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October 3, 2014

Steve Mihalchick
Administrative Law Judge
Office of Administrative Hearings
PO Box 64620
St. Paul, MN 55164-0620

Via: E-File

Re: In the Matter of the Petition of Hutchinson Telecommunications, Inc. for Arbitration with Embarq Minnesota, Inc., Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act
MPUC Docket No. P-421, 5561, 430/IC-14-189
OAH Docket No. 48-2500-31383

Dear Judge Mihalchick:

Enclosed for filing please find Hutchinson Telecommunications, Inc.'s Post Hearing Brief and Certificate of Service.

Please don't hesitate me if you have any questions. Thank you for your assistance in this matter.

Sincerely,

/s/Gregory R. Merz

Gregory Merz

GRM/akm
Enclosures

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
David C. Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Petition of Hutchinson Telecommunications, Inc. for Arbitration with Embarq Minnesota, Inc., Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act	MPUC Docket No. P-421, 5561, 430/IC-14-189 OAH Docket No. 48-2500-31383

CERTIFICATE OF SERVICE

I, Amy K. Milbradt, hereby certify that I have this day, served copies of *Hutchinson Telecommunications, Inc.'s Post Hearing Brief* by electronic service as designated on the attached service list.

Dated this 3rd day of October, 2014.

/s/Amy K. Milbradt
Amy K. Milbradt

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF MINNESOTA

Beverly Jones Heydinger	Chair
David C. Boyd	Commissioner
Nancy Lange	Commissioner
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In the Matter of the Petition of Hutchinson Telecommunications, Inc. for Arbitration with Embarq Minnesota, Inc., Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act	MPUC Docket No. P-421,5561,430/IC-14-189 OAH Docket No. 48-2500-31383

HUTCHINSON TELECOMMUNICATIONS, INC.'S POST HEARING BRIEF

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I. Introduction/Summary

Hutchinson Telecommunications, Inc. ("HTI") respectfully submits this post hearing brief in support of its petition for arbitration, pursuant to the federal Telecommunications Act of 1996[1] and Minnesota state law,[2] of an interconnection agreement with Embarq Minnesota, d/b/a CenturyLink ("CenturyLink EQ").

The Disputed Issues Matrix filed by the parties sets forth the parties' respective contract language proposals as well as a summary of their positions regarding those proposals for the 46 issues that remain in dispute. [3]The key issues, however, fall within two broad categories: 1) HTI's request for a meet point interconnection arrangement, including contract language that would expressly recognize the parties' current meet point interconnection; 2) reciprocal compensation, and more specifically, CenturyLink EQ's desire to begin charging HTI for transport on CenturyLink EQ's side of the point of interconnection, notwithstanding the parties' current interconnection agreement which provides that no such charges will be assessed. In each instance, HTI has proposed language that reflects the requirements of the Telecommunications Act, including rules and orders adopted by the Federal Communications Commission ("FCC") to implement the Act. CenturyLink EQ, in contrast, has proposed contract language the fails to comply with the Act's clear requirements.

[1] 47 U.S.C. § 252(b).
[2] Minn. Stat. § 216A.05; Minn. R. part 7812.1700.
[3] Along with the post hearing briefs, the parties are also submitting a revised joint issues matrix that identifies the issues that remain in dispute.

A. Meet point interconnection

HTI has proposed language, consistent with the Telecommunications Act and its implementing regulations, that would enable it to interconnect at any technically feasible point on CenturyLink EQ's network. HTI's proposed language includes providing for interconnection at a meet point, which the FCC has expressly recognized as an interconnection option that an incumbent carrier must make available to competitive carriers. Contract language proposed by CenturyLink EQ violates the Telecommunications Act in at least three ways. First, CenturyLink EQ has denied HTI's requested point of interconnection ("POI") for reasons having nothing to do with technical feasibility. Second, CenturyLink EQ seeks to force HTI to accept a POI that it has not requested and does not want. Third, CenturyLink EQ seeks to force HTI to interconnect at multiple points within a single LATA.

B. Reciprocal compensation

The parties' dispute regarding meet point interconnection arises from CenturyLink EQ's insistence on interconnection agreement language that would enable it to charge HTI for transport on CenturyLink EQ's side of the meet point. Under the parties' current interconnection agreement, each party bears the costs on its side of the point of interconnection. Thus, adopting CenturyLink EQ's proposed language would mean an increase in reciprocal compensation rates. CenturyLink EQ's position is contrary to the FCC rules: 1) that require each party must bear the financial responsibility for facilities on its side of the POI; 2) that prohibit any increase in rates for

reciprocal compensation, including both transport and termination, from the rates in effect as of December 29, 2011.

II. Jurisdiction and Procedural Background

HTI is a Minnesota company based in New Ulm, Minnesota.[4] HTI is a Competitive Local Exchange Carrier ("CLEC") and is a telecommunications carrier under Minn. Stat. § 237.01, subd. 6, authorized by the Commission to provide telecommunications services, including facilities-based local exchange service, in Minnesota.[5] HTI serves business and residential customers located in Litchfield, Minnesota.[6]

CenturyLink EQ (formerly known as "Embarq Minnesota, Inc.") is a telephone company under Minn. Stat. § 237.01, subd. 7, authorized by the Commission to provide telecommunications service in Minnesota, including local exchange service. CenturyLink EQ is an Incumbent Local Exchange Carrier ("ILEC") under the Telecommunications Act.[7]

HTI and CenturyLink EQ are parties to an interconnection agreement that was approved by the Commission on December 5, 2006,[8] the terms of which were the result of a voluntary agreement between the parties on all issues. The agreement had an initial term of three years with automatic renewal for an unlimited number of successive six

[4] Ex. 100 (Burns Direct), p. 2, lines 6-7.
[5] Petition, ¶ 1; Ex. 100 (Burns Direct), p. lines 6-7.
[6] Ex. 100 (Burns Direct), p. 2, lines 8-9.
[7] See 47 U.S.C. §251(h).
[8] MPUC Docket No. P-430, 5561/IC-06-1548.

month terms.[9] HTI and CenturyLink EQ have continued to operate under the current interconnection agreement while they negotiate and arbitrate a replacement interconnection agreement.[10]

HTI requested negotiation of a successor interconnection agreement on April 29, 2013.[11] The parties subsequently agreed to extend the "negotiation window"[12] a number of times. When it became clear that negotiations would not resolve all of the issues, HTI filed a petition for arbitration of the remaining disputed issues on March 3, 2014. By its Order dated March 25, 2014, the Commission found that HTI met the requirements for arbitration and referred the matter to the Office of Administrative Hearings for evidentiary proceedings.[13] CenturyLink EQ filed its response to the petition for arbitration on March 28, 2014.

III. Standard of Review

The Commission is required by the Telecommunications Act to resolve any issues set forth in a petition for arbitration of an interconnection agreement or in any response to such a petition.[14] Issues presented for arbitration must be resolved in

[9] Petition, ¶ 6; see also Hearing Ex. 100 (Burns Direct) at TGB-1 (HTI/Embarq interconnection agreement).
[10] Petition, ¶ 6.
[11] Petition, ¶ 7.
[12] *See* 47 U.S.C. § 252(b)(1) (permitting arbitration to be requested during the period from the 135th to the 160th day after the date when the incumbent local exchange carrier receives a request for arbitration).
[13] MPUC Docket No. P-421, 5561, 430/IC-14-189, ORDER REFERRING MATTER TO THE OFFICE OF ADMINISTRATIVE HEARINGS FOR ARBITRATION, ASSIGNING ARBITRATOR, AND GIVING NOTICE OF FIRST PREHEARING CONFERENCE (March 25, 2014).
[14] 47 U.S.C. 252(4)(C); see also Minn. R. part 7812.1700 (authority and role of the Commission under state law for the arbitration of interconnection agreements).

accordance with Sections 251 and 252 of the Act and the rules adopted by the FCC.[15] Section 252(c) of the Act requires a state commission resolving open issues through arbitration to, among other things, ensure that the resolution meets the requirements of Section 251 and its implementing regulations. The Commission is required to make an affirmative determination that the rates, terms and conditions that it prescribes in the arbitration proceeding for interconnection are consistent with the requirements of Sections 251(b) and (c) and Section 252(d) of the Act.[16] The Commission may also, under its state law authority, impose additional requirements pursuant to Section 252(e)(3) of the Act, as long as such requirements are consistent with the Act and the FCC's regulations.[17] The burden of proof in this proceeding is on CenturyLink EQ to prove all issues of material fact by a preponderance of the evidence.[18]

[15] *See* 47 U.S.C. §§251 and 252; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Red 13042 (1996) ("*Local Competition Order*"); 47 C.F.R. § 51.5 *et seq.*
[16] 47 U.S.C. § 252(d).
[17] 47 U.S.C. §252(e); *First Report and Order*, ¶¶ 233, 244.
[18] Minn. R. part 7812.1700, subp. 23; see also *In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Corporation*, MPUC Docket No. P-5692, 421/IC-04-549, Arbitrator's Report at ¶ 6 (December 15, 2004).

IV. Point of Interconnection and Meet Point Interconnection

A. HTI is Entitled Under the Telecommunications Act to Choose a Method of Interconnection and a Point of Interconnection that Best Meets Its Needs

1. The ILEC's interconnection obligations

The FCC defines "interconnection" to mean the "linking of two networks for the mutual exchange of traffic."[19] In order for the customers of one local exchange carrier to be able to place calls to, and receive calls from, the customers of another local exchange carrier, the networks of the two carriers must be interconnected.[20]

Interconnection with a CLEC necessarily represents a competitive threat to the ILEC. The FCC, in its *Local Competition Order*, took note of the incumbent carrier's disincentives to interconnect with a competitor:

> Because an incumbent LEC currently serves virtually all subscribers in its local serving area, an incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market. An incumbent LEC also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's customers to the incumbent LEC's subscribers.[21]

In order to address these economic disincentives, the duties of an incumbent local exchange carrier, such as CenturyLink EQ, to allow a CLEC, such as HTI, to interconnect with the incumbent's network are set forth in Section 252(c)(2). Pursuant to that section, an incumbent carrier has a duty:

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[19] 47 C.F.R. § 51.5.

[20] *Local Competition Order* at ¶10 ("[A]bsent interconnection between the incumbent LEC and the entrant, customers of the entrant would be unable to complete calls to subscribers served by the incumbent LEC's network.")

[21] *Local Competition Order* at ¶10 (footnotes omitted).

