Minnesota Public Utilities Commission

Staff Briefing Paper

Meeting Date: April 15 & 17, 2015 ..... ** Agenda Item # _____

Company: Hutchinson Telecommunications, Inc. and CenturyLink EQ

Docket No. P-421, 5561, 430/IC-14-189
In the Matter of the Petition of Hutchinson Telecommunications for Arbitration of an Interconnection Agreement with CenturyLink EQ Pursuant to 47 U.S.C. § 252(b)

Issues: I. How shall the Commission resolve the arbitrated issues?

II. When should the parties submit a final agreement for approval?

Staff: Kevin O'Grady.....651-201-2218

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Main Issues

I. How shall the Commission resolve the arbitrated issues?

II. When should the parties submit a final agreement for approval?

Relevant Documents

HTI Petition for Arbitration	March 3, 2014
Direct Testimony: Burns for HTI	May 22, 2014
Direct Testimony: Easton for CenturyLink EQ	May 22, 2014
Direct Testimony: Doherty for DOC	June 27, 2014
Rebuttal: Burns for HTI	July 25, 2014
Rebuttal: Easton for CenturyLink EQ	July 25, 2014
Post-Hearing Brief: HTI	October 3, 2014
Post-Hearing Brief: CenturyLink EQ	October 3, 2014
Updated Joint Issues Matrix	**October 9, 2014**
Post-Hearing Brief: DOC	October 30, 2014
Reply Brief: HTI	November 12, 2014
Reply Brief: CenturyLink EQ	November 12, 2014
Reply Brief: DOC	November 12, 2014
Supplemental Testimony: Doherty for DOC	November 24, 2014
Supplemental Testimony: Burns for HTI	November 24, 2014
Supplemental Testimony: Easton for CenturyLink EQ	November 24, 2014
ALJ Report	**January 16, 2015**
Exceptions: CenturyLink EQ	January 26, 2015

Case History

On December 5, 2006, the Commission approved an interconnection agreement (ICA) negotiated by Hutchinson Telecommunications, Inc. (HTI) and Embarq Minnesota, Inc. (Docket 06-1548). The parties to that ICA continue to operate under it today.

On March 3, 2014, HTI filed a petition seeking arbitration of a number of unresolved issues regarding a successor ICA with Embarq Minnesota dba CenturyLink EQ.

On March 25, 2014, the Commission referred "the unresolved issues in Hutchinson's petition to the Office of Administrative Hearings for arbitration under Minn. R. 7812.1700 …"

On January 16, 2015, the Administrative Law Judge (ALJ) Steve Mihalchick submitted his Arbitrator's Report (ALJ Report, or Report).

On January 26, 2015, CenturyLink EQ submitted Exceptions to the ALJ Report.

Background

Parties to the ICA

CenturyLink EQ is the local service provider serving the territory formerly operated by Embarq in Minnesota. It is distinct from CenturyLink QC which operates the local service territory formerly served by Qwest in Minnesota. With respect to this arbitration CenturyLink EQ is an incumbent local exchange carrier (ILEC, that is, eye-lek, or incumbent LEC). Hutchinson Telecommunications, Inc. (HTI) is a competitive local exchange carrier (CLEC, that is, see-lek, or competitive LEC) seeking interconnection with CenturyLink EQ.

The parties to the ICA, in their contract language refer to CenturyLink EQ as CenturyLink (absent the EQ). However, it is clear from the petition that the negotiating party is CenturyLink EQ, not CenturyLink QC.

Impetus for Negotiation and Arbitration

On February 8, 1996, the President signed into law the Telecommunications Act of 1996 (the Act), which established requirements and procedures intended to open existing local telecommunications markets to competition. The FCC, charged by Congress with the task of implementing the Act, summarizes the purpose of the Act, as follows:

> The Telecommunications Act of 1996 fundamentally changes telecommunications regulation. In the old regulatory regime government encouraged monopolies. In the new regulatory regime, we and the states remove the outdated barriers that protect

> monopolies from competition and affirmatively promote efficient competition using tools forged by Congress. Historically, regulation of this industry has been premised on the belief that service could be provided at the lowest cost to the maximum number of consumers through a regulated monopoly network. State and federal regulators devoted their efforts over many decades to regulating the prices and practices of these monopolies and protecting them against competitive entry. The 1996 Act adopts precisely the opposite approach. Rather than shielding telephone companies from competition, the 1996 Act requires telephone companies to open their networks to competition. [*Local Competition Order*, ¶ 1; footnote omitted]

With respect to the goals of the Act, the FCC states:

> Three principal goals established by the telephony provisions of the 1996 Act are: (1) opening the local exchange and exchange access markets to competitive entry; (2) promoting increased competition in telecommunications markets that are already open to competition, including the long distance services market; and (3) reforming our system of universal service so that universal service is preserved and advanced as the local exchange and exchange access markets move from monopoly to competition. [*Local Competition Order*, ¶ 3]

The FCC envisioned implementation of the Act in three phases. First, it established rules to open local exchange markets. That process was initiated by the *Local Competition Order* adopted in August of 1996. Second, in May of 1997, the FCC issued its *Universal Service Order* designed to modify explicit subsidy systems to ensure consumers have access to affordable services as competition develops. The FCC's third task was reformation of the access charge system. Access charges, in decreasing part, are an implicit subsidy where long distance rates are set above cost to allow local service providers to offer service at low rates. The FCC did not directly address this third task until November of 2011 with the release of the *CAF Order* (Connect America Fund Order). All three of these Orders have been subject to numerous challenges and modifications over time.

Local Competition Order

The *Local Competition Order* (and its underlying statutes) is the most pertinent of the three FCC orders for addressing the HTI/CenturyLink EQ arbitration – although the *CAF Order* is of particular significance for one grouping of issues associated with reciprocal compensation. The *Local Competition Order* comprises a monumental discussion totaling over 1,300 paragraphs and

over 3,200 footnotes. Up front, in ¶10 of that *Order*, the FCC makes a point from which much of its subsequent discussion proceeds:

> [T]he removal of statutory and regulatory barriers to entry into the local exchange and exchange access markets, while a necessary precondition to competition, is not sufficient to ensure that competition will supplant monopolies. An incumbent LEC's existing infrastructure enables it to serve new customers at a much lower incremental cost than a facilities-based entrant that must install its own switches, trunking and loops to serve its customers. Furthermore, absent interconnection between the incumbent LEC and the entrant, the customer of the entrant would be unable to complete calls to subscribers served by the incumbent LEC's network. 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. [*Local Competition Order*, ¶ 10; footnotes omitted]

Further, when discussing the necessity of developing national rules, the FCC states:

> We find that incumbent LECs have no economic incentive, independent of the incentives set forth in sections 271 and 274 of the 1996 Act, to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services. Negotiations between incumbent LECs and new entrants are not analogous to traditional commercial negotiations in which each party owns or controls something the other party desires. Under section 251, monopoly providers are required to make available their facilities and services to requesting carriers that intend to compete directly with the incumbent LEC for its customers and its control of the local market. Therefore, although the 1996 Act requires incumbent LECs, for example, to provide interconnection and access to unbundled elements on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, incumbent LECs have strong incentives to resist such obligations. **The inequality of bargaining power between incumbents and new entrants militates in favor of rules that have the effect of equalizing bargaining power** in part because many new entrants seek to enter national or regional markets. [*Local Competition Order*, ¶ 55; emphasis added]

Thus, the *Local Competition Order* recognizes that ILECs and CLECs are differently placed and, as such, ILECs are obligated to allow and accommodate market entry. **However, the *Local Competition Order* does not grant CLECs unlimited access to ILEC networks.** The arguments presented to the Commission in this arbitration reflect different understandings of those obligations.

Sections 251 and 252

The issues in dispute in this arbitration center on §§ 251 and 252 of the Act, and the FCC rules that proceed from those sections. Section 251 addresses interconnection and it establishes the bedrock principle that all telecommunications carriers have the duty to interconnect with other carriers, either directly or indirectly (§ 251(a)(1)). LECs are a subset of telecommunications carriers and they have the additional duty to establish reciprocal compensation for the transport and termination of telecommunications (§ 251(a)(5)). Reciprocal compensation is a settlement mechanism for local traffic whereby the originating LEC pays the cost of delivering traffic to the terminating LEC.

Incumbent LECs and Interconnection

Incumbent LECs, such as CenturyLink EQ, have obligations in addition to those of telecommunications carriers and non-incumbent LECs. These include the duty to negotiate in good faith, (§ 251(c)(1)), and the obligation to interconnect with requesting carriers (§ 251(c)(2)), a duty specified in greater detail than for telecommunications carriers in general (§ 251(a)(1)). ILECs also have a duty to provide requesting carriers with access to their network elements at just, reasonable and non-discriminatory terms (§ 251(c)(3)). Unbundled network elements (UNEs, or you-nees) such as Network Interface Devices, local loops, transport and switch ports (under some circumstances) can be leased by CLECs from ILECs. The HTI/CenturyLink EQ arbitration comprises a number of issues revolving about interconnection for the exchange of traffic, as opposed to the leasing of UNEs.

