing the bill, or absent such action, be required to pay the CenturyTel
6 billing, assuming the Parties cannot otherwise resolve the dispute through the established
7 dispute resolution procedures.

8 **Q. Ms. Giaminetti spends most of her testimony on this issue complaining about billing**
9 **problems she has experienced with CenturyTel. Is this testimony relevant to the**
10 **proposed Agreement terms under discussion?**

11 A. No. I would first point out that there are two sides to every dispute, and Ms. Giaminetti
12 is only presenting Charter's side.⁵⁷ I do not believe the Commission needs to delve into
13 (much less arbitrate) billing dispute allegations that are not before the Commission for
14 consideration within the context of this arbitration proceeding. Thus, I will only point out
15 that Ms. Giaminetti's litany of billing issues should be viewed by the Commission for
16 what it is – claims by only one party to these issues.⁵⁸ Further, I believe this testimony is
17 designed to camouflage the true issue at the heart of Charter's proposed language;
18 namely, that Charter seeks to be able to refuse to pay CenturyTel invoices with a sense of
19 impunity. Charter's proposal would cut off Charter's liability to pay for services after the

⁵⁷ No documentation is attached to Ms. Giaminetti's testimony that substantiates 263 errors to have been caused by CenturyTel's actions.

⁵⁸ For example, the number of porting orders processed for Charter in Missouri is well into a five-figure range. Determining the true number of valid billing errors that Charter may have experienced and comparing such to the total number of orders worked would put the magnitude of any issue more in perspective. The timing of any such errors is also relevant. Testimony on "old news" errors that arose as a result of billing system limitations that have been resolved must be distinguished from any current errors based upon the existing billing system. For example, as Ms. Giaminetti notes on page 34 of her testimony, CenturyTel has reversed the charges that were inadvertently placed upon Charter due to billing system limitations when those errors were brought to CenturyTel's attention. Thus, once CenturyTel is notified of a legitimate problem by Charter, CenturyTel takes prompt action to correct any mistake.

1 passage of two (2) years following the occurrence that gives rise to the dispute unless
2 CenturyTel incurs the cost to initiate a billing dispute claim. This approach would create
3 a financial incentive for Charter's non-payment of invoices until CenturyTel initiates a
4 dispute proceeding and incurs collection expense in order to keep Charter honest.

5 **Q. Is it common commercial practice for the Party challenging a bill to be required to**
6 **file for dispute resolution?**

7 A. Yes. Only the billed Party knows whether it has a reasonable basis to dispute charges or
8 not.

9 **Q. Does CenturyTel's position imply that it presumes its bills are always accurate?**

10 A. No. CenturyTel's position rests upon the common sense notion that only Charter can
11 know if it has proper and reasonable cause to dispute any of CenturyTel's charges.
12 CenturyTel does not purposefully bill Charter incorrectly. CenturyTel makes every effort
13 to ensure that its bills are accurate and has not hesitated to credit and correct any
14 inadvertent billing issues brought to its attention. On page 18, lines 5-9 of his testimony,
15 Mr. Webber concedes that even under Charter's language, Charter must provide a
16 sufficient information to inform CenturyTel of the basis for the dispute. If Charter's
17 dispute of charges is not resolved through dispute resolution, then it is up to Charter as to
18 whether it continues to dispute the charges. Only Charter can make that decision. If
19 Charter does not seek escalated resolution after a reasonable amount of time, then Charter
20 should pay the disputed amount.

21 **Q. Is it true that CenturyTel has admitted that Charter's language "could bring both**
22 **parties a greater degree of financial certainty" as Mr. Webber asserts on page 19,**
23 **lines 11-13?**

24 A. No. This is a mischaracterization on Mr. Webber's part. The actual quote from
25 CenturyTel's Position Statement was in the form of an offer to negotiate further. The

1 statement made was as follows: “Nonetheless, CenturyTel is willing to consider **a more**
2 **narrowly focused provision** associated with a twenty-four (24) month window
3 **assuming that the provision** can bring to both Parties a greater degree of financial
4 certainty.”⁵⁹ [Emphasis added.]