> [T]o provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network –
>
> (A) for the transmission and routing of telephone exchange service and exchange access;
>
> (B) at any technically feasible point within the carrier's network:
>
> (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
>
> (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

In order to implement the Act's requirement that an ILEC provide interconnection at "any technically feasible point within the carrier's network"[22] using "any technically feasible method of obtaining interconnection….,"[23] the FCC's rules provide that, "a previously successful method of obtaining interconnection or access to unbundled network elements at a particular premises or point of any incumbent LEC's network is substantial evidence that such method is technically feasible in the case of substantially similar network premises or points."[24] When an ILEC denies a request for a particular method of interconnection, the ILEC must prove to the state commission that the requested method of interconnection at the point is not technically feasible.[25] The FCC has interpreted the requirement that the CLEC be permitted to interconnect at

[22] 47 U.S.C. § 251(c)(2)(B).
[23] 47 C.F.R. § 51.321(a).
[24] 47 C.F.R. § 51.321(c).
[25] 47 C.F.R. § 51.321(d).

any technically feasible point as entitling the CLEC to interconnect at a single POI per Local Access and Transport Area ("LATA").[26]

An ILEC may not use cost as a factor in determining whether a requested interconnection is feasible. On this point the FCC has stated:

> Competitive carriers, many of whom may be small entities, will be permitted to request interconnection at any technically feasible point, and the determination of feasibility must be conducted without consideration of the cost of providing interconnection at a particular point. Consequently, our rules permit the party requesting interconnection, which may be a small entity, and not the incumbent LEC to decide the points that are necessary to compete effectively.[27]

The ILEC must provide interconnection at parity with that provided to itself, its subsidiaries and affiliates or any other carrier; that is, interconnection must be "at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."[28] Further, the rates, terms and conditions of interconnection must be "just, reasonable, and nondiscriminatory."[29]

These provisions, read together, stand for the proposition that the Telecommunications Act entitles a CLEC to choose a method of interconnection and a Point of Interconnection ("POI") that best meets its needs. This is precisely the issue that the court decided in *MCI Telecommunication Corporation v. Bell Atlantic-Pennsylvania*.[30]

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[26] *In the Matter of the Petition of WorldCom, Inc.* Pursuant to Section 252(e)(5) of the Communications Act, 17 FCC Red 27039, *27064, 2002 FCC LEXIS 3544, **56 (2002)("Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA.")(footnote omitted).
[27] *Local Competition Order*, ¶ 1373.
[28] 47 U.S.C. § 251 (c)(2)(C).
[29] 47 U.S. C. § 251(c)(2)(D).
[30] 271 F.3d 491 (3rd Cir. 2001).

There the ILEC, Verizon, sought interconnection agreement language that would require the CLEC, WorldCom, to interconnect in each tandem serving area, even where there was more than one tandem serving area in a single LATA.[31] As the court framed the issue, "Verizon wants Worldcom to take access at several additional points in the network, to interconnect at multiple points within the LATA, even if Worldcom does not want to do so."[32] The court rejected the interconnection agreement language proposed by the ILEC, stating:

> If only one interconnection is necessary, the requirement by the commission that there be additional connections at an unnecessary cost to the CLEC, would be inconsistent with the policy behind the Act.
>
> Moreover, the fact that § 251(c)(2) permits the CLEC to choose the points in the network at which to interconnect suggests that the Act provides for a balanced resolution in the determination of interconnection points: While the ILEC cannot be required to allow interconnection at technically unfeasible points, similarly the CLEC cannot be required to interconnect at points where it has not requested to do so. If we accept this proposition, the PUC and Verizon cannot require WorldCom to interconnect at any point in the network at which Worldcom does not wish to interconnect.
>
> The decision where to interconnect and where not to interconnect must be left to Worldcom, subject only to concerns of technical feasibility. Verizon has not presented evidence that it is not technically feasible for Worldcom to interconnect at only one point within a LATA. Nor has Verizon shown that it is technically necessary for Worldcom to interconnect at each access tandem serving area. The PUC's requirement that Worldcom interconnect at these additional points is not consistent with the Act.[33]

[31] *MCI*, 271 F.3d at 517.
[32] *MCI*, 271 F.3d at 517.
[33] *MCI*, 271 F.3d at 517-18.

Under the Telecommunications Act, the ILEC does not have a veto power over how or where the CLEC interconnects to the ILEC network, nor can the ILEC force the CLEC to interconnect at points that the CLEC has not requested.

2. HTI has proposed language that would enable it to interconnect with the CenturyLink EQ network at any technically feasible point [Issue No. 24]

The interconnection agreement language proposed by HTI properly gives effect to the requirements of the Act that allow the CLEC to select the location and method of interconnection. Thus, HTI has proposed the following language to specifically identify POIs that CenturyLink EQ is required to make available:

> 39.1 POI Locations. CLEC shall be entitled to establish a POI at any Technically Feasible point on the CenturyLink network, including but not limited to:
>
> a. CenturyLink hand holes or manholes;
>
> b. CenturyLink controlled environment vaults;
>
> c. CenturyLink Central Offices;
>
> d. Third Party locations, e.g., carrier hotels, where CenturyLink has established facilities for the purpose of interconnection with other carriers;[34]

Each of these locations are points on the CenturyLink EQ network where CenturyLink EQ performs cross-connections, both for itself and for other carriers, and, accordingly, must be available to HTI for the same purpose.[35] Although CenturyLink EQ's witness, Mr. Easton, characterized HTI's language as "overly broad,"[36] he offered no evidence

[34] Hearing Ex. 1 (Easton Direct), p. 29, lines 1-27.
[35] Hearing Ex. 101 (Burns Rebuttal, Public Version) at p. 3 lines 2-4.
[36] Hearing Ex. 1 (Easton Direct), p. 29, lines 31-32.

that any of these locations is not technically feasible. Rather, CenturyLink EQ has claimed only that HTI's proposed language is not consistent with CenturyLink EQ's "standard methods and language that CenturyLink EQ uses with all other CLECs."[37] CenturyLink EQ has completely failed to carry its burden of proving technical infeasibility.

Another CenturyLink EQ objection is that HTI's proposed language would require interconnection at a point not on CenturyLink EQ's network.[38] This objection, however, ignores the language proposed by HTI expressly states that the POI must be at a location on CenturyLink's network (i.e., "CLEC shall be entitled to establish a POI **at any Technically Feasible point on the CenturyLink network** . . . ."). [39] CenturyLink EQ has also argued that it cannot be required to interconnect outside its local service area.[40] This objection, however, finds no support in the law. The plain language of the Act permits a CLEC to interconnect at any technically feasible point "**within the carrier's network**"[41] and not "within the carrier's local calling area." As CenturyLink EQ acknowledged at the hearing, CenturyLink EQ's "network" is anywhere where it has facilities, which is broader than CenturyLink EQ's serving area.[42] CenturyLink EQ's attempt to limit HTI to interconnection in CenturyLink EQ's local service area must be rejected as contrary to the Act.

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[37] Hearing Ex. 1 (Easton Direct), p. 30, lines 4-5.
[38] Hearing Ex. 1 (Easton Direct), p. 29, line 32 – p. 30, line 1.
[39] Hearing Transcript (Easton) at p. 64, line 18 – p. 65, line 4 (emphasis added).
[40] Hearing Transcript (Easton) at p. 65, lines 1-13.
[41] 47 U.S.C. § 251 (c)(2)(B)(emphasis added).
[42] Hearing Transcript (Easton) at p. 64, line 2-17.

In order to assure that CenturyLink EQ complies with its parity and nondiscrimination obligations, HTI has proposed language to be included in this section of the interconnection agreement that would require CenturyLink EQ to disclose the locations within a LATA where it has established interconnection with another carrier:

> CenturyLink shall disclose to CLEC all locations within a LATA where CenturyLink has established facilities interconnection with a third party carrier. This existing POI location information shall be provided within business days of CLEC's written request.[43]

The information that HTI's proposed language would require be disclosed is necessary for the CLEC to be able to make an informed decision about how to plan its network.[44] As the FCC has stated:

> [I]ncumbent LECs have a duty to make available to requesting carriers general information indicating the location and technical characteristics of incumbent network facilities. Without access to such information, competing carriers would be unable to make rational network deployment decisions and could be forced to make inefficient use of their own and incumbent LEC facilities with anticompetitive effects.[45]

The circumstances surrounding the establishment of the initial interconnection between HTI and CenturyLink EQ's predecessor, Sprint, illustrate why this information is needed. When HTI sought interconnection with Sprint for the purposes of exchanging EAS/local traffic, Sprint insisted, as CenturyLink EQ insists now, that HTI interconnect at the Sprint end office.[46] HTI learned, however, of the existence of an

[43] Hearing Ex. 1 (Easton Direct), p. 29, lines 18-26.
[44] Hearing Transcript (Burns), p. 15, lines 13-23.
[45] *Local Competition Order*, ¶205.
[46] Hearing Ex. 100 (Burns Direct), p. 2, lines 16-26.

interconnection between Sprint and US West at the US West switch in St. Cloud.[47] This information came, not from Sprint, but from US West, and only then after being pressured by HTI to provide it.[48] As a result of obtaining this information, HTI was able to establish interconnection at a location that meet its needs in order to compete efficiently and effectively.

CenturyLink EQ objects to HTI's proposed disclosure requirement for two reasons. First, CenturyLink EQ argues that HTI's disclosure language would require the disclosure of proprietary information.[49] Second, CenturyLink EQ asserts that the information that HTI would require be disclosed is better obtained from third party sources.[50] Neither of these arguments can withstand scrutiny.

First, the information that HTI seeks is not information about the network of another CLEC, but rather, the network of the incumbent with which it seeks to interconnect.[51] The CenturyLink EQ witness admitted that the information that a CLEC would need for interconnection purposes – the CLLI code for the location of the point of interconnection, the interface level, and the CLLI code of the serving area switch – is not confidential.[52]

Second, the evidence shows that the third party source that CenturyLink EQ would have HTI rely on is, at best, incomplete. The CenturyLink EQ witness lacked first

[47] Hearing Ex. 100 (Burns Direct), p. 5, lines 11-20.
[48] Hearing Ex. 100 (Burns Direct) p. 6, lines 1-7.
[49] Hearing Ex. 1 (Easton Direct), p. 30, lines 10-16.
[50] Hearing Transcript (Easton), p. 67, lines 20-24.
[51] Hearing Ex. 101 (Burns Public Rebuttal), p. 10, lines 12-19.
[52] Hearing Transcript (Easton), p. 71, lines 9-21.

hand information regarding what is included in the database.[53] Mr. Burns, who does have first hand experience with the database, testified that he attempted to use that database when HTI established its initial interconnection with Sprint and the interconnection between Sprint and US West was not in the database.[54]

B. HTI is Entitled to Meet Point Interconnection at a POI of its choosing

Specific methods of interconnection that the FCC has expressly recognized as technically feasible include physical collocation, virtual collocation, and interconnection at a meet point.[55] This case primarily concerns HTI's request for—and CenturyLink EQ's refusal to provide—meet point interconnection.