Interconnection Agreements

Interconnection agreements that are negotiated or arbitrated pursuant to §§ 251 and 252 are unlike typical contractual relationships. The FCC noted a fundamental difference in ¶ 15 of the *Local Competition Order*:

> Congress recognized that, because of the incumbent LEC's incentives and superior bargaining power, its negotiations with new entrants over the terms of such agreements would be quite different from typical commercial negotiations. As distinct from bilateral commercial negotiation, the new entrant comes to the table with little or nothing the incumbent LEC needs or wants. The statute addresses this problem by creating an arbitration proceeding in which the new entrant may assert certain rights …

Additionally, ICAs approved by state commissions are public documents reducing the ability of the signatories to discriminate against third parties and thus hampering competitive entry. Furthermore, § 252(i) requires that approved ICAs must be made available to other requesting carriers. Section 252(i) states, in full:

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

And, the FCC has determined that the ILEC's obligation under §252(i) refers to "any agreement in its entirety to which the incumbent LEC is a party …" (47 CFR §51.809(a)). Thus, CenturyLink EQ is obligated to make available to any requesting telecommunications carrier the entire HTI-CenturyLink EQ agreement that the Commission approves. That is to say another CLEC may approach CenturyLink EQ in the future and request terms identical to the HTI-CenturyLink EQ agreement. From CenturyLink EQ's perspective, a concession to HTI has the potential to be a concession to numerous other CLECs.

State Commission Approval/Rejection

Section 252 of the Act sets out obligations for arbitration, negotiation, and approval of interconnection agreements (ICAs). Section 252(b)(4) limits the state commission role in reviewing arbitrations:

> The State commission shall limit its consideration of any petition under paragraph (1) [arbitration of open issues] (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3) [responses within 25 days of petition].

Section 252(e)(2)(B) dictates that a state commission may only reject an agreement …

> (or any portion thereof) adopted by arbitration under subsection (b) [compulsory arbitration] if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) [pricing standards] of this section.

However, § 252(e)(3) provides state commissions with some flexibility:

> Notwithstanding paragraph (2), but subject to section 253 [removal of barriers to entry], nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

Issues of Contention

In the main, the parties disagree as to (1) how Points of Interconnection (POIs) are to be determined, (2) the exchange of information relevant to interconnection, (3) financial compensation for the construction of facilities and equipment, (4) financial compensation for the transport of telecommunications traffic, and (5) the circumstances governing the use of Bona Fide Request (BFR) processes when HTI requests interconnection with CenturyLink EQ.

ALJ Report

The ALJ Report contributes a sound structure and order to the record. The ALJ addressed each of the open issues (or groups of issues), summarizing the parties' arguments and making recommendations. To make use of the ALJ's structure Staff has incorporated a modified version of the Report into this Briefing Paper. Staff has introduced page breaks between issues (or groups of issues), highlighted issue headings in red, and highlighted selected portions of the ALJ's discussion in blue. For each issue Staff has added a brief summary of the Exceptions filed by the parties and a list of Commission decision options. In some instances Staff has offered additional comment. Although the page numbers have changed from the original Report, the paragraph numbers remain the same. Staff has not modified the substance of the text of the Report in any manner.

The Updated Joint Issues Matrix (October 9, 2014), submitted to the ALJ by the negotiating parties in the post-briefing period, states the precise contract language proposed by HTI and CenturyLink EQ. For some issues, alternative language has been proposed in the Exceptions.

Commission Action

Two Stages

HTI's petition is a document of approximately 100 pages including both disputed terms and terms that the parties have successfully negotiated. The process for the approval of an arbitrated ICA comprises two stages: First, resolution of all disputed issues placed before the Commission, pursuant to §§ 252 (b) through (d) of the Act, and second, review and approval of all terms in the contract (negotiated and arbitrated) pursuant to § 252(e). Today's hearing addresses only issues associated with the first task. With respect to the second stage, Minn. Rules 7812.1700, subpart 21, states that a final arbitration decision must include a "deadline for submitting a final agreement to the commission for approval ... ." Staff believes that the Commission has discretion in setting that deadline.

Format of Options

For each issue (or group of issues) Staff has appended a list of Commission options. Those lists take the general form:

1. Do not modify the ALJ Report, or

2. Modify the ALJ Report in some specified fashion.

At the end of the Report Staff has appended an options section directing the Commission to make a statement to the effect that it adopts the ALJ Report as modified at the hearing, and finds that the ALJ Report, as modified, resolves the arbitrated issues pursuant to §§ 252 (b) through (d) of the Act.

At that point the Commission may direct the parties to file the entire agreement within some discretionary time period for approval pursuant to §§ 252 (e) of the Act. Typically, the Commission has set that period at 30 days.

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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

Note: This Arbitrator's Report has been modified by PUC Staff. Staff has introduced page breaks between issues (or groups of issues), highlighted issue headings in red, and highlighted selected portions of the ALJ's discussion in blue. For each issue Staff has added a brief summary of the Exceptions filed by the parties and a list of Commission decision options. In some instances Staff has offered additional comment. Although the page numbers have changed from the original Report, the paragraph numbers remain the same. Staff has not modified the substance of the text of the Report in any manner.

In the Matter of the Petition of Hutchinson Telecommunications, Inc., for Arbitration of an Interconnection Agreement with Embarq Minnesota Inc., dba CenturyLink EQ

ARBITRATOR'S REPORT

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In the Matter of the Petition of Hutchinson Telecommunications, Inc., for Arbitration of an Interconnection Agreement with Embarq Minnesota Inc., dba CenturyLink EQ

ARBITRATOR'S REPORT

This matter came before Administrative Law Judge Steve Mihalchick for an arbitration hearing on August 6, 2014. The hearing record closed on November 24, 2014, upon receipt of supplemental submissions from the parties, which had been allowed by the Administrative Law Judge.

Appearances:

Gregory R. Merz, of Gray, Plant, Mooty, Mooty & Bennett, P.A., appeared on behalf of Petitioner Hutchinson Telecommunications, Inc. (HTI).

Jason D. Topp, Associate General Counsel, appeared on behalf of Respondent Embarq Minnesota Inc., dba CenturyLink EQ (CenturyLink, CenturyLink EQ, or CTL).

Linda S. Jensen, Assistant Attorney General, appeared on behalf of the Department of Commerce (Department or DOC).

Kevin O'Grady, Staff of the Minnesota Public Utilities Commission (Commission, MPUC, or PUC) also attended the hearing.[1]

SUMMARY OF THE ISSUES

There are more than 40 issues remaining in dispute in the arbitration. The most significant issues remaining in dispute concern: 1) a dispute regarding the location of the Point of Interconnection and 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

[1] The parties sometimes refer to the PUC as "this Commission" or "the Minnesota Commission" to distinguish it from the FCC.

the point of interconnection; and 3) CenturyLink EQ's proposed Bona Fide Request (BFR) process.

There is great confusion and disagreement in this matter about several important terms. The parties interpret and use them differently from each other and sometimes differently from the meanings given them in the Telecommunications Act and the FCC's rules. Many of the issues are rooted in those different interpretations of the Telecommunications Act and the FCC's rules.

Each party supports language in the agreement that will minimize its expenses and maximize its revenues and claims that its positions are supported by the law.

SUMMARY OF RECOMMENDATIONS

The Administrative Law Judge recommends that HTI's language be adopted as proposed, or with modification, on all the primary issues and that HTI's language be adopted for the majority of the "Miscellaneous" issues.

The Administrative Law Judge recommends that there be no finding that CenturyLink EQ negotiated in bad faith.

Based upon the record, the Administrative Law Judge makes the following,

FINDINGS AND RECOMMENDATIONS

Regulatory Background - Interconnection

1. The Telecommunications Act of 1996[2] (the Act, the 1996 Act, or the Telecommunications Act), fundamentally changed telephone regulation by requiring telephone companies to open their networks to competition.[3] Of particular relevance in this case are two sections of the Telecommunications Act, 47 U.S.C. §§ 251, 252 (2012).

2. In the *Local Competition Order*, the FCC interpreted the Telecommunications Act and adopted regulations implementing, among other subjects, the interconnection requirements, which were codified at 47 C.F.R. Part 51 (2014) (the FCC's rules).[4]

3. A "telecommunications carrier" is any provider offering telecommunications for a fee directly to the public.[5] Telecommunications carriers have

[2] Pub.L.No. 104-104, 110 Stat. 56, codified in various sections of Title 47, United States Code.
[3] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 13042 (1996) ("*Local Competition Order"*) ¶ 1.
[4] *Local Competition Order* ¶ 1443.
[5] 47 C.F.R. § 51.5.

the duty to interconnect with the facilities and equipment of other telecommunications carriers.[6]

4. A "Local Exchange Carrier" (LEC) is any provider engaged in furnishing intercommunicating service to subscribers within an exchange area.[7] An "incumbent LEC" (ILEC) is an LEC that on February 8, 1996, provided telephone exchange service in its exchange area and was a member of the Exchange Carrier Association or a successor or assign of a member.[8] Generally, ILECs are the large regional LECs.

5. The Telecommunications Act made it easier for small LECs to compete for the customers of the ILECs. One way is to allow such a "competitive local exchange carrier" (CLEC) to request interconnection with an ILEC. When such a request is made, under 47 C.F.R § 51.305, the ILEC must do the following:

> a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:
>
> 1) For the transmission and routing of telephone exchange traffic, exchange access traffic, or both;
>
> 2) At any technically feasible point within the incumbent LEC's network including, at a minimum:
>
> i. The line-side of a local switch;
>
> ii. The trunk-side of a local switch;
>
> iii. The trunk interconnection points for a tandem switch;
>
> iv. Central office cross-connect points;
>
> v. Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and
>
> vi. The points of access to unbundled network elements as described in § 51.319;
>
> 3) That is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party. At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's

[6] 47 U.S.C. § 251(a).
[7] 47 C.F.R. § 51.5.
[8] 47 C.F.R. § 51.5.

network. This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier; and

4) On terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules including, but not limited to, offering such terms and conditions equally to all requesting telecommunications carriers, and offering such terms and conditions that are no less favorable than the terms and conditions upon which the incumbent LEC provides such interconnection to itself. This includes, but is not limited to, the time within which the incumbent LEC provides such interconnection.

b) A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC's network and not for the purpose of providing to others telephone exchange service, exchange access service, or both, is not entitled to receive interconnection pursuant to section 251(c)(2) of the Act.

c) Previous successful interconnection at a particular point in a network, using particular facilities, constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities.

d) Previous successful interconnection at a particular point in a network at a particular level of quality constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, at that level of quality.

e) An incumbent LEC that denies a request for interconnection at a particular point must prove to the state commission that interconnection at that point is not technically feasible.

f) If technically feasible, an incumbent LEC shall provide two-way trunking upon request.

g) An incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve interconnection consistent with the requirements of this section.[9]

[9] 47 C.F.R § 51.305. *See, also,* 47 U.S.C. 251(c)(2).