5 **Q. Does Mr. Webber’s testimony make any other points regarding Issue 13 that have**
6 **not already been addressed in your Direct Testimony?**

7 A. No. Mr. Webber only refers to Ms. Giaminetti’s billing history testimony and then
8 reiterates the same Charter position as set forth in its Disputed Issues/Decision Point List
9 that I have already addressed and shown to be flawed. Further, neither Charter witness
10 provided any valid reason why Charter should not be required to file a petition for formal
11 dispute resolution within one year of providing written notice of a billing dispute. I
12 would refer the Commission back to my Direct Testimony for a thorough review of the
13 background and impact of this issue.⁶⁰

14 **Q. What is CenturyTel’s desired outcome for Issue 13?**

15 A. Charter’s proposed language is inappropriate since it provides Charter latitude to avoid
16 payment of valid charges. The Commission should find that CenturyTel’s language
17 properly establishes reasonable timeframes under which disputes must be raised and
18 resolved, and that CenturyTel’s language prevents either Party from letting a dispute
19 linger for an unreasonable period of time to its benefit.

20 **Issue 17 Should the Interconnection Agreement contain terms setting forth the**
21 **process to be followed if Charter submits an “unauthorized” request to**
22 **CenturyTel to port an End User’s telephone number, and should Charter be**

⁵⁹ See, CenturyTel Response, Exhibit 1, page 45.

⁶⁰ Miller Direct at 48-52.

1 **required to compensate CenturyTel for switching the unauthorized port**
2 **back to the authorized carrier?**

3 **Q. Did Charter provide any direct testimony on this issue?**

4 A. No. Charter does not address Issue 17 in any of its direct testimony, so I will not address
5 this issue in my rebuttal testimony at this time. However, if Charter addresses this issue
6 in rebuttal testimony, such rebuttal must be strictly limited to responding to my Direct
7 Testimony. I would respectfully refer the Commission to my Direct Testimony offered in
8 this matter and would request the right at a later time to respond to any such testimony by
9 Charter that goes beyond the scope of rebutting my Direct Testimony.

10 **Issue 28 Does CenturyTel have the right to monitor and audit Charter's access to its**
11 **OSS?**

12 **Q. Was the Charter testimony on Issue 28 provided by Amy Hankins?**

13 A. Yes. Because there are two "Ms. Hankins" testifying in this case, all my references to
14 Ms. Hankins in this Rebuttal Testimony are references to Ms. Amy Hankins of Charter.

15 **Q. Ms. Hankins wants CenturyTel to define auditing and monitoring.⁶¹ Has**
16 **CenturyTel already done so?**

17 A. Yes. In my Direct Testimony, I note that the permissible scope of the audit is clearly set
18 forth in the Agreement. Charter's assertions that CenturyTel's proposed "audit" and
19 "monitoring" rights are "unfettered and undefined" are simply inaccurate.⁶² Both rights
20 are circumscribed by an express purpose in the contract language. The purpose of an
21 "audit" is expressly "to ascertain whether CLEC is complying with the requirements of
22 Applicable Law and this Agreement with regard to CLEC's access to, and use and

⁶¹ Hankins Direct at 4, lines 11-13.

⁶² Hankins Direct at 6, lines 4-5.

1 disclosure of, CenturyTel OSS Information."⁶³ Similarly, the right to "monitor" is
2 specific to "CLEC's access to and use of CenturyTel OSS Information which is made
3 available by CenturyTel to CLEC pursuant to this Agreement, to ascertain whether CLEC
4 is complying with the requirements of Applicable Law and this Agreement"⁶⁴ This
5 language both defines and gives an express purpose for the monitoring and auditing
6 rights. I can only assume that Charter wants more specific detail, but such detail is
7 neither called for nor is it properly included in the terms of the Agreement.

8 **Q. Why should CenturyTel not be required to provide any further definition of how it**
9 **would audit and monitor Charter's access to CenturyTel's OSS?**

10 A. There are two reasons. First, CenturyTel's methods and ability to audit and monitor
11 might change over time, even as the systems accessed might themselves change over
12 time. There is no need to have strict auditing and monitoring definitions in the
13 Agreement that would require unnecessary amendments in the future. Second, and more
14 to the point of the issue, I would reiterate for the Commission that Charter's position is
15 akin to giving the fox the blueprints to the henhouse's security system. The whole
16 purpose of an audit is to ensure that both Charter and CenturyTel are and remain in
17 compliance with the confidentiality requirements of 47 U.S.C. § 222. The right to
18 monitor is therefore a security measure; monitoring is supposed to be a deterrent to
19 misuse of the OSS system or OSS information. Monitoring would lack any value as a
20 deterrent if CenturyTel were required to announce when and how it is going to monitor
21 for misuse, as that would permit those intent on misuse to affect counter-measures at the
22 appropriate time or to engage in misuse at a time that CenturyTel is not monitoring

⁶³ CenturyTel's proposed Agreement, Article X, § 8.3.1.