1. Definition of Meet Point Interconnection Arrangement [Issue No. 7]

"Meet point interconnection" is an arrangement by which each telecommunications carrier builds and maintains its network to a meet point.[56] A "meet point" is "a point of interconnection between two networks, designated by two telecommunication carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends."[57] Thus, under a meet point interconnection arrangement, each party is required to bear the cost on its side of the meet point (*i.e.*, the POI). In its *Local Competition Order*, the FCC discussed the technical feasibility of interconnection at a meet point:

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[53] Hearing Transcript (Easton), p. 67, line 24-p. 68, line 5.
[54] Hearing Transcript (Burns), p. 151, line 12-p. 152, line 24.
[55] 47 C.F.R. § 51.321(b).
[56] 47 C.F.R. § 51.5.
[57] 47 C.F.R. § 51.5.

> [O]ther methods of technically feasible interconnection or access to incumbent LEC networks, such as meet point arrangements, in addition to virtual and physical collocation, must be available to new entrants upon request. Meet point arrangements (or mid-span meets), for example are commonly used between neighboring LECs for the mutual exchange of traffic, and thus, in general, we believe such arrangements are technically feasible. Further, although the creation of meet point arrangements may require some build out of facilities by the incumbent LEC, we believe such arrangements are within the scope of the obligations imposed by sections 251(c)(2) and 251(c)(3). In a meet point arrangement, the "point" of interconnection for purposes of sections 251(c)(2) and 251(c)(3) remains on the "local carrier's network" (e.g., main distribution frame, trunk side of the switch), and the limited build-out of facilities from that point may then constitute an accommodation of interconnection. In a meet point arrangement, each party pays its portion of the costs to build out to the meet point.[58]

HTI has proposed language that incorporates the FCC definition of "Meet Point Interconnection Arrangement" as part of the interconnection agreement.[59] That proposed language provides that "Meet Point Interconnection Arrangement means each telecommunications carrier builds and maintains its network 1 to a Meet Point. (47 C.F.R.§ 51.5)."[60] The parties have agreed on a definition of Meet Point: "'Meet Point' is point of interconnection between two networks, designated by two telecommunications carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends. (47 C.F.R.§ 51.5)." CenturyLink EQ acknowledges that HTI's proposed definition of Meet Point Interconnection Arrangement is consistent with the FCC definition.[61] CenturyLink EQ does not propose any alternate definition of Meet Point Interconnection Arrangement but only argues that the definition should be

[58] *Local Competition Order*, ¶ 553 (footnotes omitted).
[59] See Disputed Issues Matrix, Issue No. 7.
[60] Hearing Exhibit 1 (Easton Direct) at p. 12, line 25-p. 13, line 2. See 57 C.F.R. §51.5 (defining "meet point interconnection arrangement").
[61] Hearing Transcript (Easton) at p. 55, line 23 – p. 56, line 3.

omitted because the term is not included in CenturyLink EQ's version of the agreement.[62] Meet point interconnection is a technically feasible method of interconnection identified by the FCC and HTI is entitled to have that option reflected in the interconnection agreement. Inclusion of the definition is appropriate.

2. Mid Span Fiber Meet [Issues 8 and 39]

Related to the dispute regarding the definition of Meet Point Interconnection Arrangement is the parties' dispute regarding the definition of "Mid Span Fiber Meet." HTI proposes the following definition:

> A form of Meet Point Interconnection Arrangement, which uses fiber optic transmission facilities to interconnect carriers' networks. An Interconnection architecture whereby two carriers' fiber transmission facilities meet at a mutually agreed upon point for the mutual exchange of traffic, subject to the trunking requirements and other terms and provisions of this Agreement. The "point" of Interconnection, for purposes of §§251(c)(2) and 251(c)(3), remains on CenturyLink's network.[63]

CenturyLink EQ, in contrast, proposes the following definition:

> An Interconnection architecture whereby two carriers' fiber transmission facilities meet at a mutually agreed upon point for the mutual exchange of traffic, subject to the trunking requirements and other terms and provisions of this Agreement. The "point" of Interconnection, for purposes of §§251(c)(2) and 251(c)(3), remains on CenturyLink's network and is limited to the Interconnection of facilities between the CenturyLink Serving Wire Center and the location of the CLEC switch or other equipment located within the area served by the CenturyLink Serving Wire Center.[64]

In order to further describe interconnection via a Mid Span Fiber Meet, CenturyLink EQ proposes:

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[62] Hearing Transcript (Easton) at p. 54, lines 6-14.
[63] Hearing Exhibit 1 (Easton Direct) at p. 14, lines 5-19.
[64] Hearing Exhibit 1 (Easton Direct) at p. 13, line 18-p. 14, line 3.

> The Mid Span Fiber Meet, as proposed, must be at a mutually agreeable, economically and technically feasible point between CenturyLink's Serving Wire Center End Office and CLEC's Premises, and will be within the CenturyLink Local Calling Area.[65]

HTI proposes to delete this language and substitute it with:

> A Mid Span Fiber Meet is a form of Meet Point Interconnection Arrangement where fiber optic facilities are spliced at Meet Point which is logically located between the Parties' premises.[66]

CenturyLink EQ's language must be rejected because it would impose limitations on meet point interconnection that are contrary to the Telecommunications Act and its implementing regulations. First, a Mid Span Fiber Meet is only one variety of meet point interconnection arrangement; HTI's proposed definition makes this clear and CenturyLink EQ's does not. In fact, CenturyLink EQ takes the position that a Mid Span Fiber Meet is the only form of meet point interconnection that can be established without first resorting to CenturyLink EQ's Bona Fide Request ("BFR") process. Under CenturyLink EQ's language, any type of meet point interconnection other than a Mid Span Fiber Meet would be considered non-standard and would be subject to CenturyLink EQ's proposed BFR process in order to assess "feasibility."[67] Second, by requiring that the meet point be "mutually agreed upon," CenturyLink EQ seeks to give itself veto power over HTI's selection of the POI. Third, CenturyLink EQ would limit the POI location to the interconnection of facilities between the CenturyLink EQ serving wire center and the CLEC switch. Fourth, CenturyLink EQ's language would include

[65] Hearing Ex. 1 (Easton Direct) at p. 56, lines 6-12.
[66] Hearing Ex. 1 (Easton Direct) at p. 56, lines 19-25.
[67] Hearing Transcript (Easton), p. 57 lines 7-16; Hearing Ex. 1 (Easton Direct), p. 27, lines 1-4. See, infra, pp. 30-38, regarding CenturyLink EQ's BFR process.

economic feasibility as a limitation on the establishment of meet point interconnection. CenturyLink EQ does not attempt to show that these limitations are required as a matter of technical feasibility; rather, the limitations are based on what CenturyLink EQ chooses to call "standard" interconnection.[68]

3. Single POI per LATA [Issue Nos. 25, 26, 27, 28, 29, 30, 31, 32, 34, 38, 48]

CenturyLink EQ's proposed language would also violate the Telecommunications Act's requirement that a CLEC is entitled to interconnect at a single point of interconnection in each LATA. Thus, CenturyLink EQ would require HTI to establish a POI: 1) at each tandem in the LATA where it wishes to exchange traffic;[69] 2) at each end office where traffic meets certain thresholds;[70] 3) at each CenturyLink EQ end office that subtends a non-CenturyLink tandem where traffic meets certain thresholds;[71] 4) at each non-contiguous exchange or group of exchanges where it wishes to exchange traffic;[72] and 5) in each rate center where it wishes to obtain numbering resources.[73] These provisions would require HTI to interconnect at numerous points in a single LATA, for reasons that are wholly unrelated to technical

[68] Cf. Hearing Ex. 1 (Easton Direct), p. 57, lines 2-6 ("Mid Span Fiber Meet is the standard method that CenturyLink EQ uses to provide network interconnection at a "Meet Point", thus making Hutchinson's added definition (Issue No. 7) and reference to the additional term in this added language unnecessary.")
[69] Hearing Ex. 1 (Easton Direct) at p. 33, line 10-p. 34, line 10 (Issue No. 26).
[70] Hearing Ex. 1 (Easton Direct) at p. 34, line 14 – p. 35, line 21 (Issue No. 27); see also Hearing Ex. 1 (Easton Direct), p. 40, line 10-p. 42, line 13 (Issue No. 31) (calculation of threshold for establishing direct trunking).
[71] Hearing Ex. 1 (Easton Direct) at p. 35, line 25 – p. 37, line 2 (Issue No. 28).
[72] Hearing Ex. 1 (Easton Direct) at p. 37, line 6 – p. 38, line 23 (Issue No. 29).
[73] Hearing Ex. 1 (Easton Direct) at p. 39, line 4 – p. 40, line 6 (Issue No. 30).

feasibility; rather, the purpose of CenturyLink EQ's language is to enable it to impose charges for transport.[74]

In each of these contract sections, HTI proposes substituting the term "trunk group" for the term "POI." HTI's proposed language accurately reflects that, although there may be instances where proper network engineering might require the establishment of additional trunking, such trunking is not the equivalent of a POI, which has a specific meaning under the FCC's rules. Ms. Doherty, on behalf of the Department of Commerce, supports the language proposed by HTI on these issues.[75]

Apparently recognizing that these provisions clearly violate the Telecommunications Act "single POI per LATA" requirement, CenturyLink, on September 26, 2014, CenturyLink EQ provided revised proposals for these issues. That revised language, although it may avoid the problem of requiring multiple POIs in a single LATA, still improperly limits HTI's ability to identify a POI that best meets its needs. In particular, CenturyLink EQ's revised language would require that HTI's POI be at the CenturyLink EQ tandem. There is no evidence of technical feasibility that could possibly support such a limitation; rather, CenturyLink EQ's new proposed language, like it previous proposals, is intended allow it to bill HTI reciprocal compensation charges for which it is not and should not be responsible.

[74] See, infra, at Section V, for a discussion of issues relating to reciprocal compensation.
[75] Hearing Exhibit 200 (Doherty Direct), p. 18, lines 1-6.

4. HTI's specific interconnection requests [Issue Nos. 44, and 77]

In additional to language describing, generally, terms and conditions governing meet point interconnect, HTI has proposed two specific meet point interconnection arrangements. One such proposal, for a meet point at the CenturyLink QC ("Qwest") central office in St. Cloud, is the parties' current interconnection arrangement, which has been in place since 1999.[76] HTI's other interconnection proposal, for a meet point at CenturyLink EQ's remote switch at Glencoe, is the same as the interconnection that HTI's ILEC affiliate, Hutchinson Telephone Company ("HTC"), has had with CenturyLink EQ since before the passage of the Telecommunication Act in 1996.[77] In both instances, CenturyLink EQ acknowledges that HTI's interconnection request is technically feasible, but has rejected those requests because they seek what CenturyLink EQ calls "nonstandard" interconnection.[78]

With respect to the existing interconnection at the Qwest St. Cloud central office, CenturyLink EQ simply states that the arrangement "isn't something we would agree to do today."[79] CenturyLink EQ does not claim that the interconnection arrangement is not technically feasible, nor could it, given that CenturyLink and HTI have been operating using that arrangement for many years. Yet, CenturyLink EQ insists the arrangement is

[76] Hearing Ex. 100 (Burns Direct), p. 6, lines 6-7, Fig. 2.
[77] Hearing Ex. 100 (Burns Direct), p. 31, line 9-p. 32, line 9, Fig. 11.
[78] Hearing Ex. 2 (Easton Rebuttal), p. 2, line 18-p. 3, line 6 ("technical feasibility is not actually an issue in this arbitration").
[79] Hearing Transcript (Easton), p. 102, line 18-p. 103, line. 12.