6. "Technically feasible" is to be determined as follows:

> *Technically feasible.* Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.[10]

7. The requirement that a CLEC be permitted to interconnect at any technically feasible point also entitles the CLEC to request only one point of interconnection per Local Access and Transport Area (LATA), rather than multiple points in a LATA.[11]

8. In its flexibility analysis describing the interconnection rules, the *Local Competition Order* 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.[12]

9. An LEC must make any interconnection (or service or network element) provided under an approved Interconnection Agreement (ICA) to which it is a party available to any other requesting telecommunications carrier upon the same terms and conditions.[13]

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[10] 47 C.F.R. § 51.5.
[11] *In the Matter of the Petition of WorldCom, Inc.,* 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).
[12] *Local Competition Order*, ¶ 1373.
[13] 47 U.S.C. § 252(i).

10. The Telecommunications Act requires that ILECs like CenturyLink EQ, and CLECs requesting interconnection like HTI, negotiate the terms and conditions of ICAs in good faith.[14]

Procedural History

11. HTI is a Minnesota company based in New Ulm, Minnesota. HTI is a telecommunications carrier under Minn. Stat. § 237.01, subd. 6 (2014), authorized by the Commission to provide telecommunications services, including facilities-based local exchange service, in Minnesota. HTI serves business and residential customers located in Litchfield, Minnesota.[15] HTI is a CLEC under the Telecommunications Act.[16]

12. CenturyLink EQ is a telephone company under Minn. Stat. § 237.01, subd. 7 (2014), authorized by the Commission to provide telecommunications service in Minnesota, including local exchange service. CenturyLink EQ is an ILEC under the Telecommunications Act.[17]

13. HTI and CenturyLink EQ are parties to an interconnection agreement that was approved by the Commission on December 5, 2006,[18] the terms of which were the result of a voluntary agreement on all issues between them. The agreement had an initial term of three years with automatic renewal for an unlimited number of successive six month terms.[19] HTI and CenturyLink EQ have continued to operate under the current interconnection agreement while they negotiate and arbitrate a replacement interconnection agreement.[20]

14. HTI decided to provide local exchange service in the Glencoe, Minnesota area, and believed that the current interconnection agreement required modifications to more clearly address the "meet point interconnection agreement" it intended to use for interconnection, as well as other changes required because of changes in relevant law. On April 29, 2013, HTI requested negotiation of a successor interconnection agreement. Two days later, CenturyLink EQ provided a copy of CenturyLink EQ's standard template agreement to HTI. After early discussions between the CenturyLink EQ negotiator and the HTI negotiator, Thomas Burns, HTI elected to attempt to modify the CenturyLink EQ template rather than the current agreement.[21]

[14] 47 U.S.C. § 251(c)(1).
[15] Hearing Exhibit (Ex.) 100 (Burns Direct) at 2, lines 6-9.
[16] Petition at ¶ 1.
[17] *See* 47 U.S.C. §251(h). There are references in the record to CenturyLink EQ's predecessor Minnesota telephone companies known as Sprint, then Embarq. There are also references to CenturyLink EQ's affiliate CenturyLink QC and its predecessors U.S. West, then Qwest. CenturyLink QC. Qwest and CenturyLink EQ are affiliates of CenturyLink but continue to operate separate processes and systems. Exhibit (Ex.) 1 (Easton Direct) at 87.
[18] MPUC Docket No. P-430, 5561/IC-06-1548.
[19] Petition at ¶ 6; *see also* Ex. 100 (Burns Direct) at TGB-1 (HTI/Embarq interconnection agreement).
[20] Petition at ¶ 6.
[21] Ex. 100 (Burns Direct) at 14, lines 11-16; Petition at ¶ 7.

15. The parties subsequently agreed to extend the "negotiation window"[22] a number of times. When it became clear to it 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.[23] CenturyLink EQ filed its response to the petition for arbitration on March 28, 2014.

16. Prior to the hearing, the parties filed a Joint Disputed Issues Matrix dated March 31, 2014, identifying 77 disputed issues, the specific contract language proposed by each party, and the parties' position statements in support of their proposed language.[24] By the time of the arbitration hearing on August 6, 2014, the parties had resolved several more issues, leaving 57 disputed. Following the hearing, the parties continued to exchange proposals and 31 more issues were resolved, leaving 46 unresolved issues. On October 9, 2014, the parties filed a revised Joint Disputed Issues Matrix dated October 3, 2014, that reflects the parties' positions on issues in dispute at that time.[25] CenturyLink has modified its proposals related to the term "POI" and eliminated certain restrictions on the location where parties physically interconnect.[26] HTI has added proposed language related to the provision of usage records in a new issue marked on the Issues Matrix as Issue 67.1.

Commission and Arbitrator Authority

17. The Commission has jurisdiction under 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.[27] Issues presented for arbitration must be resolved in accordance with Sections 251 and 252 of the Act and the rules adopted by the FCC.[28] 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 Telecommunications Act.[29]

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[22] *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).
[23] 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).
[24] Ex. 1 (Easton Direct) at WRE-1 (Joint Disputed Issues Matrix, March 21, 2014).
[25] Joint Disputed Issues Matrix, Oct 3, 2014, available at PUC eDockets, No. 14-189, Document ID 201410-103687-01 (Issues Matrix).
[26] *See* Issues 11, 25-31, 34, 37, 48 and 67.
[27] 47 U.S.C. 252(b)(4)(C); *see also* Minn. R. 7812.1700 (2013) (authority and role of the Commission under state law for the arbitration of interconnection agreements).
[28] *See* 47 U.S.C. §§ 251 and 252; *Local Competition Order*; 47 C.F.R. § 51.5 *et seq.*
[29] 47 U.S.C. § 252(d).

18. A state commission may also, under its state law authority, impose additional requirements, as long as such requirements are consistent with the 1996 Act and the FCC's rules.[30]

19. Under the PUC rule governing interconnection arbitrations, the burden of proof in this proceeding is generally upon CenturyLink EQ to prove all issues of material fact by a preponderance of the evidence. However, the arbitrator may shift the burden of production as appropriate, based on which party has control of the critical information regarding the issue in dispute. The arbitrator may also shift the burden of proof as necessary to comply with applicable FCC regulations regarding burden of proof.[31] As noted above, such FCC rules place the burden on the ILEC to demonstrate any claimed technical infeasibility of a CLEC's request for interconnection or unbundled access and also require the ILEC to prove by clear and convincing evidence any claim that it cannot satisfy such a request because of adverse network reliability impacts.[32]

Undisputed Issues

20. Any portion of a proposed interconnection agreement to which the parties agree is subject to less scrutiny by the Commission. The Commission may only reject such portions if they discriminate against a telecommunications carrier not a party to the agreement or if the implementation of such portions is not consistent with the public interest, convenience, and necessity.[33] Such portions are not required to meet requirements of Sections 251(b) and (c) and Section 252(d) of the Act.

21. No allegation is made in this matter of any undisputed portion being discriminatory or not consistent with the public interest, convenience, and necessity. The Administrative Law Judge recommends that all undisputed portions of the proposed agreement be approved pursuant to 47 U.S.C. § 252(e)(2)(A).

[30] 47 U.S.C. § 252(e)(3); *Local Competition Order* ¶¶ 233, 244.
[31] Minn. R. 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).
[32] 47 C.F.R. §§ 51.5 and 51.321(d).
[33] 47 U.S.C. § 252(e)(2)(A).

Principal Remaining Disputed Issues

Issue 11: Point of Interconnection (POI)

22. The FCC's rules do not expressly define the terms "point" or "point of interconnection." The word "point" is used throughout the rules and the *Local Competition Order* according to its common meaning, often in reference to a "point of interconnection" or "interconnection point." Sometimes that point is simply called "the interconnection."

23. Issue 11 concerns the definition of Point of Interconnection (POI). The parties agree that the first sentence of the definition in the proposed agreement should incorporate most of the language of the existing interconnection agreement[34] and read as follows:

> "Point of Interconnection" ("POI") is the physical point that establishes the technical interface, the test point, and the operational responsibility hand-off between CLEC and CenturyLink for the local interconnection of their networks.[35]

24. The Parties propose different additional language to describe the financial significance of POIs and the circumstances under which the location of a POI reflects a division of the parties' financial responsibilities.