⁶⁴ *Id.* at § 8.3.2.

1 usage. This same concept also applies to auditing. Therefore, there are no legitimate
2 reasons for Charter's demand for specific details. Moreover, if Charter agrees to auditing
3 and monitoring in principle, why does specific knowledge of the method really matter to
4 Charter?

5 **Q. Under Charter's proposed language, could Charter refuse to consent to**
6 **CenturyTel's monitoring for any reason?**

7 A. Yes. Under Charter's proposed language, it could refuse to consent to monitoring for
8 any reason. This is obviously unacceptable.

9 **Q. So does Ms. Hankins accurately characterize Charter's position?**

10 A. No. Ms. Hankins claims that Charter merely seeks a description of how CenturyTel will
11 monitor Charter's use of CenturyTel's OSS; however, Charter's actual proposal is that
12 CenturyTel can only do so with Charter's consent.⁶⁵ CenturyTel must have the right to
13 monitor in order to prevent misuse or abuse of the system.

14 **Q. On pages 7 and 8 of her testimony, Ms. Hankins relates a Charter fear that**
15 **CenturyTel's auditing and monitoring of Charter's access can be used by**
16 **CenturyTel in some competitively advantageous fashion. Would such use by**
17 **CenturyTel be permitted to happen?**

18 A. No. I have already stated that one purpose of the audit is to ensure CenturyTel's own
19 compliance with 47 U.S.C. § 222. Section 222 not only obligates CenturyTel to ensure
20 the confidentiality of its customer information, but also prohibits CenturyTel from
21 allowing knowledge of Charter's actions to be used for sales and marketing purposes by
22 CenturyTel. Article X, § 8.3.2 of the Agreement does specifically say that monitoring
23 may include "electronic monitoring." To the extent, however, that any manual efforts
24 may be contemplated, only a limited number of specified CenturyTel personnel would

⁶⁵Hankins Direct at 8, lines 19-23.

1 have the responsibility and ability to perform the audits and monitoring. These
2 individuals would not be involved in CenturyTel sales and marketing. Ms. Hankins
3 appears to forget that Charter's concern is already addressed by agreed upon language in
4 Article X, § 8.3.3, which clearly states that any information obtained by CenturyTel
5 pursuant to the provisions of Article X, § 8.0 is required to be treated by CenturyTel as
6 "Confidential Information" of Charter pursuant to Article III, § 14.0. If that alone is not
7 sufficient reason to discount Ms. Hankins' assertion, CenturyTel has the following
8 Company policy which provides, in part:

9 Information relating to a competitive carrier, its operations or its sales and
10 marketing efforts is made available to certain CenturyTel personnel during the
11 normal course of business. At all times, such personnel must comply with 47
12 USC, § 222 (b) - Confidentiality of carrier information:

13 A telecommunications carrier that receives or obtains proprietary
14 information from another carrier for purposes of providing any
15 telecommunications service shall use such information only for such
16 purpose, and shall not use such information for its own marketing efforts.

17 CenturyTel considers the following to be proprietary information of another
18 carrier under Section 222-

- 19 - Preorders and all orders for services or UNEs placed by a competitor,
- 20 - Information that would constitute customer proprietary network information
21 of the competitor's end user customers pursuant to the Act and the rules and
22 regulations of the FCC,
- 23 - Usage information with respect to a competitor's end-users, whether disclosed
24 by the competitor to CenturyTel or otherwise acquired by CenturyTel in the
25 course of its performance under a Section 251 Agreement, and
- 26 - Any information of the competitor's network or operations that has not been
27 made publicly known and that can be used in an advantageous fashion against
28 the competitor.