"inappropriate" and that it has no obligation to continue to make it available to HTI on a non-discriminatory basis.[80]

With respect to HTI's request for a meet point interconnection at the CenturyLink EQ remote, CenturyLink EQ's position is directly contrary to its obligation under the Telecommunications to provide interconnection on terms that are non-discriminatory and at least equal in quality to that provided to any other carrier.[81] There is no question that CenturyLink EQ understood HTI's request. In fact, during the negotiations over the interconnection agreement, a CenturyLink EQ engineer prepared a preliminary network design showing interconnection with the POI at Glencoe, as HTI had requested.[82] Yet CenturyLink EQ essentially ignored HTI's request in favor of its offer of a virtual collocation at the Osseo switch.

Whether an interconnection requested by a CLEC is "standard" is not a criteria recognized by the Act as a proper basis for denying the CLEC's request. Indeed, CenturyLink EQ acknowledges that the dispute regarding the location of the POI is not about technical feasibility, but cost,[83] which the FCC has expressly rejected as a basis for denying an interconnection method and POI location requested by a CLEC.[84] Having admitted that HTI's interconnection requests are technically feasible, that should be the end of the inquiry. Instead, CenturyLink EQ forced HTI to go through arbitration in

[80] Hearing Ex. 2 (Easton Rebuttal), p. 31, line 15-p. 32, line 14.
[81] 47 U.S.C. §252(c)(2).
[82] Hearing Ex. 102 (Burns Rebuttal Trade Secret), p. 6, line 21-p. 7, line 4.
[83] Hearing Ex. 2 (Easton Rebuttal), p. 2, line 17-p. 3, line 20.
[84] Local Competition Order ¶1373 ("the determination of feasibility must be conducted without consideration of the cost of providing interconnection at a particular point").

order to secure something that it is clearly entitled to under the Telecommunications Act.

V. Reciprocal Compensation [Issue Nos. 33, 37, 41, 42, and 47]

The Telecommunications Act requires all carriers to establish reciprocal compensation for the transport and termination of telecommunications.[85] "Transport" is defined to mean "the transmission and any necessary tandem switching of Non-Access Telecommunications Traffic…from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party…."[86] "Termination" is defined to mean "the switching of Non-Access Telecommunications Traffic at the terminating carrier's end office switch…."[87]

One type of reciprocal compensation methodology is bill-and-keep, under which each carrier recovers its costs by billing its own customers for transport and termination on its network and keeping the payments received from its own customers, rather than billing the other carrier for transport and termination. Here, the parties have agreed that termination (i.e., the usage-based element of reciprocal compensation) will be on a bill-and-keep basis. The dispute concerns CenturyLink EQ's proposed contract language that would enable it to begin charging HTI for transport – for which CenturyLink EQ currently provides at no charge – from the meet point to the CenturyLink EQ end office switch.

[85] 47 U.S.C. § 251(b)(5); see also Hearing Transcript (Easton) at p. 77, lines 7-11.
[86] 47 C.F.R. § 51.701(c).
[87] 47 C.F.R. § 51.703(d).

A. The FCC Has Held That Bill-and-Keep is the Preferred Reciprocal Compensation Methodology

Intercarrier compensation, including reciprocal compensation, is a subject with which the FCC has repeatedly and contentiously wrestled, both before and since the passage of the Telecommunications Act, as well as one that has sparked a seemingly endless stream of litigation. In 2011, as part of its *Connect America Fund* order ("*CAF Order*")[88] the FCC overhauled the intercarrier compensation system that it described as "outdated," "riddled with efficiencies and opportunities for wasteful arbitrage," and "unfair to customers."[89] To that end, the FCC adopted "bill-and-keep" as "the default methodology for all intercarrier compensation traffic."[90] Pursuant to a bill-and-keep compensation methodology, "a carrier generally looks to its end-users—which are the entities and individuals making the choice to subscribe to that network—rather than looking to other carriers and their customers to pay for the costs of its network."[91]

In support of its action, the FCC noted that "[b]ill-and-keep has significant policy advantages over other proposals in the record":

> A bill-and-keep methodology will ensure that consumers pay only for services that they chose and receive, eliminating the existing opaque implicit subsidy system under which consumers pay to support other carriers' network costs. This subsidy system shields subsidy recipients and their customers from price signals associated with network deployment choices. A bill-and-keep methodology also imposes fewer regulatory burdens and reduces arbitrage and competitive distortions

[88] *In the Matter of Connect America Fund*, WC Docket No. 10-90, *Report and Order and Further Notice of Proposed Rulemaking,* 26 FCC Rcd 17663, 2011 FCC LEXIS 4859 (November 28, 2011)("*CAF Order*").
[89] *CAF Order* at ¶ 9.
[90] *CAF Order* at ¶ 741.
[91] *CAF Order* at ¶ 737.

> inherent in the current system, eliminating carriers' ability to shift network costs to competitors and their customers.[92]

Specifically with respect to the broader objectives of regulatory and administrative simplicity, the FCC found:

> Bill-and-keep is also less burdensome than approaches that would require the Commission and/or state regulators to set a uniform positive intercarrier compensation rate, such as $0.0007. In particular, bill-and-keep reduces the significant regulatory costs and uncertainty associated with choosing such a rate, which would require complicated, time consuming regulatory proceedings, based on factors such as demand elasticities for subscription and usage as well as the nature and extent of competition. As the Commission has recognized with respect to the existing reciprocal compensation rate methodology, "[s]tate pricing proceedings under the TELRIC [Total Element Long Run Incremental Cost] regime have been extremely complicated and often last for two or three years at a time….The drain on resources for the state commissions and interested parties can be tremendous." Indeed, the cost of implementing such a framework potentially could outweigh the resulting intercarrier compensation revenues for many carriers. Moreover, in setting any new intercarrier rate, it would be necessary to rely on information from carriers who would have incentives to maximize their own revenues, rather than ensure socially optimal intercarrier compensation charges. Thus, the costs of choosing a new positive intercarrier compensation rate would be significant, and a reasonable outcome would be highly uncertain.[93]

The FCC recognized the important role played by the states in this implementation process, including the responsibility of state commissions for the negotiations and arbitration of interconnection agreements under the Telecommunications Act.[94]

The FCC adopted a number of rules in order to implement its policy decision to establish bill-and-keep as the default compensation mechanism. Thus, under the FCC's new intercarrier compensation rules, all reciprocal compensation rates (*i.e.*, rates for

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[92] *CAF Order* at ¶ 738.
[93] *CAF Order,* ¶ 743 (footnotes omitted).
[94] *CAF Order* at ¶ 790.

transport and termination) are capped as of the effective date of the *CAF Order*—i.e., December 29, 2011—and all bill-and-keep arrangements in effect as of that date are to remain in effect unless the parties mutually agree to an alternative arrangement:

> Effective December 29, 2011, no telecommunications carrier may increase a Non-Access Reciprocal Compensation for transport or termination above the level in effect on December 29, 2011. All Bill-and-Keep Arrangements in effect on December 29, 2011 shall remain in place unless both parties mutually agree to an alternative arrangement.[95]

For some, but not all, reciprocal compensation elements, the FCC has established a transition plan to gradually reduce the rates for those elements to zero (*i.e.,* bill-and-keep). However, the *CAF Order* also makes very clear that, for those elements that were already set at zero as of December 29, 2011, those rates may not be increased absent agreement by both parties.

CenturyLink EQ has argued that the FCC "specifically excluded dedicated transport from the bill and keep regime" established by the *CAF Order*.[96] This argument is based on a misreading of the *CAF Order*. CenturyLink EQ relies on three specific paragraphs from the *CAF Order*: ¶¶ 739, 821, 1297.[97] These paragraphs do not, as CenturyLink claims, exclude dedicated transport "from the bill and keep regime." What those paragraphs say is that the FCC is deferring taking any action to establish a transition plan for certain reciprocal compensation rate elements, including, among others, dedicated transport. Those paragraphs do not say, however, that a party may, without the agreement of the other party, increase reciprocal compensation rates,

[95] 47 C.F.R. § 51.705(c)(1).
[96] Hearing Ex. 2 (Easton Rebuttal), p. 19, lines 20-22
[97] Hearing Ex. 2 (Easton Rebuttal), p. 19, line 20 - p. 20, line 21; see also Hearing Transcript (Easton), p. 81, line 17 – p. 82, line 1.

including rates for dedicated transport, above the rate that was in effect on December 29, 2011. To the contrary, the rules adopted by the *CAF Order* freeze **all** reciprocal compensation for transport and termination, providing that: "[N]o telecommunications carrier may increase a Non-Access Reciprocal Compensation **for transport or termination** above the level in effect on December 29, 2011."[98] Indeed, it would make little sense for the FCC to identify bill-and-keep as the desired end point for all reciprocal compensation[99] but then to permit a CenturyLink EQ to unilaterally begin charging for a reciprocal compensation elements -- Dedicated and Common Transport -- that it is not charging for under the parties' current agreement, thus moving away from the FCC's desired end point.

B. Reciprocal Compensation Currently in Effect Between the Parties is Bill-and Keep

Under the parties' current agreement, neither party charges the other reciprocal compensation for either transport or termination.[100] In other words, all reciprocal compensation under the parties' current agreement – including both transport and termination – is bill-and-keep.[101] The current bill-and-keep arrangement has been in place for 15 years, since 1999.[102] Although CenturyLink EQ now characterizes that

[98] 47 C.F.R. § 51.705(c)(1) (emphasis added).
[99] *CAF Order*, ¶ 741.
[100] Hearing Ex. 100 (Burns Direct) at TGB-1, pp. 29, 39, 41; see also Hearing Transcript (Easton), p. 78, lines 2-7.
[101] See Hearing Ex. 200 (Doherty Direct) at KAD-1, p. 4 (CenturyLink's Supplemental Responses to HTI's First Set of IRs) ("CenturyLink EQ admits that the current traffic exchange agreement does not contain any provisions for compensation between the companies and therefore would be properly characterized as 'bill and keep' as that term has been defined by HTI.")
[102] Hearing Transcript (Easton), p. 83, line 25 – p. 84, line 2.

arrangement as inappropriate and claims that it tried to change it in 2002,[103] the parties initially entered into a bill-and-keep reciprocal compensation arrangement in 1999 and agreed to continue the same arrangement in 2006. Although CenturyLink EQ certainly could have chosen to arbitrate the issue in 2006, it chose not to do that. As a result, the reciprocal compensation in effect at the time the *CAF Order* took effect was bill-and-keep for both transport and termination.[104]

Consistent with the Act and the FCC's implementing rules, HTI's proposed language provides that each party will bear responsibility for costs on its side of the POI (i.e., the meet point).