25. HTI proposes a second sentence for the definition that reads:

> Each POI also establishes the demarcation point to delineate each Party's financial obligations for facility costs.[36]

HTI's position is that the Telecommunications Act and the FCC's rules require that each party be responsible for costs on its side of every point of interconnection and that whether the POI was established pursuant to a non-standard method or process is irrelevant to the issue of financial responsibility.[37]

26. CenturyLink contends that a non-standard method of interconnection may lead to alternative financial arrangements CenturyLink would accept HTI's language if a clause such as the following is added to the second sentence:

> …, except for both POIs established through the Bona Fide Request ("BFR") process in Section 59 and when DTT [Direct Trunk Transport] is

[34] Ex. 100 (Burns Direct) at TGB-1 (HTI/Embarq interconnection agreement), ¶ 1.37.
[35] *Id.*
[36] *Id.*
[37] *Id.*

> ordered from an existing POI to a CenturyLink Tandem Switch or End Office.[38]

27. The Department notes that several sections of the proposed interconnection agreement use the term POI or point of interconnection, but that use of the term is inconsistent.[39] Department witness Ms. Doherty testified that "defining the term POI to mean or infer different concepts in different sections in the agreement is at best confusing and that use of the term throughout the ICA should be, at minimum, consistent."[40]

28. The Department recommended two possible definitions for Issue 11. First:

> "Point of Interconnection" ("POI") is the physical point of interconnection at which two networks are linked for the mutual exchange of traffic.

Alternatively, the Department recommends that the agreed-upon portion of the language proposed by the parties be used for Issue 11. The Department also recommends that the terms "Point of Interconnection" and "POI" should be used consistently throughout the agreement to reflect this definition when applicable; and further, that the parties' respective financial responsibilities for costs associated with facilities, and the transport and termination of traffic should be addressed separately in the agreement.[41]

29. The Department also recommends that the Commission reject CenturyLink EQ's proposals for these Issues, because these proposals, for economic reasons, require multiple points of interconnection in a Local Access and Transport Area (LATA)[42] Such a result is inconsistent with the Telecommunications Act's requirements that (1) the sole basis for denial of an interconnection request is lack of technical feasibility,[43] and (2) a CLEC may not be required to interconnect at multiple points in a LATA.[44]

Recommendation

30. The ALJ recommends that the following language be approved for Issue 11:

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[38] *Id.*
[39] DOC Ex. 200 at 15 (Doherty Direct).
[40] DOC Ex. 200 at 18 (Doherty Direct).
[41] DOC Post Hearing Brief at 6-7 (*citing* DOC Ex. 200 at 18 (Doherty Direct.)
[42] CenturyLink's newly-proposed (as of September 26, 2014) language, which presumptively requires HTI to order direct trunked transport to each CenturyLink EQ tandem where HTI wishes to exchange traffic in lieu of establishing a POI at each tandem, has the same effect financially as language requiring that HTI establish multiple POIs.
[43] 47 C.F.R. § 51.5 (technical feasibility does not include consideration of economic concerns).
[44] DOC Post Hearing Brief at 6.

> "Point of Interconnection" ("POI") is the physical point that establishes the technical interface, the test point, and the operational hand-off between CLEC and CenturyLink for local interconnection of their networks."

31. Combining the plain meaning of "point" with the FCC's rule definition of "interconnection," the term "point of interconnection" clearly means the "point" (i.e., location) where two networks "interconnect" (i.e., physically link for exchange of traffic).[45] So the language agreed to by the parties is really not needed. But it is somewhat helpful. It makes clear that an interconnection is a "physical" connection, as the *Local Competition Order* stated.[46] It also defines the shortcut term "POI" that is used throughout the proposed agreement. Most importantly, the parties have agreed to this language. Therefore, it cannot be rejected by the Commission unless it discriminates against a telecommunications carrier not a party to the agreement or if the implementation of the provision is not consistent with the public interest, convenience, and necessity.[47] That has not been alleged here and does not appear to be the case.

32. No additional language regarding financial responsibility should be added to the definition of "point of interconnection" because definitions in contracts, as in rules and other legal documents, are usually poor places to put operational requirements and prohibitions. Doing so often leads to conflicts, redundancy, and confusion. The Department and HTI are correct that including a reference to the BFR process and to Direct Trunk Transport does create confusion and may conflict with the Telecommunications Act. These are provisions that should be addressed in the directly related sections of the proposed agreement, not in a definition.

33. Nor should HTI's proposal to declare that a POI is the demarcation line for financial obligations be added to the definition of POI. Contrary to HTI's arguments, the Telecommunications Act and the FCC's rules do not define a point of interconnection as a demarcation line for financial obligations. The Department does not believe that in all cases the financial demarcation and the physical point of interconnection are the same.[48] Thus doing so in the proposed agreement would create a conflict with the Telecommunications Act and confusion.

Exceptions to ALJ Report

No exceptions were filed.

[45] Ex. 101 (Burns Rebuttal) at 1, lines 20-21.
[46] *Local Competition Order* ¶ 26.
[47] 47 U.S.C. § 252(e)(2)(A).
[48] Transcript (Tr.) (Doherty) at 144, lines 6-17.

Staff Comment

Note: LATA refers to Local Access and Transport Area. LATAs are geographical areas defined by the Modified Final Judgment governing the break-up of AT&T in the early 1980s. The entirety of Minnesota comprises five LATAs.

Commission Options re: Issue 11: Point of Interconnection

1. Do not modify the ALJ Report.

2. Modify the ALJ Report to adopt CenturyLink EQ's proposed language as referenced by the ALJ in ¶¶ 23, 25 and 26.

3. Modify the ALJ Report to adopt HTI's proposed language as referenced by the ALJ in ¶¶ 23 and 25.

4. Modify the ALJ Report to adopt DOC's proposed language as referenced by the ALJ in ¶ 28.

5. Modify the ALJ Report to adopt DOC's proposed alternative language as referenced by the ALJ in ¶ 23.

6. Take other action.

Staff recommends option 1.

Issue 24, part 1: Identification of certain technically feasible points

34. The first paragraph of Issue 24 involves an HTI proposed list of locations that would be considered technically feasible and thus entitle HTI to interconnect at such locations.

35. HTI proposes the following language:

> 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;[49]

These locations are points on the CenturyLink EQ network where CenturyLink EQ typically performs cross-connections for itself and for other carriers. Thus, according to HTI, these points should be presumed to be technically feasible and, further, interconnection must be available to HTI for the same purposes on the same terms and conditions.[50]

36. CenturyLink EQ opposes the language added by HTI and states that its POI language (proposed at Issue 25) requires a minimum of one POI on the CenturyLink EQ network in the LATA and describes the standard methods CenturyLink EQ has developed and that are available for all CLECs to establish POIs.[51]

37. CenturyLink EQ does not claim that any of the locations listed in the HTI's proposal are not technically feasible. CenturyLink EQ does argue that HTI's proposed language would require interconnection at a point not on CenturyLink EQ's network[52] and at points outside its local service area.[53]

[49] Issues Matrix, Issue 24; Ex. 1 (Easton Direct) at WRE-2 (Proposed Agreement) at 34-35.
[50] Ex. 101 (Burns Rebuttal, Public Version) at 3, lines 1-4.
[51] Issues Matrix, Issue 24.
[52] Ex. 1 (Easton Direct) at 29, line 32, to 30, line 1.
[53] Tr. (Easton) at 65, lines 1-13.

Recommendation

38. HTI's proposal should be adopted in part. The following language should be approved for the first paragraph proposed in Issue 24:

> 39.1 Technically Feasible. In addition to the technically feasible points listed in 47 C.F.R. § 51.305(a)(2), CLEC shall be entitled to interconnection at any technically feasible point within CenturyLink's network, including but not limited to:
>
> a. CenturyLink hand holes or manholes;
>
> b. CenturyLink controlled environment vaults;
>
> c. CenturyLink central office.

39. HTI's references to "POI Locations" and "POI" have been deleted and a reference to 47 C.F.R. § 51.305(a)(2) added because the purpose here is to identify technically feasible points not already specifically defined in § 51.305(a)(2).

40. The reference to third party locations such as carrier hotels has been deleted. A location such as the "511 Building" in Minneapolis is outside of CenturyLink EQ's service area and not "within" its network as required by 47 C.F.R. § 51.305(a)(2), as well as the language proposed here. At most, a carrier hotel is connected to the network; it is not part of it. Nor is it similar to the technically feasible points already identified in 47 C.F.R. § 51.305(a)(2), all of which are on or near a switch that is part of the network.[54]

41. For further argument, CenturyLink EQ points to the definition of "incumbent local exchange carrier" in the Telecommunications Act:

> For purposes of [Section 251], the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that provided telephone exchange service in such area. [55]

CenturyLink EQ suggests this language could be interpreted such that it would not be the ILEC at a point on its network that is outside of its serving area, so it would not have the incumbent's obligations under Section 251 at that point.[56]

42. CenturyLink EQ's argument is not persuasive because the "area" referred to by the definition of an ILEC is the area where that ILEC provides telephone exchange service, not where its network runs. Moreover, as HTI argues, this definition is used to determine whether a carrier is subject to the interconnection obligations of Section

[54] Apparently Minneapolis is in CenturyLink QC's service area. It is not clear in the record why CenturyLink EQ can treat its affiliate CenturyLink QC as a third party.
[55] 47 U.S.C. § 251(h).
[56] Tr. (Easton) at 65, lines 9-13.

251(c)(2); it does not address where interconnection must be provided.[57] There is no dispute here regarding CenturyLink EQ's status as an incumbent local exchange carrier. Thus, the interconnection obligations set forth in Section 251(c)(2), apply to CenturyLink EQ.

43. In discussing technically feasible points of interconnection, the *Local Competition Order* encouraged parties and the states, through negotiation and arbitration, to identify additional points of technically feasible interconnection.[58] The interconnection agreement language proposed by HTI on this issue, as modified by the Administrative Law Judge, does so and is consistent with the Act's requirements that the requesting LEC be allowed to select the location and method of interconnection.

Exceptions to ALJ Report

No exceptions were filed.