29 It is CenturyTel's policy that a competitor's Section 222 information will not be
30 disclosed to any personnel not directly involved with processing the information
31 for the competitor or used for any purpose other than to provide service, fulfill

1 work or other purposes as specified in CenturyTel's Section 251 agreement with
2 the competitor.

3 This written policy is contained in the document "Acceptable Use of Information
4 Provided By Competitors," which is posted internally for all employees to review and is
5 specifically distributed to those employees coming into contact with confidential
6 communications.

7 **Q. Can you please summarize the practical problem with Charter's proposal?**

8 A. As Charter's proposal is explained by Ms. Hankins, CenturyTel would have to give
9 advance notice and obtain Charter's consent before any monitoring session. This leads to
10 the following problems:

- 11 1. Charter could simply say no, in which case CenturyTel would never be
12 able to monitor;
- 13 2. Charter could insist on such details of CenturyTel's monitoring so as to
14 defeat the purpose of the monitoring; and
- 15 3. Advance notice of any monitoring would also defeat the purpose.

16 **Q. You have already testified that Charter has agreed to "unspecific" auditing and**
17 **monitoring terms with SBC in Missouri, correct?**

18 A. Yes. The terms of Charter's interconnection agreement with SBC even state that the
19 audit is to be used to ensure Charter is not "misusing" the OSS access.⁶⁶ I know of no
20 reason, and Charter has not offered any reason, as to why Charter should not include
21 CenturyTel's proposed audit terms in the Agreement when Charter voluntarily agreed to
22 "unspecific" audit terms with SBC.

23 **Q. What is the desired outcome for Issue 28?**

⁶⁶ Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, SBC MISSOURI/CHARTER FIBERLINK-MISSOURI, LLC, 080305, dated August 2, 2005.

1 A. The Commission should determine that Charter's criticisms of CenturyTel's position
2 regarding Issue 28 are without basis. Accordingly, for that reason as well as the more
3 important need to ensure both Parties' continuing compliance with Section 222,
4 CenturyTel's position regarding Issue 28 should be sustained by the Commission.

5 **Issue 32 How should the Agreement define each Party's obligations with respect to**
6 **fulfilling directory assistance obligations consistent with Section 251(b)(3) of**
7 **the Act?**

8 **Q: Ms. Hankins' testimony regarding Issue 32 asserts problems with CenturyTel's DA**
9 **database as managed by CenturyTel's third party DA provider. In your opinion, is**
10 **any of this testimony relevant to Issue 32?**

11 A. No. Ms. Hankins attempts to lay blame on CenturyTel for a change made by
12 CenturyTel's former DA provider without CenturyTel's knowledge in early 2007. As
13 one result of the issues with that former DA provider, CenturyTel contracted with a new
14 DA provider almost a year ago, and Charter admits that there have been no problems
15 since the change.⁶⁷ Ms. Hankins' assertions that the problems are recent (Hankins Direct
16 at 12, lines 19 and 25) and that CenturyTel did not take any action as a result of Charter's
17 earlier claims (Hankins Direct at 14, lines 10-11) are, therefore, false.

18 **Q. Did CenturyTel attempt to cause its original DA provider to address Charter's**
19 **claimed issues?**

20 A: Yes. To my knowledge, Charter first asked a question about DA in Wisconsin in mid-
21 February 2007. Charter did not initiate any formal discussion regarding DA issues and
22 terms until March of 2007. CenturyTel Service Group, acting on behalf of all CenturyTel
23 affiliates, related Charter's issues to the DA provider at that time, attempted to resolve

⁶⁷ Charter DA complaint against the CenturyTel Wisconsin affiliates made to the Wisconsin Public Service Commission, March 2007.

1 those issues, and also obtained an assurance from the DA provider that the issues had
2 been addressed. In fact, CenturyTel Service Group even set up conference calls with
3 both Charter and the DA provider as participants. A Wisconsin Public Service
4 Commission staff member monitored some of these calls, including the final call during
5 which Charter admitted that CenturyTel Service Group had offered two appropriate
6 solutions, and it was up to Charter to make a decision with regard to which solution to
7 implement. CenturyTel Service Group never heard back from Charter on this issue after
8 that last call.