> Each Party is financially responsible for transport on its side of each POI. If CLEC chooses to lease the facility from each POI to CLEC's network from CenturyLink EQ and the facility is within CenturyLink EQ's serving territory, CLEC will lease the facility from CenturyLink EQ as defined Section 39.9, Network Interconnection Methods for Direct Interconnection. [105]

Similarly, when HTI interconnects using the facilities of a third party carrier, as would be the case if HTI were to interconnect using the HTC interconnection facilities at the Glencoe remote, HTI's proposed language provides that each party will bear the costs on its side of the POI:

> Third Party Carrier Meet Point. If CLEC chooses to interconnect with CenturyLink using a third party's Meet-Point Arrangement, e.g. a third party's facilities which are interconnected to the CenturyLink network, the POI shall be at the third party Meet Point with CenturyLink, and each Party is responsible for its costs on its side of the POI.[106]

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[103] Hearing Ex. 2 (Easton Rebuttal), p. 32, lines 8-14.
[104] Hearing Transcript (Easton), p. 84, line 6 – p. 85, line 5.
[105] Hearing Ex. 1 (Easton Direct), p. 43, line 24-p. 44, line 2 (Issue No. 33).
[106] Hearing Ex. 1 (Easton Direct), p. 60, lines 13-21 (Issue No. 42).

CenturyLink EQ, however, seeks to begin charging for transmission from the POI (i.e., the meet point) to the CenturyLink EQ end office switch, which is "transport" under the FCC's rules governing reciprocal compensation.[107] Although CenturyLink EQ admits that it does not currently charge for transport on its side of the meet point, it proposes language that would enable it to begin charging for transport under its access tariff.[108] To allow CenturyLink EQ to begin charging for transport that it does not charge for under the parties' current agreement is a rate increase under any reasonable understanding of the term, which the *CAF Order,* by its plain language, does not permit.

CenturyLink EQ's proposal to increase the reciprocal compensation rates it charges HTI is also contrary to the requirement that CenturyLink EQ provide HTI with interconnection at parity with that which it offers any other carrier. The Telecommunications Act requires CenturyLink EQ to provide HTI with interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself or . . . any other party." As noted above, the meet point interconnection that HTI has requested at the Glencoe remote is the same as the interconnection that CenturyLink EQ currently provides to HTI's ILEC affiliate, HTC.[109] CenturyLink EQ does not charge HTC for transport between the Glencoe remote and the Osseo central office, although it insists that it should be permitted to charge HTI.[110] The Telecommunications Act does

[107] 47 C.F.R. § 51.701(c) (defining "transport" as "the transmission and any necessary tandem switching of Non-Access Telecommunications Traffic…from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party….").
[108] See Hearing Ex. 200 (Doherty Direct) at KAD-1, pp. 13-14 (CenturyLink's Supplemental Responses to HTI's First Set of IRs).
[109] Hearing Transcript (Easton), p. 1, line 24 – p. 102, line 25.
[110] Hearing Transcript (Easton), p. 103, lines 4-12.

not permit CenturyLink EQ to provide a competitor – HTI – with interconnection on terms that are less favorable (e.g., more expensive) than CenturyLink EQ provides to another ILEC – HTC – with which it does not compete.

C. The Commission's Decision in the Interconnection Arbitration Between Qwest and Charter is Inapposite

CenturyLink EQ argues that the issue of reciprocal compensation in this case is controlled by the Commission's decision in the interconnection arbitration between Qwest and Charter.[111] The issue in the *Charter Arbitration* was how the parties would compensate each other for direct trunked transport from the POI to the tandem or end office switch serving called party. Charter advocated in favor of a bill-and-keep arrangement for both transport and termination while Qwest sought the ability to charge a non-recurring charge for transport.[112] The ALJ found that, on the particular facts of that case, reciprocal billing for transport of the other party's traffic "is a more fair and reasonable method of recovering these [transport] costs."[113] However, because the *Charter Arbitration* case is distinguishable, both as a matter of a law and as a matter of fact, CenturyLink EQ's reliance on the decision in that case is misplaced.

First, as a matter of law, at the time of the decision in the *Charter Arbitration*, the FCC had not yet issued its *CAF Order* which identified bill-and-keep as the preferred methodology for all reciprocal compensation and froze all reciprocal compensation

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[111] Hearing Exhibit 1 (Easton Direct), at p. 6, lines 12 – 18; *see In the Matter of the Petition of Charter Fiberlink, LLC, for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. §252(b),* MPUC Docket No. P-5535, 421/M-08-952 ("*Charter Arbitration*").
[112] *Charter Arbitration*, Arbitrator's Order, ¶¶ 73, 78.
[113] *Charter Arbitration*, Arbitrator's Order, ¶ 89; see also *Charter Arbitration*, ORDER RESOLVING ARBITRATION ISSUES AND REQURING FILED INTERCONNECTION AGREEMENT, pp. 9-11 (July 10, 2009).

rates as of the effective date of that Order. Nor were the parties to the *Charter Arbitration* already operating under a long-standing agreement providing for bill-and-keep for both transport and termination elements of reciprocal compensation. Since the *Charter Arbitration*, the FCC has determined that the more fair and reasonable method of reciprocal compensation is for carriers to recover their costs of transport and termination from their own customers, rather than from one another, and has taken specific steps to implement that policy.

Second, as noted by the Department's witness, Ms. Doherty, the facts of this case differ from the facts of the *Charter Arbitration* in a number of significant respects.[114] Thus, the network configurations in the two cases were very different. In the *Charter Arbitration*, Charter chose to interconnect at a single POI for purposes of serving customers in multiple local calling areas from a single Charter switch using its existing cable facilities, while here HTI seeks to establish a POI to exchange local traffic, including EAS traffic, in a single local/EAS calling area, interconnecting at Glencoe for the purpose of serving customers in Glencoe. Additionally, in order to exchange traffic with Qwest throughout the LATA, Charter sought direct trunked transport between three Qwest tandems in the LATA, which was a service that Qwest did not provide to itself. Here, HTI seeks transport from the Glencoe remote to the Osseo host, which CenturyLink EQ does provide to itself and also to HTI's ILEC affiliate, HTC. Because there is already ample capacity between Glencoe and Osseo, HTI's request will not require CenturyLink EQ to construct new facilities. Finally, in the *Charter Arbitration*, it

[114] Hearing Exhibit 201 (Doherty Surrebuttal) at pp. 4 – 5.

was the way in which Charter chose to configure its network and to locate its POI far from the switch serving Charter's customers that caused additional transport costs. Here, HTI's proposed POI is close to HTI's switch. The cost that CenturyLink EQ is seeking to charge to HTI is the result of how CenturyLink EQ has decided to configure its network. There is no unfairness that arises from requiring CenturyLink EQ to bear that cost.

VI. CenturyLink EQ's Proposed Bona Fide Request ("BFR") Process [Issue Nos. 43 and 68]

A. CenturyLink EQ's Proposed BFR Process is Unrelated to the Issue of Technical Feasibility, Which is the Only Legitimate Purpose of Such a Process

The purpose of a BFR process relating to a request for interconnection is to provide a mechanism for determining whether a particular interconnection request is technically feasible. Indeed, because technical feasibility is, as a matter of law, the only limitation on the interconnection options available to a CLEC, technical feasibility is the only legitimate purpose for a BFR process. HTI has proposed the following language to resolve Issue No. 43, which would govern the limited circumstances under which a CLEC would be required to use a BFR process in order to establish interconnection:

> The parties may establish, through negotiations, other Technically Feasible methods of Interconnection via the Bona Fide Request (BFR) process. If a substantially similar arrangement has been previously provided to a third party, or is offered by CenturyLink as a product, such arrangement will be made available to CLEC through normal ordering and provisioning processes and not subject to the BFR process.[115]

In connection with Issue No. 68, HTI has proposed the following:

[115] Hearing Ex. 1 (Easton Direct), p. 62, lines 7-15.

> The Bona Fide Request process shall be used when CLEC requests a form of Network Interconnection or other service which CenturyLink does not provide in this agreement, to itself, or to another carrier.[116]

HTI's proposed provision tracks the relevant FCC rule that provides: "a previously successful method of obtaining interconnection or access to unbundled network elements at a particular premises or point of any incumbent LEC's network is substantial evidence that such method is technically feasible in the case of substantially similar network premises or points."[117]

CenturyLink EQ's proposed language provides:

> The parties may establish, through negotiations, other Technically Feasible methods of interconnection via the Bona Fide Request (BFR) process unless a particular arrangement has been previously provided to a third party, or is offered by CenturyLink as a product.[118]

CenturyLink EQ would propose to charge a $1,585 "processing fee" for a CLEC required to avail itself of the dubious privilege of CenturyLink EQ's BFR process.[119]

The language proposed by the parties is similar, except for CenturyLink EQ's substitution of the phrase "particular arrangement" for the phrase "substantially similar arrangement." The practical impact of CenturyLink EQ's substitution is to require that HTI resort to the BFR process under circumstances the scope of which even CenturyLink EQ is unable to define, as the following testimony shows. Initially, the CenturyLink EQ witness asserted that "particular arrangement" was intended to mean the same thing as "substantially similar":

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[116] Hearing Ex. 1 (Easton Direct), p. 85, lines 9-15.
[117] 47 C.F.R. § 51.321(c).
[118] Hearing Ex. 1 (Easton Direct), p. 62, lines 1-5.
[119] CenturyLink EQ Answer to Petition for Arbitration, Ex. B at p. 81.

Q. But if a particular arrangement has been provided by CenturyLink to another carrier, the BFR process is not required?

A. Correct, if it's substantially similar.

Q. And that's what I was going to ask you about, the phrase particular arrangement, what does that mean? Is it that intended to mean the same thing as substantially similar?

A. Yes.[120]

Only a few minutes later, however, the CenturyLink EQ witness retracted this assertion, stating that "particular arrangement" was "a little more specific than substantially similar":

A. If someone came to me and said we want to do exactly the same arrangement at the same place you agreed to with such and such a carrier, I wouldn't need to go through the BFR process.

Q. But I understood you to tell me that [the BFR process] would apply not just to exactly the same, but any arrangement that's substantially similar.

A. Well our language says particular arrangement, which is a little more specific, I would argue.

Q. Well, I thought you told me they were the same thing?

A. I may have. I would argue that particular arrangement is a little more specific than substantially similar.

Q. The FCC rules use the phrase substantially similar, correct?

A. I believe I've seen that, yes.

Q. They don't use the words particular arrangement, correct?

A. No, I've seen substantially similar.

Q. So how is HTI to know whether what they're asking for is the same as a particular arrangement that CenturyLink has offered to someone in the past?