Staff Comment

Introduction

In ¶ 38 the ALJ recommends the adoption of language similar to that sought by HTI.

> 39.1 Technically Feasible. In addition to the technically feasible points listed in 47 C.F.R. § 51.305(a)(2), CLEC shall be entitled to interconnection at any technically feasible point within CenturyLink's network, including but not limited to:
> a. CenturyLink hand holes or manholes;
> b. CenturyLink controlled environment vaults;
> c. CenturyLink central office.

Significantly, the ALJ rejects clause "d" sought by HTI:

> d. Third Party locations, e.g., carrier hotels, where CenturyLink has established facilities for the purpose of interconnection with other carriers;

In ¶ 40, the ALJ provides reasoning for rejecting "d":

[57] 47 U.S.C. §251(c) ("In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties . . . .")
[58] *Local Competition Order*, ¶212.

> The reference to third party locations such as carrier hotels has been deleted. A location such as the "511 Building" in Minneapolis is outside of CenturyLink EQ's service area and not "within" its network as required by 47 C.F.R. § 51.305(a)(2), as well as the language proposed here. At most, a carrier hotel is connected to the network; it is not part of it. Nor is it similar to the technically feasible points already identified in 47 C.F.R. § 51.305(a)(2), all of which are on or near a switch that is part of the network.

Staff respectfully disagrees with the ALJ's recommendation, although Staff is less concerned with the ALJ's recommended language than with the analysis itself. Staff believes the ALJ's analysis may be inconsistent with other findings in the Report and that the record may not support the findings in ¶ 40.

As background, consider that opening local markets to competition, by removing barriers to entry, is one of the central tenets of the Act and of the FCC's *Local Competition Order*. With respect to efficiency of interconnection the FCC states:

> Congress addressed these problems in the 1996 Act by mandating that the most significant economic impediments to efficient entry into the monopolized local market must be removed. The incumbent LECs have economies of density, connectivity, and scale; traditionally, these have been viewed as creating a natural monopoly. … [T]he local competition provisions of the Act require that these economies be shared with entrants. We believe they should be shared in a way that permits the incumbent LECs to maintain operating efficiency to further fair competition, and to enable the entrants to share the economic benefits of that efficiency in the form of cost-based prices. [*Local Competition Order*, ¶ 11; footnote omitted]

And,

> The interconnection obligation of section 251(c)(2), discussed in this section, allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic. [*Local Competition Order*, ¶ 172]

Note, too, that the 511 Building in downtown Minneapolis is located at the center of millions of residential and business customers within a short driving distance. Given the primacy of interconnection to opening markets, Staff believes the Commission should not hamper HTI's access to that hub without focused review.

Staff has two specific concerns regarding the ALJ's findings:

(1) the potential for inconsistency regarding the question of whether an ILEC's service area is coterminous with an ILEC's network, and

(2) the degree to which the record supports a finding that carriers hotels, and in particular the 511 Building, are not within CenturyLink EQ's network.

Focal Point of the Issues

47 C.F.R. § 51.305(a) states, in part:

(a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:

(1) For the transmission and routing of telephone exchange traffic, exchange access traffic, or both;

(2) At any technically feasible point within the incumbent LEC's network …

The debate revolves around the phrase requiring ILECs to provide for interconnection at "any technically feasible point within the incumbent LEC's network." In short, HTI argues that CenturyLink EQ has made no showing that interconnection at the 511 Building is not technically feasible, and HTI seeks interconnection at any carrier hotels where CenturyLink EQ has established facilities for the purpose of interconnection with other carriers. CenturyLink EQ does not claim that interconnection at the 511 Building is not technically feasible. Rather, it claims that the 511 Building is outside of its service territory and, as such, CenturyLink EQ does not have ILEC obligations to interconnect pursuant to § 251. The 511 Building is situated in CenturyLink QC's service area.

Network vs Service Area

The following excerpt from the Transcripts of the Evidentiary Hearing highlights the service area debate (p. 63, line 22 – p. 66, line 3):

Q [HTI] Okay. If you look at page 29, line 8, Hutchinson proposes the following: CLECs shall be entitled to establish a POI at any technically feasible point on the CenturyLink EQ network. Do you see that?

A [EQ] I do.

Q [HTI] So given that language, how do you believe that Hutchinson is proposing to include locations that are not on CenturyLink's network?

A [EQ] Well, the concern would be specifically the carrier hotels. There's been discussion in this proceeding about the 511 building where CenturyLink does have facilities, but it's outside of our serving area.

Q [HTI] Right. And your serving area is not co-extensive with your network, your network is something broader, correct?

A [EQ] It can be.

Q [HTI] Where you have facilities is part of your network?

A [EQ] Correct.

Q [HTI] And so if you have facilities at a carrier hotel, that's part of your network, right?

A [EQ] It could be, yes.

Q [HTI] And what HTI is proposing is that to the extent these specific locations, handles or manholes, controlled environmental vaults, central offices, third party locations, if those locations are on CenturyLink's network, then those are permissible POIs to the extent technically feasible, that's HTI's proposal?

A [EQ] That's HTI's proposal.

Q [HTI] And that proposal doesn't say that HTI is allowed to pick a POI that is not on CenturyLink's network, does it?

A [EQ] No. We just said it does have language, but under this language, the way I interpret it, they could ask for interconnection outside of our serving area.

Q [HTI] Right. But not your network, not outside of your network?

A [EQ] Not outside of the network. But the concern I have about outside the serving area, outside the serving area we don't serve as the incumbent and I would argue we don't have the incumbent obligations under 251.

Q [HTI] Now, would you agree with me that if CenturyLink is interconnected with another carrier in a particular location, then there's a presumption that it's technically feasible for another carrier to interconnect at that same location?

A [EQ] I would agree, yes.

Q [HTI] And would you also agree with me that if CenturyLink is interconnected with another location – I'm sorry, let me start again. If CenturyLink is interconnected with another carrier at a particular location, then the obligation of parity requires that HTI be given that same opportunity, correct?

A [EQ] If, in fact, the interconnection being requested is substantially the same.

Network vs Service Area: Potential Inconsistency

A comparison of two seemingly conflicting statements made by the ALJ can be seen when comparing two findings. In ¶ 40, in reference to technically feasible points of interconnection (Issue 24, part 1), the ALJ states:

> The reference to third party locations such as carrier hotels has been deleted. A location such as the "511 Building" in Minneapolis **is outside of CenturyLink EQ's service area and not "within" its network** as required by 47 C.F.R. § 51.305(a)(2), as well as the language proposed here. At most, a carrier hotel is connected to the network; it is not part of it. Nor is it similar to the technically feasible points already identified in 47 C.F.R. § 51.305(a)(2), all of which are on or near a switch that is part of the network. [emphasis added]

In ¶ 129, in reference to reciprocal compensation (Issues 33, 37, 42 and 47), the ALJ states:

> Regarding the existing St. Cloud interconnection arrangement under the current interconnection agreement that HTI requested be continued with the point of interconnection at the (Qwest) St. Cloud Tandem, CenturyLink EQ claims that the St. Cloud POI is not on its network because it is not in its service area, so HTI cannot request interconnection there. This argument was accepted in Issue 24 regarding the carrier hotels in Minneapolis because they were not "within" CenturyLink EQ's network. The network configuration in the St. Cloud LATA appears to be much different. Mr. Easton's Ex. WRE-3 shows **the CenturyLink CQ tandem in St. Cloud serving ten CenturyLink EQ end office switches around the tandem with names indicating them to be in central to western Minnesota. That tandem is a significant part of CenturyLink EQ's network and substantially within it**. [emphasis added]

On the one hand, the ALJ finds that the St. Cloud tandem is substantially within CenturyLink EQ's network because of its logical placement with respect to "ten CenturyLink EQ end office switches around the tandem," even though the tandem lies outside CenturyLink EQ's service area (¶ 129). On the other hand, the ALJ finds that "the "511 Building" in Minneapolis is outside of CenturyLink EQ's service area and not "within" its network (¶ 40)." Furthermore, the ALJ finds that carrier hotels, in general, are not part of a network.

Network vs Service Area: Related ALJ Recommendations

In addition to finding in ¶ 129 that CenturyLink QC's tandem in St. Cloud is within CenturyLink EQ's network, the ALJ made several other findings that would support the argument that CenturyLink EQ's network is not necessarily coterminous with its service area.

Two issues were grouped together by the ALJ and labeled Specific Interconnection Requests (Issues 44 and 77; ¶¶ 100-105). There HTI sought interconnection with CenturyLink EQ at two meet points: (1) CenturyLink QC's central office in St. Cloud and (2) CenturyLink EQ's remote switch at Glencoe. The ALJ reasoned that because both points are technically feasible HTI may choose either meet point. This recommendation is consistent with the ALJ's reasoning in ¶ 42 that CenturyLink EQ is subject to the § 251 requirements of the Act. The ALJ does not restrict that finding to apply only to CenturyLink EQ's service area.

For Issues 8 and 39 (regarding selection of mid-span fiber meet points, ¶¶ 77-88) CenturyLink EQ argued, in part, that HTI's language was inappropriate because it could allow HTI to force CenturyLink EQ to establish a meet point outside its service area. The ALJ rejected CenturyLink's arguments and recommended adoption of HTI's language.

The ALJ addressed the issue of CenturyLink EQ's obligation to provide to HTI technical information that may facilitate interconnection (Issue 24, part 2; ¶¶ 44-56). The ALJ stated that "CenturyLink EQ's arguments that it should not be required to provide information about the locations of its interconnections to other ILECs must be rejected" (¶ 54). The ALJ recommended the following language (¶ 53):

> CenturyLink shall disclose to CLEC **all locations within a LATA where CenturyLink has established facilities interconnection** with a third party carrier. This existing interconnection information shall be provided within 15 business days of a written request from CLEC that specifies the geographic area of the customers it plans to serve. [emphasis added]

The ALJ's recommended language does not narrow CenturyLink EQ's obligation to facilities within its service area.