9 **Q. You stated that CenturyTel changed DA providers almost a year ago. When did**
10 **you begin your search for a new DA provider?**

11 A. CenturyTel Service Group began immediately searching for a new DA provider at the
12 same time it was working to resolve issues between Charter and the existing DA provider
13 in March of 2007. In its search for a new DA provider, CenturyTel included the specific
14 issues that affected Charter as requirements that the successful bidder needed to fulfill—
15 *i.e.*, that the new DA provider had to populate and dip a national database. Despite being
16 Charter's offered witness on this DA Issue, Ms. Hankins is obviously unaware or
17 misinformed as to the actual background and the content of the discussions between the
18 Parties and the Wisconsin Public Service Commission in early 2007 regarding this issue.

19 **Q. Mr. Gates provides various citations of law, including references to Section 222(e) of**
20 **the Act, and claims that CenturyTel's proposal is not in compliance with law.⁶⁸**
21 **How do you respond to this assertion?**

22 A. I would point Mr. Gates to my Direct Testimony, pages 58-60 where I set forth
23 CenturyTel's rationale in support of CenturyTel's proposed provisions of the Agreement
24 regarding this issue. I will let counsel address the specifics of applicable law in the

⁶⁸ Gates Direct at 85-87.

CenturyTel legal briefs but in my opinion, however, Mr. Gates' discussion of the Act's requirements to make subscriber list information available to directory publishers is entirely irrelevant to this issue that focuses on Section 251(b)(3) directory assistance obligations.

Q. Why do you believe that Mr. Gates' discussion of the provision of subscriber listing information to directory publishers is not relevant to Issue 32?

A. First of all, because curiously, Mr. Gates admits this fact in his testimony, stating:

Note that the statutory obligation of Section 251(b)(3) is different from the act of making "directory listings" available to entities that might want to publish a directory. . . . at bottom the issue in this case does not involve that market, which is governed by Section 222(e). **Instead, this issue relates to the separate and distinct requirement under Section 251(b)(3).**⁶⁹ [Emphasis added]

Setting aside the legal arguments which CenturyTel's counsel will provide in its briefing, directory listings and directory assistance are two separate processes and the processes are not related. A directory assistance submission by Charter does not populate the directory listing database, and a directory listing submission by Charter does not populate the directory assistance database. Further, each process has its own costs as well as revenue requirements to pay for such costs. It is unclear why Mr. Gates has introduced the principles of Section 222(e) and the provision of subscriber listing information to directory publishers into the discussion of Issue 32. What is clear is that such discussion is irrelevant and does not advance Charter's claim that its proposed language for the Agreement relating to this Issue 32 should be approved.

Q. Are the obligations in CenturyTel's proposed language reciprocal?

A. Yes.

⁶⁹ Gates Direct at 86, lines 4-12.

1 **Q. Are the obligations in Charter’s proposed language reciprocal?**

2 A. No. Mr. Gates posits that the legal obligations on the Parties are reciprocal,⁷⁰ yet
3 Charter's language (the specific listed obligations for each party thereunder) is not
4 reciprocal and Mr. Gates fails to admit so. Mr. Gates further states: "... the Agreement
5 should include a statement that each Party is obligated to ensure that its subscribers can
6 obtain subscriber listing information of the other Party's subscribers..."⁷¹ CenturyTel's
7 language does exactly that where Charter’s language does not.

8 **Q. Is there anything else of substance in Charter’s testimony on this issue?**

9 A. No. Accordingly, I would refer the Commission to my Direct Testimony for a thorough
10 discussion of the matter, including why this entire issue should be moot.⁷²

11 **Q. How should the Commission rule on Issue 32?**

12 A. The Commission should recognize that Charter seeks to obligate CenturyTel to perform
13 work that is not needed or assume obligations under the Agreement that are not required
14 by applicable law. Charter can obtain the desired results faster, easier and likely without
15 cost by using an available alternative. The Commission should agree that CenturyTel’s
16 language best meets the obligations of law and should be used in this Agreement.