[120] Hearing Transcript (Easton) at p. 91, line 20-p. 92, line 3.

A. It's less than crystal clear, I would agree.[121]

The BFR process proposed by CenturyLink EQ is an obstacle to HTI's ability to obtain interconnection in a manner and at a location that best meets its needs. The process is expensive, resource intensive, and involves numerous steps and opportunities for delay. Obviously, the CenturyLink EQ witness's admission that the CenturyLink EQ language is "less than crystal clear" greatly understates the flaw in that language. HTI would essentially be at CenturyLink EQ's mercy with respect to whether the BFR process does or does not apply. CenturyLink EQ refuses to disclose information regarding other BFRs[122] and locations where CenturyLink EQ has interconnected with other carriers.[123] As CenturyLink EQ describes how the process would work, if HTI requests interconnection that CenturyLink EQ regards as "nonstandard," CenturyLink EQ would make a case-by-case determination of whether what HTI is requesting a "particular arrangement" that CenturyLink EQ has provided in the past.[124] CenturyLink EQ suggests that there would be something less than "the full blown BFR process" – a sort of "BFR light," apparently – that would be used to determine whether a request is subject to the BFR process,[125] although this concept is nowhere to be found in the language that CenturyLink EQ has proposed. Given that CenturyLink EQ is, itself, unable to explain what is intended by the phrase "particular arrangement,"

[121] Hearing Transcript (Easton), p. 95, line 16-p. 96, line 14.
[122] See Issue No. 76.
[123] See Issue No. 24.
[124] Hearing Transcript (Easton), p. 98, line 4-page 99, line 9.
[125] Hearing Transcript (Easton), p. 94, line 21-p. 95, line 19.

including that language in the contract is an obvious breeding ground for confusion and future disputes.

The language that CenturyLink EQ has proposed is, in fact, contrary to the FCC's rules, because, as CenturyLink EQ itself has acknowledged, that language would require HTI to go through the BFR process as a prerequisite to obtaining an interconnection arrangement that is substantially similar to an arrangement that CenturyLink EQ is already providing to another carrier. Further, CenturyLink EQ would deny HTI the information it needs to determine whether the BFR process is being applied in a discriminatory manner.

Moreover, contrary to the CenturyLink EQ witness's testimony, CenturyLink EQ does, in fact, seek to require HTI to go through the BFR process even for an interconnection arrangement that is exactly the same as that provided by CenturyLink to another carrier. Thus, CenturyLink EQ admits that the interconnection arrangement that HTI has requested at the Glencoe remote switch is identical to the interconnection that has been in place between CenturyLink EQ (and its predecessor, Embarq) and HTI's ILEC affiliate, HTC, for many years.[126] Nonetheless, CenturyLink EQ insists not only that the interconnection requested by HTI is "nonstandard" and would therefore, be subject to the BFR, but that the arrangement that HTI has requested "isn't something we would agree to do today."[127]

[126] Hearing Transcript (Easton), p. 102, line 2-p. 103, line 17.
[127] Hearing Transcript (Easton), p. 102, line 18-p. 103, line. 12.

B. CenturyLink EQ's Proposed BFR Process Will Only Serve to Impose Unnecessary Delay and Inappropriate Costs on HTI [Issue No. 11]

Under the FCC's rules, each party is to bear the costs on its side of the POI. This concept is incorporated into the parties' current interconnection agreement, as discussed above, and is reflected, as well, in the definition of "Point of Interconnection" that HTI has proposed in this arbitration, which provides that the Point of Interconnection:

> Is the physical point that establishes the technical interface, the test point, and the operational responsibility hand-off between CLEC and CenturyLink for local interconnection of their networks. Each POI also establishes the demarcation point to delineate each Party's financial obligations for facility costs.[128]

CenturyLink EQ proposes to define the Point of Interconnection as:

> The physical point that establishes the technical interface, the test point, and the operational responsibility hand-off between CLEC and CenturyLink for local interconnection of their networks. For POIs not established through the Bona Fide Request ("BFR") process in Section 59, each POI also establishes the demarcation point to delineate each Party's financial obligations for facility costs.[129]

As CenturyLink EQ's proposed definition of Point of Interconnection clearly shows, CenturyLink EQ's BFR process has nothing to do with determining the technical feasibility of an interconnection request and everything to do with its desire to shift costs onto the CLEC. Thus, CenturyLink EQ agrees that each party will bear the costs on its side of the POI, **except** in those (undefined) circumstances where its BFR process would apply. To that end, CenturyLink EQ has included, as part of the definition of

[128] Hearing Ex. 1 (Easton Direct), p. 15, line 24- p. 16, line 4.
[129] Hearing Ex. 1 (Easton Direct), p. 15, lines 11-15.

Point of Interconnection, the following qualification: "For POIs not established through the Bona Fide Request ("BFR") process in Section 59, each POI also establishes the demarcation point to delineate each Party's financial obligations for facility costs."[130] In attempting to provide a rationale for this qualification, CenturyLink EQ asserts that this language "allows for the possibility that alternative financial arrangements may apply when a non-standard interconnection arrangement is requested."[131]

As a threshold matter, CenturyLink EQ provides no legal support for diverging from the general rule, which requires that each carrier will be responsible for costs on its side of the POI.[132] Indeed, as discussed above, the FCC's *CAF Order* would preclude CenturyLink EQ from imposing reciprocal compensation charges for transport that are not provided for under the parties' current agreement.

Further, as a matter of fact, CenturyLink EQ has made no effort to support its claim of additional costs arising from an allegedly "non-standard" interconnection arrangement. With specific respect to HTI's request for meet point interconnection at CenturyLink EQ's Glencoe remote, it is undisputed that there is ample capacity available to transport traffic between the Glencoe remote and the Osseo host.[133] HTI's interconnection request will not require CenturyLink EQ to build new facilities and will not impose any incremental costs.[134] In the case of interconnection at the Qwest St. Cloud switch, CenturyLink EQ has been interconnected with HTI at that location,

[130] Hearing Ex. 1 (Easton Direct), p. 15, lines 14-22.
[131] Hearing Ex. 1 (Easton Direct), p. 16, lines 11-15.
[132] *Local Competition Order* ¶553; see also 47 C.F.R. §51.5 (definition of meet point).
[133] Hearing Transcript (Easton), p. 61, line 24-p. 62, line 7; Hearing Ex. 103.
[134] Hearing Ex. 102 (Burns Trade Secret Rebuttal), p. 11, lines 8-19.

literally for years, without charging for transport on CenturyLink EQ's side of the POI. Continuing to use an existing interconnection arrangement obviously imposes no additional costs on CenturyLink EQ.

CenturyLink EQ attempts to use its BFR process to foist onto HTI, at significant expense to HTI, a virtual collocation that HTI does not need and does not want.[135] Under a virtual collocation arrangement, the CLEC provides the necessary equipment and CenturyLink EQ installs, operates, and maintains the equipment.[136] Here, however, HTI would use the facilities of a third party, its affiliated ILEC, for purposes of interconnection and has no need of any additional equipment.[137] Yet, depending on the applicability of specific virtual collocation rate elements, CenturyLink EQ may charge HTI in excess of $15,000 to establish virtual collocation, if the CenturyLink EQ language were to be adopted.[138] Furthermore, by using the BFR to establish a point of interconnection, not through a meet point at the Glencoe remote, as HTI requested, but at the Osseo host, CenturyLink EQ would seek the opportunity to begin charging a monthly charge for transport from Glencoe to Osseo. CenturyLink EQ has failed to carry its burden to show that any of these charges are appropriate.

VII. Miscellaneous Issues

A. Definition of "End User" [Issue No. 1]

HTI has proposed the following definition of the term "End User":

[135] Hearing Exhibit 100 (Burns Direct), p. 55, line 1-p.56, line 14.
[136] Hearing Ex. 100 (Burns Direct), p. 55, lines 1-5; Hearing Transcript (Gordon), p. 127, lines 18-24.
[137] Hearing Ex. 100 (Burns Direct), p. 55, line 10-p. 56, line 3; Hearing Ex. 101 (Burns Public Rebuttal), p. 12, lines 1-15.
[138] Response to Petition, Ex. C.

> Any third party retail customer that subscribes to a Telecommunications Service. As used herein, End User does not include any Interexchange Carrier (IXC), Competitive Access Provider (CAP) or Commercial Mobile Radio Service (CMRS) provider (also known as a Wireless Carrier) or their retail customers.[139]
>
> CenturyLink EQ has proposed that "End User" be defined to mean:
>
> Any third party retail customer that subscribes to, and does not resell to others, a service provided by (i) a Party to this Agreement; or (ii) a wholesale customer of a Party, where the service provided by such Party's wholesale customer is derived from a Telecommunications Service provided to such Party by the other Party, Unless otherwise specified, a reference to a Party's End Users shall be deemed to refer to either (i) or (ii) above. As used herein, End User does not include any of the parties to this Agreement with respect to any item or service obtained under this Agreement, nor any Interexchange Carrier (IXC), Competitive Access Provider (CAP), or Commercial Mobile Radio Service (CMRS) provider (also known as a Wireless Carrier) or their retail customers.[140]

CenturyLink EQ's definition only adds complexity, it does not increase clarity.

In support of its definition over that proposed by HTI, CenturyLink EQ contends that HTI's definition "fails to include the requirement that the end user cannot be a reseller nor can it be the Party itself."[141] In fact, HTI's proposed definition expressly requires that an "End User" be a "third party retail customer," which does exclude both resellers and the parties themselves, as the CenturyLink EQ witness acknowledged at the hearing.[142] Additionally, CenturyLink EQ argues that its definition "appropriately describes that type of wholesale customers that would meet the definition of End User

[139] Hearing Ex. 1 (Easton Direct), p. 8. lines 11-22. CenturyLink EQ's stated refusal to provide HTI with interconnection that it provides to an ILEC is also a blatant violation of CenturyLink EQ's parity and nondiscrimination obligations. See, supra, pp. 34-35.
[140] Hearing Ex. 1 (Easton Direct) p. 7, line 20- p. 8, line 8.
[141] Hearing Ex. 1 (Easton Direct), p. 8 lines 25-26.
[142] Hearing Transcript (Easton), p. 52, lines 14-18.

as it is used in this agreement."[143] On cross examination regarding this argument, however, CenturyLink EQ's witness could not identify any wholesale customers that were intended to be included under CenturyLink EQ's definition.[144]

B. Definition of "Transit Traffic" [Issue No. 14]

Issue No. 14 concerns the definition of "Transit Traffic." To resolve that issue, HTI proposes the following:

> "Transit Traffic" means traffic exchanged between a CLEC End User and the customer of a third party carrier which traverses the CenturyLink network using CenturyLink Transit Service. For the purposes of this Agreement Jointly Provided Access Service is not considered Transit Traffic.[145]

CenturyLink EQ's proposed definition is:

> "Transit Traffic" means Non-Access Telecommunications Traffic, IntraLATA LEC Toll Traffic, and Toll VoIP-PSTN Traffic that is routed by CLEC through CenturyLink's network for delivery to a third party Telecommunications Carrier's network or Non-Access Telecommunications Traffic, IntraLATA Toll Traffic, Toll VoIP- PSTN Traffic, and CMRS traffic that is routed by a third party carrier through CenturyLink's network for delivery to CLEC's network.[146]

HTI objects to the language proposed by CenturyLink EQ on the ground that it is unnecessarily complicated. CenturyLink EQ argues that this details is necessary, particularly in light of the parties' disagreement regarding Toll VoIP-PSTN Traffic.[147] As the transit provider, however, CenturyLink EQ will generally not be in a position to be able to distinguish among various types of traffic (for example, IntraLATA Toll

[143] Hearing Ex. 1 (Easton Direct), p. 8, lines 28-30.
[144] Hearing Transcript (Easton), p. 53, lines 21-24.
[145] Hearing Ex. 1 (Easton Direct), p. 19, lines 9-14.
[146] Hearing Ex. 1 (Easton Direct), p. 18, line 20-p. 19, line 7.
[147] Hearing Ex. 1 (Easton Direct), p. 19, line 21 –p. 20, line 4.