Network v. Service Area: ILEC Obligations pursuant to § 251

CenturyLink EQ argues that it may not have a duty pursuant to § 251 outside its service area because of the definition of ILEC. Section 251(h) defines an ILEC as follows:

> For purposes of this section, the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that … provided telephone exchange service in such area …

The ALJ addressed CenturyLink EQ's argument regarding its § 251 obligations beyond the borders of its service area in ¶ 42 as follows:

> CenturyLink EQ's argument is not persuasive because the "area" referred to by the definition of an ILEC is the area where that ILEC provides telephone exchange service, not where its network runs. Moreover, as HTI argues, this definition is used to determine whether a carrier is subject to the interconnection obligations of Section 251(c)(2); it does not address where interconnection must be provided. There is no dispute here regarding CenturyLink EQ's status as an incumbent local exchange carrier. Thus, the interconnection obligations set forth in Section 251(c)(2), apply to CenturyLink EQ. [footnote omitted]

Staff agrees with the ALJ's finding in ¶ 42. Further, CenturyLink EQ did not offer any support for its assertions regarding its obligations outside its service territory. Staff is unaware of any language in the Act, the FCC's *Local Competition Order*, or any other FCC orders that would support CenturyLink EQ's assertion.

On March 23, 2000, Southwestern Bell (an ILEC) in Texas sought arbitration of an agreement with AT&T (a CLEC) before the Public Utilities Commission of Texas (PUCT). The Texas Commission found that although AT&T could choose a technically feasible point of interconnection it must bear a share of the Southwestern Bell's cost for transporting calls to AT&T. AT&T challenged that decision in the U.S. District Court for the Western District of Texas. *Sw. Bell Tel. Co. v. The Tex. Pub. Util. Comm'n*, No. CIV. A. MO-01-CA-045, 2002 WL 32066469 (W.D. Tex. Dec. 26, 2002). While on appeal the FCC issued its *WorldCom Order* (FCC 02-1731).

On July 17, 2002, the FCC ruled on a number of issues in an arbitration between WorldCom (the CLEC) and Verizon (the ILEC) in the state of Virginia. The Virginia State Corporation Commission had declined to hear the arguments and, as such, the FCC acted in its stead. In that arbitration Verizon argued that it was inappropriate for it to bear all of the transport costs of delivering traffic to the CLEC especially given that the CLEC may choose a point of interconnection outside of Verizon's service area. The FCC rejected Verizon's argument and affirmed ILEC obligations:

> 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. [¶52, footnotes omitted]

On December 26, 2002, several months after the FCC issued its *WorldCom Order*, the Texas District Court, referencing that FCC order, rejected the PUCT decision stating:

> [T]he Court is of the opinion that AT&T has the statutory right under the Act to select the location of a technically feasible point of interconnection, and that the regulations of the Federal Communications Commission ("FCC"), including in particular 47 C.F.R. § 51.703(b), prohibit SWBT from imposing charges for delivering its "local" traffic originating on its network to the point of interconnection selected by AT&T **even when that point is outside of a local calling area** of SWBT, … . *Sw. Bell Tel. Co. v. The Tex. Pub. Util. Comm'n*, No. CIV.A. MO-01-CA-045, 2002 WL 32066469 (W.D. Tex. Dec. 26, 2002).

Southwestern Bell subsequently challenged the District Court decision at the U.S. Court of Appeals for the Fifth Circuit. The Fifth Circuit Court affirmed the District Court's decision. *Sw. Bell Tel. Co. v. Pub. Util. Comm'n of Texas*, 348 F.3d 482 (5th Cir. 2003).

More recently the FCC made tangential reference to out-of-service-area interconnection. In the *CAF Order* of 2011 (¶ 998), in the context of transitioning the industry to a bill-and-keep rate structure, the FCC stated: "We find it appropriate … to establish an interim default rule allocating responsibility for transport costs applicable to non-access traffic exchanged between CMRS [Commercial Mobile Radio Service, that is, wireless] providers and rural, rate-of-return regulated LECs to provide a gradual transition for such carriers." Paragraph 999 states:

> Specifically, for such traffic, the rural, rate-of-return LEC will be responsible for transport to the CMRS provider's chosen interconnection point when it is located within the LEC's service area. **When the CMRS provider's chosen interconnection point is located outside the LEC's service area**, we provide that the LEC's transport and provisioning obligation stops at its meet point and the CMRS provider is responsible for the remaining transport to its interconnection point. [footnotes omitted; emphasis added]

Neither HTI nor CenturyLink EQ are rural rate-of-return carriers or CMRS providers, and the directive addresses rates for transport, not interconnection directly. However, there is no indication in the FCC's *CAF Order* that interconnection outside an ILEC's service territory is troublesome or novel in any manner. Paragraph 999 is encoded in 47 C.F.R § 51.709(c). Staff

believes that the FCC's statement in its *WorldCom Order* restricts geographic placement only in terms of LATA boundaries, not service areas.

For the reasons stated above Staff believes that, at a minimum, the reference to service area in ¶ 40 should be stricken. "Within-ness" is unrelated to service area boundary.

Role of Carrier Hotels

Because service areas are not necessarily coterminous with networks any finding of "within" must be based on other criteria. The ALJ's language in ¶ 40 suggests two other avenues of analysis: (1) a carrier hotel is connected to the network; it is not part of it, and (2) a carrier hotel is not similar to the other technically feasible points addressed in rule.

Newton's Telecom Dictionary (26th edition, 2011, p. 251) describes carrier hotels, in general, as follows:

> A term for a building that houses many local and long distance telephone companies and many different types of local and long distance companies. Those companies typically provide voice, data, video transmission, Internet access and perhaps switching. They may also provide Internet services, such as web site hosting, and web site caching. New York City has the classic carrier hotel. … It's a huge well-constructed building, with floors that can support heavy machinery. It covers an entire square block. The new owner put in heavy duty and emergency power, heavy-duty air conditioning, and tons of duct space in and around the building and to the local manholes. Each floor in the building has its own loading dock. You can drive a two-ton truck to the loading dock on the ground floor and then lift the truck and its trailer up to your floor, back the trailer into position, unhitch and drive the truck out of the building. In this way, it's possible to roll in a complete central office and have it up and running in hours. As carrier hotels are neutral sites owned by "disinterested" third party landlords, who are only motivated by the rent, the entire process of installing, maintaining and operating a central office is much simpler, faster and less expensive than colocating equipment in an ILEC (Incumbent Local Exchange Carrier) CO (Central Office). Therefore, CLECs (Competitive LECs) and IXCs (Interchange Carriers) often prefer locating in a carrier hotel. Further, the companies that live in the carrier hotel can interconnect with each other directly over very short distances (e.g. the fifth floor to sixth floor) with cable very simply, quickly and cheaply … .

HTI Witness Burns testified that Cologix, Inc. operates the 511 Building in Minneapolis and that it is the largest carrier interconnection point in Minnesota (Burns, Direct Testimony, p. 3, footnote 22). Staff is unaware of the specific facilities owned, leased and/or operated by LECs in the 511 Building or of any specific services or facilities provided by the hotel operator (other than those generally described on Cologix' website: http://www.cologix.com/images/SpecSheets/MinneapolisDataCenter_MIN1.pdf).

Carrier Hotels: Logical Placement

In ¶ 129 the ALJ suggests that logical placement of a point of interconnection is a criterion for determining whether a point lies within a network:

> Mr. Easton's Ex. WRE-3 shows the CenturyLink CQ tandem in St. Cloud serving ten CenturyLink EQ end office switches around the tandem with names indicating them to be in central to western Minnesota. That tandem is a significant part of CenturyLink EQ's network and substantially within it.

That reasoning could be applied to determining whether the 511 Building is substantially within CenturyLink EQ's network. However, there is no direct evidence in the record to show, in detail, how the 511 Building is logically placed with respect to CenturyLink EQ's numerous service areas within the LATA. CenturyLink EQ operates as an ILEC in 44 exchanges in Minnesota. Several of those exchanges lie within a few miles of the I-494/I-694 beltway, to the north-west, south-west and south-east of the 511 Building. It is not inconceivable that the 511 Building could play a central role in CenturyLink EQ's provision of local service.