17 **Q. Does this conclude your testimony?**

18 A. Yes, it does.

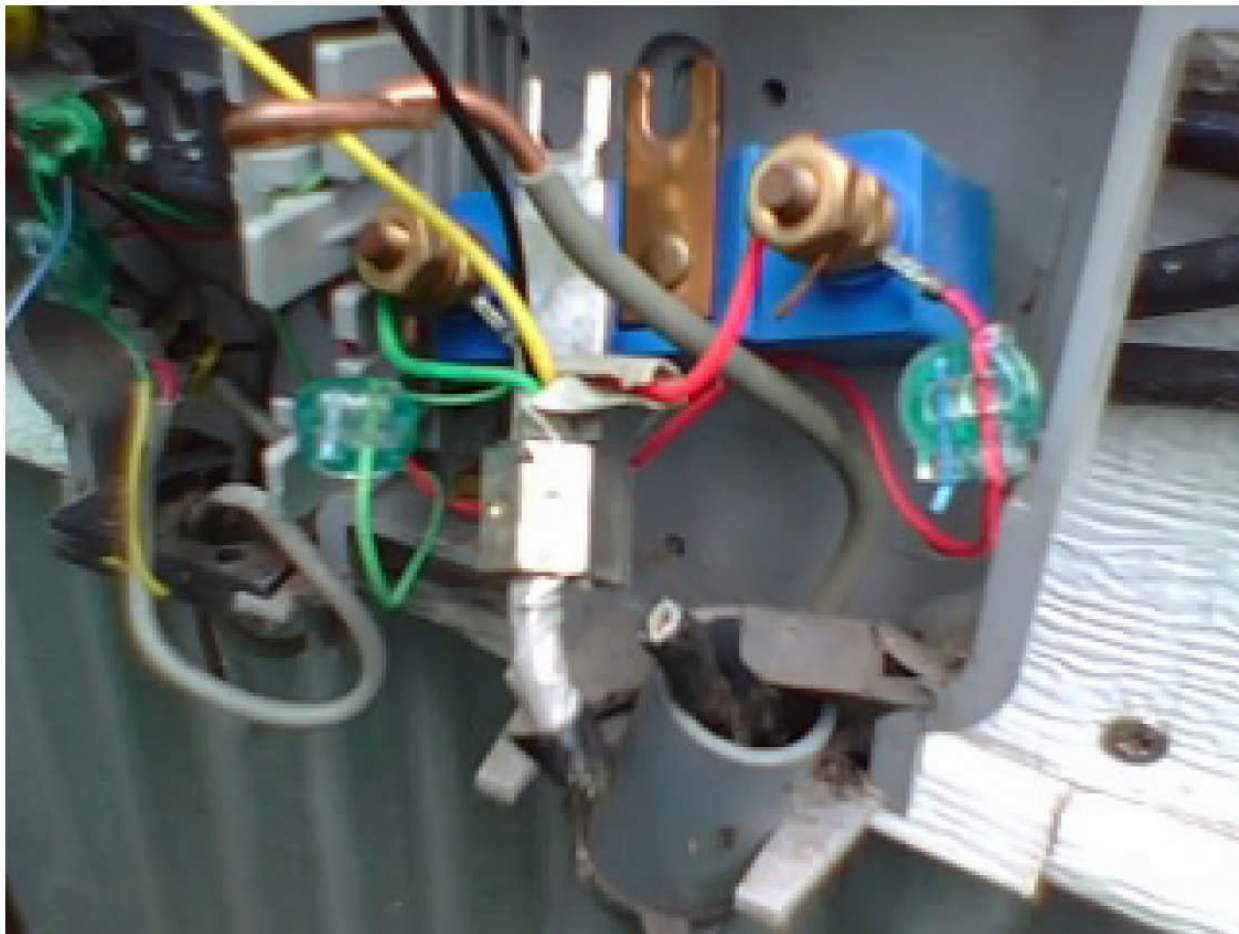
⁷⁰ Gates Direct at 87, lines 12-14.

⁷¹ *Id.*

⁷² Miller Direct at 60-63.