Traffic from Toll VoIP- PSTN Traffic), therefore the additional detail of CenturyLink EQ's language adds nothing.

C. Routing of intraLATA Toll, Toll VoIP-PSTN traffic [Issue 67.1; see also Issue No. 18 (no exchange of toll traffic; Issue No. 36 (exchange of Switched Access Traffic); Issue No. 51 (indirect routing)]

Issue No. 67.1 concerns the requirement that a party routing toll traffic to the other party provide billing records necessary to bill the originating carrier. Neither party terminates any toll traffic to the other party under their current interconnection agreement.[148] It was HTI's understanding that CenturyLink EQ did not intend to send toll traffic, including VOIP-PSTN toll traffic, to HTI under their new agreement.[149] Based upon that understanding, HTI proposed contract language providing that the parties would not route toll traffic to one another, either directly or indirectly.[150] Subsequently, it became clear that CenturyLink EQ does intend to route VOIP-PSTN toll traffic to HTI both directly and indirectly.[151] Although HTI does not object to the concept of VOIP-PSTN toll traffic being routed under the parties' local interconnection agreement, it wants to assure that it is able to bill the originating carrier for that traffic, whether that carrier is CenturyLink EQ or another carrier, when appropriate.[152] It is not technically feasible for HT to discern whether CenturyLink EQ-originated IntraLATA

[148] Hearing Ex. 101 (Burns Rebuttal Public), p. 17, line 1.
[149] Hearing Ex. 101 (Burns Rebuttal Public), p. 16, lines 2-6.
[150] See Issue No. 18.
[151] Hearing Ex. 101 (Burns Rebuttal Public), p. 16, lines 5-8.
[152] Hearing Ex. 101 (Burns Rebuttal Public), p. 16, line 8-p. 17, line 7.

VoIP P STN traffic that is terminated to the HTI network commingled with other carrier traffic. Accordingly, HTI proposed the following provision:

> Should either Party choose to begin routing its own IntraLATA Toll Traffic or Toll VoIP PSTN Traffic directly or indirectly to the other Party, the Party making such election shall first provide ninety (90) days written notice to the other Party for the express purposes of amending this section to address the provision of usage records.

Although CenturyLink EQ has agreed that it will provide HTI with "information on Transit Traffic,"[153] it has not provided critical details, such as data content, format, and media, regarding the information to be provided.[154]

CenturyLink EQ argues that Sections 43.1.2.b and 55.2.2 of the interconnection agreement contain agreed upon language regarding how Toll VoIP-PSTN Traffic is to be billed.[155] Neither of these provisions, however, require the provision of usage records. Section 43.1.2.b relates to determining the jurisdiction (i.e., local or non-local) of a VoIP call. Section 55. 2.2 relates to financial responsibility for transit traffic sent by HTI to CenturyLink EQ for delivery to another carrier. These provisions do not concern the issue that HTI's language, quoted above, is intended to address.

D. Requirements for establishment of direct interconnection [Issue No. 50]

The parties have agreed that HTI will establish direct interconnection with CenturyLink EQ when the total volume of indirectly exchanged traffic between the parties meets certain thresholds. HTI has also agreed that it will issue an order to establish direct connection within thirty days of being informed that the threshold has

[153] See Issue No. 66.
[154] Hearing Ex. 101 (Burns Rebuttal Public), p. 16, lines 15-21.
[155] Hearing Ex. 2 (Easton Rebuttal). p. 43, lines 8-12.

been met.[156] The parties' dispute concerns the following language proposed by CenturyLink EQ:

> CTL will notify HTI that traffic triggers in Sections 42.3 or 42.4 triggers have been met or exceeded. HTI will agree to issue ASRs to establish interconnection within thirty (30) days of receiving such notice. CLEC will reimburse CenturyLink for any transit charges billed by an intermediary carrier after the thirty (30) Day period for traffic originated by CenturyLink. CLEC will also reimburse CenturyLink for any transport costs that would be CLEC's responsibility under the Direct Interconnection terms.[157]

HTI objects to this language and urges that it be omitted from the parties' agreement.

The effect of the CenturyLink EQ's proposal is to impose upon HTI financial consequences for circumstances that are beyond its control. Although HTI can issue an order to establish direct interconnection with CenturyLink EQ, it cannot control how long it will take to establish interconnection. As this case has shown, negotiations regarding the establishment of a point of interconnection can be highly contentious and very drawn out. Given the history, it seems very unlikely that interconnection can be established in fewer than thirty days.

E. Financial responsibility for indirect interconnection [Issue No. 46]

HTI has proposed the following language regarding financial responsibility for indirect interconnection:

> Indirect Network Connection shall be accomplished by CenturyLink and CLEC each being responsible for delivering Local Traffic to and receiving Local Traffic at the ILEC Tandem serving the CenturyLink End Office. Each Party acknowledges that it is the originating Party's responsibility to entire into transiting arrangements with the third party providing the transit services. Each Party is responsible for the facilities to the ILEC

[156] Hearing Ex. 1 (Easton Direct), p. 69, lines 21-28.
[157] Hearing Ex. 1 (Easton Direct), p. 69, lines 6-20.

> Tandem, and for the appropriate sizing, operation, and maintenance of the transport facility to the Tandem. A Party choosing to route its Non-Access Telecommunications Traffic to a third party transit service provider for termination to the other Party is solely responsible for all associated third party transit charges.[158]
>
> CenturyLink EQ proposes the following:
>
> A Party choosing Indirect Network Connection to route its Non-Access Telecommunications Traffic, Toll VoIP-PSTN Traffic and IntraLATA LEC Toll Traffic, to a third party ILEC tandem provider for termination to the other Party is solely responsible for all associated transit charges, until the cost exceeds the amount in Section 42.4. Should either Party wish to exchange traffic under this Agreement through a third party provider other than a third party ILEC tandem provider currently being used by the Parties for the exchange of traffic, that Party will request an amendment to this Agreement.[159]

CenturyLink EQ argues that its language should be adopted because HTI's proposed language does not make it clear that the originating party is responsible for any transit charges and because CenturyLink EQ's language "limits this obligation based on a cost limit as outlined by Section 42.4."[160] Testimony at the hearing demonstrated these objections to be meritless. At the hearing, the CenturyLink EQ witness admitted that HTI's proposed language does, in fact, clearly specify responsibility for third party transit charges.[161] Further, the CenturyLink EQ witness testified that the provision cross-referenced by CenturyLink EQ's proposal, Section 42.4, was omitted by agreement of the parties.[162]

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[158] Hearing Ex. 1 (Easton Direct), p. 65, lines 5-17,
[159] Hearing Ex. 1 (Easton Direct) p. 64, line 20- p. 65, line 2.
[160] Hearing Ex. 1 (Easton Direct) p. 65, lines 20-22.
[161] Hearing Transcript (Easton), p. 104, lines 6-17.
[162] Hearing Transcript (Easton), p. 105, lines 5-19.

F. Establishment of bi-directional, two-way trunk groups/Conversion of one way trunk groups [Issue Nos. 54 and 57]

Issue Nos. 54 and 57 concern language regarding the use of bi-directional two-way trunk groups rather than one-way trunk groups. The parties have agreed to include the following language proposed by HTI requiring to the use of bi-directional two-way trunk groups:

> Non-Access Telecommunications Traffic. The existing Local Interconnection Trunk Group(s) in place between the Parties are bi-directional two-way groups for the exchange of Non Access Telecommunications Traffic. Should additional groups be required for this traffic, the Parties agree to establish bi-directional two-way trunk groups.

Because HTI already uses exclusively bi-directional two-way trunk groups, it has proposed striking language proposed by CenturyLink EQ relating to one-way trunk groups that does not apply to it.

CenturyLink EQ does not dispute that the language that HTI proposes striking does not apply to HTI, but urges that the language be included anyway because this language is CenturyLink EQ's standard language, which may be necessary for other carriers who may choose to opt into the HTI interconnection agreement.[163] CenturyLink EQ's desire to use its standard language is not a sufficient justification for including language that clearly does not apply to HTI and will only serve as a source of potential confusion in the future.

An interconnection agreement is intended to be tailored to the specific needs of a particular CLEC. In the context of the requirement for in-region interLATA entry, the

[163] Hearing Ex. 2 (Easton Rebuttal), p. 53, lines 1-15; Hearing Transcript (Easton), p. 109, lines 10-16.

Act permits the incumbent to satisfy those requirements, in part, by making available a commission-approved "statement of the terms and conditions that the company generally offers to provide such access and interconnection" (commonly referred to as a "Statement of Generally Available Terms" or "SGAT").[164] Had Congress intended that the interconnection agreement be a "one size fits all" document, it would have provided the SGAT as the sole means by which terms and conditions of interconnection would be made available by ILEC. That it did not do so shows that Congress recognized the need for individual CLECs to be able to enter into agreements that are specific to their particular competitive needs.

In its *Second Report and Order*,[165] the FCC adopted its "all-or-nothing" rule, which requires a CLEC to opt into an existing interconnection agreement in its entirety, rather than adopting only certain provisions of an agreement. In reversing its prior "pick-and-choose" rule, the FCC said, "We find that this new rule will promote more give-and-take in negotiations, which will produce creative agreements that are better tailored to meet carriers' individual needs."[166] As a result, a carrier that, unlike HTI, currently utilizes one-way trunking could not opt in to the HTI agreement except for those provisions relating to two-way trunking. Such a carrier would be required to opt into the entire agreement or none of it. This rule adequately addresses CenturyLink EQ's professed concerns about other CLECs that might opt in to the HTI interconnection agreement.