The dearth of evidence in the record regarding the 511 Building may be attributable to CenturyLink EQ's response to HTI's request for such information during discovery (DOC Witness Doherty Direct Testimony, Exhibit KAD-1, pp. 16-17):

> Information Request No. 26:
> Describe all facilities owned, leased or controlled by CenturyLink EQ or one of its affiliates at the 511 Building and with respect to each, 1) state whether the facilities are owned, leased, or controlled; 2) identify the entity that owns, leases, or controls the facilities.
>
> Response:
> CenturyLink EQ objects to this request as vague with respect to the term 511 building although in conversation, HTI has described the building as the Minnesota Technology Building. CenturyLink EQ further objects to this request as overly

> broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Finally, this building is not in Century Link EQ's serving territory and therefore is irrelevant to any interconnection request HTI might make under this interconnection agreement.
>
> Supplemental Response: CenturyLink EQ maintains its objection and further clarifies that the 511 building is not a part of the CenturyLink EQ network and therefore not an appropriate point of interconnection pursuant to 47 U.S.C. §251(c)(2)(B), which provides for interconnection "at any technically feasible point within the carrier's network." **CenturyLink EQ has no network facilities at the 511 building**. Affiliate facilities are irrelevant under this standard. [emphasis added]

Taken together, CenturyLink EQ's responses reflect CenturyLink EQ's position that it is not required to provide interconnection outside its service area and that the 511 Building is not part of its network. Staff believes that CenturyLink EQ's statement that it "has no network facilities at the 511 building" is significant. Given that statement, and setting aside the service area argument (and Staff believes it should be), Staff believes that CenturyLink EQ should have no opposition to clause "d" of HTI's proposed language:

> d. Third Party locations, e.g., carrier hotels, where CenturyLink has established facilities for the purpose of interconnection with other carriers;

If CenturyLink EQ has no facilities at the 511 Building, then clause "d" should not be troublesome. However, in oral testimony, CenturyLink EQ witness Easton provided some information as to CenturyLink EQ's use of the 511 Building, information that may contradict its response to Information Request No. 26 (Evidentiary Hearing Transcript; p. 64, lines 2-8):

> Q [HTI] So given that language, how do you believe that Hutchinson is proposing to include locations that are not on CenturyLink's network?
> A [EQ] Well, the concern would be specifically the carrier hotels. There's been discussion in this proceeding about **the 511 building where CenturyLink does have facilities**, but it's outside of our serving area. [emphasis added]

Be that as it may, there is more information in the record suggesting that the 511 Building may be part of CenturyLink EQ's network, more evidence than suggests that it isn't. HTI witness Burns, in rebuttal testimony stated:

> Clearly, CTL EQ has not attempted to disprove the technical feasibility of each of those POI locations because it cannot. The list of potential locations proposed by HTI - CenturyLink hand holes and manholes, CenturyLink controlled environment

> vaults, CenturyLink central offices, and third party locations, such as carrier hotels - are all locations where CenturyLink EQ performs cross-connects, both for itself and for other carriers and, therefore, represent technically feasible POIs. [Rebuttal, p. 3]

Although Burns' statement does not directly reference the 511 Building it goes to how carrier hotels can function as part of a network. A statement by CenturyLink EQ witness Easton also makes reference to how carrier hotels can be used:

> I agree that a CLEC has multiple ways of connecting to CenturyLink EQ's End office from the CLEC's location, whether that be its switch (if that is located within CenturyLink EQ's serving territory) or another physical location (such as a carrier hotel, if that is located within CenturyLink EQ's serving territory) where the CLEC establishes a presence. [Rebuttal, p. 18]

Two responses to HTI information requests provide some indication of how a carrier hotel may be employed. In Information Request No. 6 HTI stated: "Please state whether CenturyLink EQ has interconnected with another carrier, including any CenturyLink EQ affiliate, at: … third party locations, such as a carrier hotel where CenturyLink EQ has established facilities for the purpose of interconnecting with other carriers." CenturyLink EQ responded: "CenturyLink EQ may connect its network with another network at a third-party location. However, the location is not the exclusive consideration for connecting two networks nor for establishing the Point of Interconnection." [DOC Witness Doherty Direct Testimony, Exhibit KAD-1, p. 5]

In Information Request No. 7 HTI stated: "Do you admit that CenturyLink EQ performs cross-connects for itself at each of the following locations: … Third party locations, such as carrier hotels where CenturyLink EQ has established facilities for the purpose of interconnecting with other carriers." CenturyLink EQ responded: "Yes. Excluding the interconnection with other carriers, CenturyLink EQ may use cross-connect equipment to cross-connect network elements with itself where the environment allows for such equipment." [DOC Witness Doherty Direct Testimony, Exhibit KAD-1, pp. 5-6]. Staff is unclear how "Excluding the interconnection with other carriers" should be interpreted.

From the above excerpts from CenturyLink EQ's oral and written testimony it is unclear as to whether CenturyLink EQ has facilities at the 511 Building, but it is clear that it does cross-connects there for itself. HTI witness Burns has stated that CenturyLink EQ also does cross-connects there for other carriers. Staff believes this evidence suggests that, in terms of logical placement, the 511 Building is within CenturyLink EQ's network, especially so given that there is no record evidence to support the ALJ's finding that the 511 Building is not part of it.

Carrier Hotels: Similarity

The ALJ also found in ¶ 40 that a carrier hotel is not "similar to the technically feasible points already identified in 47 C.F.R. § 51.305(a)(2), all of which are on or near a switch that is part of the network."

Staff believes that "similarity" alone is not sufficient to support the ALJ's finding because the cited rule provides a list of feasible points noting that such points are "at a minimum." Further, there is nothing in the record to suggest that a carrier hotel does not encompass interconnection facilities that are similar to those comprising the FCC's list of technically feasible points. Section 51.305(a)(2) states, in part:

> (a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:
>
> (1) For the transmission and routing of telephone exchange traffic, exchange access traffic, or both;
>
> (2) At any technically feasible point within the incumbent LEC's network including, at a minimum:
>
> (i) The line-side of a local switch;
> (ii) The trunk-side of a local switch;
> (iii) The trunk interconnection points for a tandem switch;
> (iv) Central office cross-connect points;
> (v) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and
> (vi) The points of access to unbundled network elements as described in §51.319;

The ALJ in ¶ 38 recommended that three additional points be added to the list: (1) CenturyLink hand holes or manholes, (2) CenturyLink controlled environment vaults, and (3) CenturyLink central office. Although the record does not spell out in detail how CenturyLink EQ utilizes the 511 Building, it also does not spell out how any of the minimum nine feasible points acceptable to the ALJ are dissimilar to the functions performed in a carrier hotel. Indeed, Staff believes that the main attraction of a carrier hotel is that it can provide efficient points at which carriers may interconnect with one another. CenturyLink EQ performs cross-connects at the 511 Building and it may have facilities there.

Broader Statutory View of ILEC Obligations

To this point, Staff has focused on the meaning of "within" and the evidence available to determine "within." Here it is useful to step back and examine how narrowly regulators can or should construe "within the incumbent LEC's network."

In Ohio, in 2008, the Public Utilities Commission of Ohio (PUCO) issued an order requiring AT&T (an ILEC) to interconnect with Intrado (a CLEC) **on Intrado's network**, a finding which could be read to run directly counter to the § 251(c)(2) of the Act requiring ILECs to provide interconnection at any technically feasible point within the ILEC's network. AT&T sought appeal with the U.S. District Court for the Southern District of Ohio, Eastern District. The District Court affirmed the PUCO decision. *Ohio Bell Tel. Co. v. Pub. Util. Comm'n of Ohio*, 844 F. Supp. 2d 873 (S.D. Ohio 2012). Subsequently, AT&T appealed the matter to the U.S. Court of Appeals for the Sixth District and, on November 12, 2013, that court affirmed the decision of the lower court. *Ohio Bell Tel. Co. v. Pub. Util. Comm'n of Ohio*, 711 F.3d 637 (6th Cir. 2013).

The reasoning of PUCO and the two courts held that § 251 of the Act dictates a tiered set of interconnection obligations. Section 251(a) addresses the general duties of all telecommunications carriers obliging all carriers to interconnect directly or indirectly with other carriers. Section 251(b) addresses the duties of local exchange carriers, a subset of telecommunications carriers, and § 251(c) sets out the duties of incumbent local exchange carriers, ILECs being a subset of LECs. It is § 251(c) that makes reference to interconnection within the ILEC's network. Sections 251(a) and (c) of the Act state, in part:

> (a) GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS - Each telecommunications carrier has the duty -
> (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and
> (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.
>
> (c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS - In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:
> (1) DUTY TO NEGOTIATE- The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this

subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) INTERCONNECTION - The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

PUCO found that AT&T, as an ILEC, is subject to §§ 251(a) through (c), not just § 251(c). AT&T objected, arguing that it is only subject to § 251(c). The District Court reasoned that AT&T is also subject to the broader dictates of ¶ 251(a) and that PUCO had sufficient authority and grounds for requiring AT&T to interconnect **on Intrado's network**. The District Court made numerous references to the FCC's *CRC Communications Declaratory Ruling* (FCC 11-83; adopted May 25, 2011). There the FCC stated:

> We clarify that LECs are obligated to fulfill all of the duties set forth in sections 251(a) and (b) of the Act, including the duty to interconnect and exchange traffic, even if the LEC has a rural exemption from the obligations set forth in section 251(c). We also clarify that the rural incumbent LECs' obligations under sections 251(a) and (b) can be implemented through the state commission arbitration and mediation provisions in section 252 of the Act. [¶ 2; footnotes omitted]

Although the FCC spoke directly to rural LECs the District Court found that:

> [T]he same holding would apply to standard ILECs who do not qualify for the rural exemption, as, once again, non-exempt ILECs are under the strictest obligations of any telecommunications carrier to provide interconnection." *Ohio Bell Tel. Co. v. Pub. Util. Comm'n of Ohio*, 844 F. Supp. 2d 873 (S.D. Ohio 2012).

In affirming the District Court's decision, the Sixth Circuit Court stated:

> [W]e are persuaded that the district court's interpretation, that incumbent carriers are subject to Section 251(a)'s general interconnection duties, is the correct one. Simply

> stated, it makes little sense to read the Act in a way that imposes fewer duties on incumbent carriers than on less-established, nondominant carriers. As we have previously recognized, the Act is designed to encourage competition by imposing the greatest interconnection duties on incumbent carriers like AT&T. Here, were AT&T not an incumbent carrier subject to Section 251(c) and, instead, were a less-established carrier, the issue would be easy: the Commission clearly would have the authority under Section 251(a) to order interconnection on Intrado's network. There is no limiting language in the statute stating that interconnection must occur on the incumbent carrier's network and, based on the hierarchical structure of the Act, it logically follows that the Commission has the authority to impose this same duty on an incumbent carrier. *Ohio Bell Tel. Co. v. Pub. Util. Comm'n. of Ohio*, 711 F.3d 637 (6th Cir. 2013).