REBUTTAL SCHEDULE GEM-1

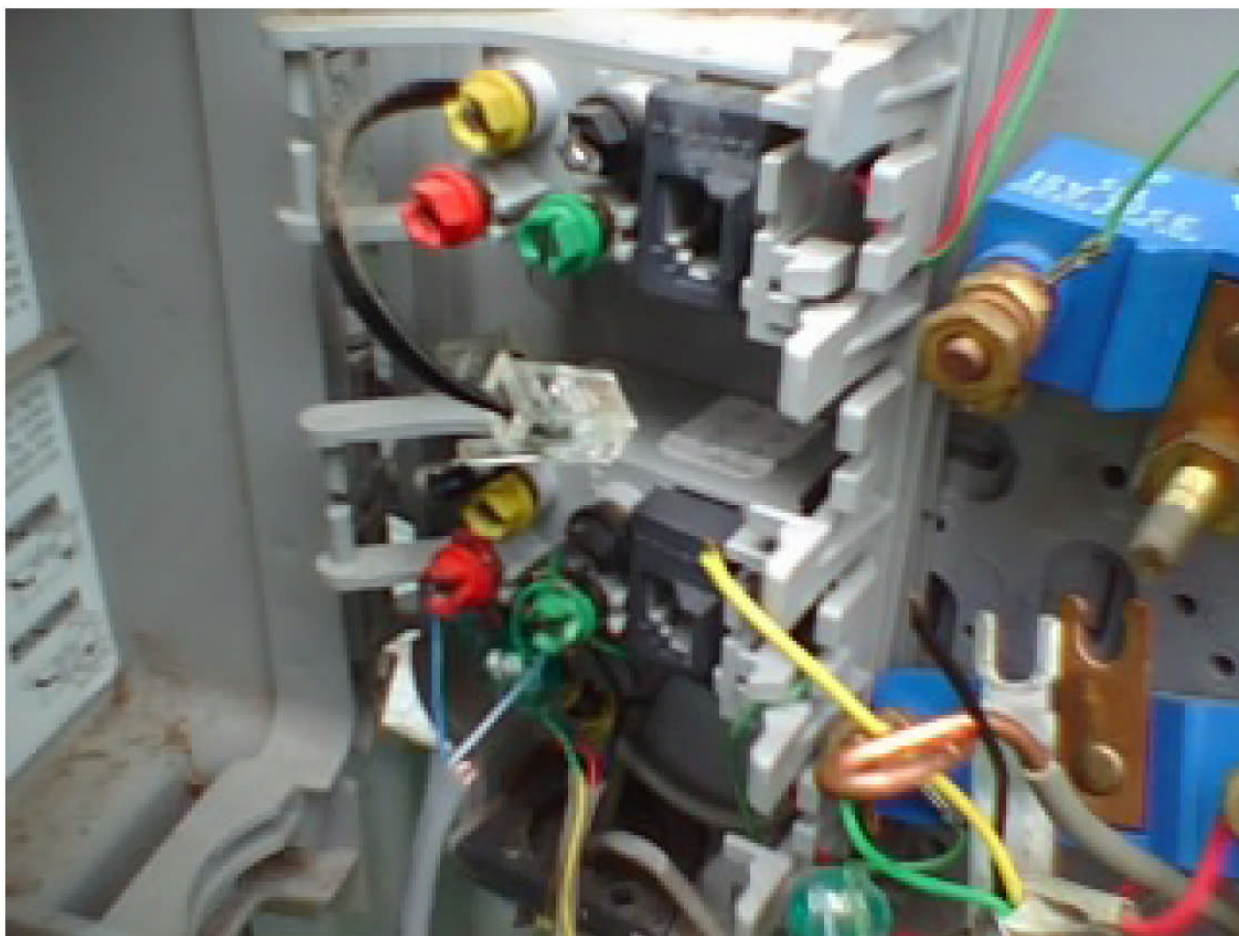
[SEE ATTACHED]



Photograph taken on October 7, 2008. Photograph shows damaged NID casing, CenturyTel drop wire cut, CenturyTel ground wire disconnected and Charter connections established in the NID. (The red and green wires using the blue-green plastic connectors are the Charter connections.)

Ashland, WI 54806*

*Customer address and telephone number are available, however, are not included in the exhibit based upon confidentiality considerations.



Photograph taken on October 7, 2008. Photograph shows CenturyTel ground wire and other internal NID connections ripped or pulled out. Charter connection (using the blue-green plastic connector) is just visible at the bottom of the picture.

Ashland, WI 54806*

*Customer address and telephone number are available, however, are not included in the exhibit based upon confidentiality considerations.



Photograph taken on October 9, 2008. Photograph shows CenturyTel drop wire and ground wire cut by Charter before attachment to the NID.

Ashland, WI 54806*

*Customer address and telephone number are available, however, are not included in the exhibit based upon confidentiality considerations.