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[164] 47 U.S.C. § 271(c)(1)(B).
[165] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Carriers*, CC Docket No. 01-338, Second Report and Order (July 31, 2004) ("*Second Report and Order*").
[166] *Second Report and Order* (July 31, 2004).

G. Trunk forecasting [Issue Nos. 59-61]

These issues all concern provisions relating to trunk forecasts that HTI is required to provide to CenturyLink EQ. The parties have agreed on language that requires HTI to provide CenturyLink EQ with annual forecasts for traffic utilization over trunk groups.[167] The parties' dispute centers on the following language proposed by HTI:

> The calculation of CLEC over-forecasted capacity will be based on the number of DS1 equivalents expressed as a percentage to the total capacity of the facility cross-section. Example: A CLEC over-forecast of 10 DS1s in a facility segment served by an OC3 (984 DS1s) equates to an over-forecast of 11.9%.[168]

CenturyLink EQ proposes the following:

> The calculation of the twenty percent (20%) over-forecast will be based on the number of DS1 equivalents for the total traffic volume to CenturyLink.[169]

If HTI's language is adopted to resolve Issue No. 60, HTI does not object to the language proposed by CenturyLink EQ for Issue Nos. 59 and 61, which concern CenturyLink EQ's ability to recover its costs in the event that HTI over-forecasts its needs and CenturyLink EQ acts on the over-forecast to its detriment. HTI's proposal provides additional clarity regarding how the over-forecasting will be determined. HTI does not object to bearing the financial consequences of over-forecasting, provided that there is some certainty regarding the circumstances under which those financial

[167] Hearing Ex. 1 (Easton Direct), Ex. WRE-2 at pp. 52-53.
[168] Hearing Ex. 1 (Easton Direct), p. 77, lines 6-16 (Issue No. 60).
[169] Hearing Ex. 1 (Easton Direct), p. 76, lines 7-12.

consequences would apply. HTI's proposal is reasonable and will help to avoid future disputes.

H. Blocked traffic [Issue No. 64]

Traffic that originates on the network of one carrier, travels across (*i.e.*, "transits") the network of a second carrier, and delivered by the second carrier to a third carrier is often referred to as "transit traffic" and the second carrier is often referred to as the "transit provider." Issue No. 64 concerns CenturyLink's responsibilities when transit traffic is blocked by a third party. HTI proposes the following language:

> In the event Transit Traffic routed by one Party to the other Party is blocked by a third party, the Party to whom the Transit Traffic was routed CenturyLink agrees to accept a trouble ticket on the matter and shall not unreasonably withhold providing commercially reasonable assistance.[170]

CenturyLink EQ proposes:

> In the event Transit Traffic routed by one Party to the other Party is blocked by a third party, the Party to whom the Transit Traffic was routed shall not unreasonably withhold providing commercially reasonable assistance. [171]

The key difference between the parties' proposals is that, in the event that traffic is blocked by a third party, HTI's language would require CenturyLink EQ to accept a trouble ticket while CenturyLink EQ wishes to limit its responsibility to only providing commercially reasonable efforts. Trouble tickets are processed and cleared pursuant to known procedures. There are no similar standards for what constitutes "commercially reasonable assistance." By eliminating language requiring that it accept a trouble ticket,

[170] Hearing Ex. 1 (Easton Direct), p. 79, lines 20-25.
[171] Hearing Ex. 1 (Easton Direct), p. 79, lines 13-19.

CenturyLink EQ is effectively eliminating the ability to track CenturyLink's performance.

I. Financial responsibility for transit traffic [Issue Nos. 65 and 66]

The parties have agreed that, for transit traffic, CenturyLink will not have any responsibility for termination charges which may be assessed by the third party carrier and that it will be the responsibility of each party to enter into arrangements with third party terminating carriers for the exchange of transit traffic.[172] The dispute regarding Issue No. 65 concerns the following language requested by CenturyLink EQ:

> CLEC shall be responsible for payment of Transit Service charges on Transit Traffic routed to CenturyLink by CLEC and for any charges assessed by the terminating carrier. CLEC agrees to enter into traffic exchange agreements with third-parties prior to routing any Transit Traffic to CenturyLink for delivery to such third parties, and CLEC will indemnify, defend and hold harmless CenturyLink against any and all charges levied by such third-party terminating carrier with respect to Transit Traffic, including but not limited to, termination charges related to such traffic and attorneys' fees and expenses.[173]

HTI objects to this proposal and asks that the provision be omitted in its entirety. The first part of the proposal, which states that CenturyLink EQ is not responsible for third party termination charges for transited traffic, is already reflected in agreed upon language and is, therefore, redundant and unnecessary. The greater concern, however, is the language that requires HTI to defend, indemnify, and hold CenturyLink EQ harmless for such charges, including attorneys' fees and expenses. CenturyLink EQ's language creates the potential for essentially unlimited financial exposure. HTI does not

[172] Hearing Ex. 1 (Easton Direct), Ex. WRE-2, p. 62; see also Hearing Transcript (Easton), p. 109, line 20-p. 110, line 21.
[173] Hearing Ex. 1 (Easton Direct), p. 81, lines 5-18.

control what termination charges a third party carrier may bill CenturyLink EQ nor does it have control over what CenturyLink EQ elects to pay. CenturyLink EQ's proposed language would establish an unlimited obligation to indemnify CenturyLink EQ and would prevent HTI from exercising an important right to dispute such charges when appropriate. Certainly if CenturyLink EQ were entitled to an unlimited right to indemnification, it would have little incentive to dispute such charges. To the extent that CenturyLink EQ is required to pay charges that it believes it should not have to pay under the interconnection agreement, it will be able to resort to dispute resolution.

In instances where HTI is the terminating carrier and CenturyLink EQ is the transit carrier, the parties have agreed that CenturyLink EQ will provide records necessary for HTI to bill the originating carrier and HTI will pay CenturyLink EQ for such records. The dispute relating to Issue No. 66 concerns HTI's proposed language that would require CenturyLink EQ to file with the Commission its rate for providing usage records. The Commission has responsibility to assure that rates for telecommunications services are fair and reasonable.[174] The requirement that CenturyLink EQ file its rates for usage records will assist the Commission in carrying out that regulatory responsibility and should be adopted.

J. Transit traffic thresholds [Issue No. 67]

The parties have each proposed language that would require HTI to establish a direct connection when the amount of Transit Traffic meets certain volume thresholds. At the time of the evidentiary hearing in this matter, CenturyLink EQ had proposed

[174] Minn. Stat. §237.06.

language providing for a penalty if HTI fails to establish a direct connection within 60 days of being notified of the need to do so.[175] HTI proposed striking the penalty language and, instead, permit CenturyLink to seek dispute resolution.[176]

Apparently recognizing the unenforceability of this penalty provision,[177] CenturyLink EQ provided a revised proposal on September 26, 2014, which eliminated the penalty and recognized the Commission's authority over any attempt to discontinue service. Although this revised proposal represents a step in the right direction, it still would impose consequences on HTI for circumstances beyond its control. In particular, while HTI can seek to establish interconnection with the third party carrier, it does not control the timing. In some instances, 60 days may not be a sufficient amount of time to establish interconnection. Under the Telecommunications Act, the negotiations window for reaching a voluntary interconnection agreement is 160 days. If the parties are not able to resolve all issues through negotiation, the time needed to establish interconnection will obviously be much longer. In the event this issue arises, the appropriate remedy should be to seek dispute resolution, as HTI has proposed, rather than to act unilaterally.

K. BFR process requirements [Issue Nos. 69, 70, 73, 74, 75, 76]

Issue Nos. 69, 70, 73, 74, and 75 all relate to the timelines that will apply in the event it becomes necessary to resort to the BFR process. The parties' disputes with

[175] Hearing Ex. 1 (Easton Direct), p. 83, line 15-p. 84, line 10.
[176] Hearing Ex. 1 (Easton Direct), p. 84, lines 12-31.
[177] See Hearing Transcript (Easton), p. 112, line 17-p. 113, line 4; *Gorco Const. Co. v. Stein,* 256 Minn. 476, 99 N.W.2d 69 (Minn., 1959))contract provision that seeks to penalize a breaching party, rather than compensate the non-breaching party, is unreasonable and unenforceable).

respect to these issues concern each parties' desire to either afford itself more time, or the other party less time, to take specific actions. In determining the timelines that are appropriate, it is not enough for CenturyLink EQ to argue that the timelines that it has proposed are the same as contained in other interconnection agreements. As discussed above, interconnection agreements are to be tailored to the specific needs of the interconnecting carriers; the Telecommunications Act does not anticipate that one size will fit all. The timelines that HTI has proposed appropriately reflect that HTI is a small company, without an in-house legal or regulatory department, that will necessarily rely heavily on outside consultants for these kinds of issues.

To resolve Issue No. 76, HTI has proposed the following:

> CenturyLink will provide notice to CLECs of all BFRs which have been deployed or denied, provided, however, that identifying information such as the name of the requesting CLEC and the location of the request shall be removed. CenturyLink shall make available a topical list of the BFRs that it has received from CLECs. The description of each item on that list shall be sufficient to allow CLEC to understand the general nature of the product, service, or combination thereof that has been requested and a summary of the disposition of the request as soon as it is made. CenturyLink shall also be required upon the request of CLEC to provide sufficient details about the terms and conditions of any granted requests to allow CLEC to take the same offering under substantially identical circumstances. CenturyLink shall not be required to provide information about the request initially made by CLEC whose BFR was granted, but must make available the same kinds of information about what it offered in response to the BFR as it does for other products or services available under this Agreement. CLEC shall be entitled to the same offering terms and conditions made under any granted BFR, provided that CenturyLink may require the use of ICB pricing where it makes a demonstration to CLEC of the need therefore.[178]

[178] Hearing Ex. 1 (Easton Direct), p. 93, line 8-p. 94, line 3.

CenturyLink EQ opposes this proposal on the ground that such disclosure is not legally required and would impose an undue burden.[179]

HTI has proposed this provision as a means to assure that CenturyLink EQ is complying with its parity and non-discrimination obligations under the Telecommunications Act. The information that this provision would require to be disclosed is necessary for HTI to determine whether another company has made a similar request and how CenturyLink EQ addressed that request.

CenturyLink EQ offers no facts in support of its claim of undue burden. In fact, according to CenturyLink EQ, its BFR process is used only rarely, so complying with the disclosure requirement should not be burdensome.

IX. Conclusion

For the foregoing reasons, HTI respectfully requests that the Commission adopt the language proposed by HTI in order to resolve each of the remaining disputed issues. HTI's proposed contract provisions are fully consistent with the requirements of the Telecommunications Act and its implementing regulations and, where relevant, Minnesota law.

[179] Hearing Ex. 1 (Easton Direct), p. 84, lines 5-14.

Dated: October 3, 2014

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