Staff believes that the Commission has considerable latitude in addressing interconnection.

Summary

HTI seeks a list of interconnection points that can be presumed to be technically feasible. 47 C.F.R. § 51.305(a)(2) obligates an ILEC to "provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network …" at "any technically feasible point within the incumbent LEC's network …" Section 51.305(c) elaborates upon technical feasibility:

> Previous successful interconnection at a particular point in a network, using particular facilities, constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities.

And § 51.305(e) places the burden of proof on ILECs:

> An incumbent LEC that denies a request for interconnection at a particular point must prove to the state commission that interconnection at that point is not technically feasible.

Neither CenturyLink EQ nor the ALJ has argued that HTI's proposed clause "d" comprises technically infeasible elements, that is, "Third Party locations, e.g., carrier hotels, where CenturyLink has established facilities for the purpose of interconnection with other carriers." Rather, CenturyLink EQ and the ALJ have focused on carrier hotels in general and, in particular, the 511 Building.

Staff believes the argument that the 511 Building is not on CenturyLink EQ's network because it is outside its service area can be dismissed. Staff also believes that the ALJ's statement that "a carrier hotel is connected to the network; it is not part of it" is not supported in the record. There is no discussion of how carrier hotels, in general, are used or not used. And there is evidence in the record indicating that CenturyLink EQ is connected to the 511 Building, that it performs cross connects there, and that it may have facilities there. Clearly, CenturyLink perceives some value to using the 511 Building, and CenturyLink EQ is in the business of operating a telecommunications network.

Staff Recommendation re: ¶¶ 38 & 40

Staff recommends that the Commission modify the ALJ report, ¶ 38 as follows:

> HTI's proposal should be adopted in part. The following language should be approved for the first paragraph proposed in Issue 24:
>
> 39.1 Technically Feasible. In addition to the technically feasible points listed in 47 C.F.R. § 51.305(a)(2), CLEC shall be entitled to interconnection at any technically feasible point within CenturyLink's network, including but not limited to:
> a. CenturyLink hand holes or manholes;
> b. CenturyLink controlled environment vaults;
> c. CenturyLink central office;~~.~~
> d. Third Party locations, e.g., carrier hotels, where CenturyLink has established facilities for the purpose of interconnection with other carriers;

and strike ¶ 40 in entirety.

Staff Recommendation re: ¶ 129

Issues surrounding reciprocal compensation are addressed in ¶ 106 through ¶ 129. As ¶ 129 is logically linked to the "hotel" issue Staff will recommend modification of the ALJ Report in ¶ 129 as follows:

> Regarding the existing St. Cloud interconnection arrangement under the current interconnection agreement that HTI requested be continued with the point of interconnection at the (Qwest) St. Cloud Tandem, that tandem is a significant part of CenturyLink EQ's network and substantially within it.~~CenturyLink EQ claims that the St. Cloud POI is not on its network because it is not in its service area, so HTI~~

~~cannot request interconnection there. This argument was accepted in Issue 24 regarding the carrier hotels in Minneapolis because they were not "within" CenturyLink EQ's network. The network configuration in the St. Cloud LATA appears to be much different.~~ Mr. Easton's Ex. WRE-3 shows the CenturyLink ~~CO~~QC tandem in St. Cloud serving ten CenturyLink EQ end office switches around the tandem with names indicating them to be in central to western Minnesota. ~~That tandem is a significant part of CenturyLink EQ's network and substantially within it.~~

Commission Options re: Issue 24, part 1: Identification of Technically Feasible Points

1. Do not modify the ALJ Report

2. Modify the ALJ Report as follows:

   Modify ¶ 38 as follows:

   HTI's proposal should be adopted in part. The following language should be approved for the first paragraph proposed in Issue 24:

   39.1 Technically Feasible. In addition to the technically feasible points listed in 47 C.F.R. § 51.305(a)(2), CLEC shall be entitled to interconnection at any technically feasible point within CenturyLink's network, including but not limited to:
   a. CenturyLink hand holes or manholes;
   b. CenturyLink controlled environment vaults;
   c. CenturyLink central office;~~.~~
   d. Third Party locations, e.g., carrier hotels, where CenturyLink has established facilities for the purpose of interconnection with other carriers;

   and strike ¶ 40 in entirety.

3. Modify the ALJ Report to reject the language proposed by the ALJ, HTI and Staff.

4. Take other action.

Staff recommends option 2.

Issue 24, part 2: Disclosure of connections with other carriers

44. The second paragraph of Issue 24 concerns 47 C.F.R. § 51.305(g), which requires an ILEC to provide, to a requesting carrier, "technical information about the ILEC's network facilities sufficient to allow the requesting carrier to achieve interconnection consistent with the requirements of this section."[59] The extent of that requirement is at issue.

45. HTI proposed the following language:

> 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[60] information shall be provided within 15 business days of CLEC's written request.[61]

HTI witness Mr. Burns indicated at the hearing that HTI was interested in information on all other carriers, both CLECs and, especially, ILECs.[62] He further indicated that HTI needs four pieces of information about every interconnection in a LATA to understand its location: (1) the CenturyLink EQ switch code; (2) the Point of Interconnection CLLI code[63] or the physical location (3) the interface level; and (4) the terms of the compensation agreement associated with each Point of Interconnection.[64]

46. One example of an ILEC withholding information about a useable existing interconnection with other carriers occurred when HTI requested the initial interconnection between HTI and CenturyLink EQ's predecessor Sprint in 1999. Sprint offered its template agreement to HTI. The template agreement required, and Sprint insisted, that HTI interconnect at the Sprint end office.[65] HTI learned, however, of the existence of an interconnection between Sprint and US West at the US West switch in St. Cloud.[66] This information came, not from Sprint, but from US West.[67] As a result, HTI was eventually able to request and obtain interconnection at the St. Cloud location that better met its needs.[68]

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[59] 47 C.F.R. § 51.305(g).
[60] This appears to be the only place that the term "POI Location" appears in the Issues Matrix, other than its definition discussed above and in the parties' comments on Issues 24 and 76.
[61] Issues Matrix Issue 24; HTI Brief at 12. HTI's original proposal was not limited to one LATA and asked for statewide information.
[62] Tr. (Burns) at 14, line 14 , to 15, line 9.
[63] CLLI stands for "Code Common Language Location Identifier" which is an alphanumeric eleven character code used to identify physical locations and equipment. *See Newton's Telecom Dictionary* (18th edition), p. 162 (2002).
[64] Tr. (Burns) at 18, line 2, to 19, line 9.
[65] Ex. 100 (Burns Direct) at 2, lines 16-26.
[66] Ex. 100 (Burns Direct) at 5, lines 11-20.
[67] Ex. 100 (Burns Direct) at 6, lines 1-7.
[68] Tr. (Burns) at 13, line 21, to 14, line 22.

47. HTI points out that the *Local Competition Order*, in its discussion of technical feasibility, 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.[69]

48. Both parties point out that the *Local Competition Order*, in its discussion of the duty to negotiate in good faith, stated, in relevant part:

> We agree with incumbent LECs and new entrants that contend that the parties should be required to provide information necessary to reach agreement.[70] Parties should provide information that will speed the provisioning process, and incumbent LECs must prove to the state commission, or in some instances the Commission [FCC] or a court, that delay is not a motive in their conduct. Review of such requests, however, must be made on a case-by-case basis to determine whether the information requested is reasonable and necessary to resolving the issues at stake. It would be reasonable, for example, for a requesting carrier to seek and obtain cost data relevant to the negotiation, or information about the incumbent's network that is necessary to make a determination about which network elements to request to serve a particular customer. [footnote omitted] It would not appear to be reasonable, however, for a carrier to demand proprietary information about the incumbent's network that is not necessary for such interconnection.[71]

49. HTI emphasizes the *Local Competition Order* language finding that **parties should be required to provide information necessary to reach agreement** and that it would be **reasonable for a requesting carrier to seek and obtain** cost data relevant to the negotiation, or information about the **incumbent's network that is necessary to make a determination** about which network elements to request to serve a particular customer.[72] CenturyLink EQ emphasizes the language finding that review of such requests by state commissions or the FCC must be made on a **case-by-case basis** to determine whether the information requested is reasonable and necessary to

[69] *Local Competition Order*, ¶ 205.
[70] [fn 292] *See National Labor Relations Board v. Truitt Mfg Co*, 351 U.S. 149, 153 (1956) (the trier of fact can reasonably conclude that a party lacks good faith if it raises assertions about inability to pay without making the slightest effort to substantiate that claim); *see also Microwave Facilities Operating in 1850-1990 MHz (2GHz) Band*, 61 F.R. 29679, 29689 (1996).
[71] [fn 294] This is consistent with previous FCC determinations. *See, e.g., Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 4 FCC Rcd 468, 472 (1989) (good faith negotiations necessitate that, at a minimum, one party must approach the other with a specific request).
[72] Ex. 100 (Burns Direct) at 7, following line 24.

resolving the issues at stake and that it would be reasonable for a requesting carrier to seek and obtain information about the incumbent's network that is **necessary** to make a determination about which network elements to request to serve **a particular customer**."[73]

50. CenturyLink EQ witness Mr. Easton testified and argued that the information required by the HTI language (1) would include carrier proprietary information; (2) is not stored by CenturyLink EQ in a single easily accessible place; (3) that retrieving the information would be time-consuming and costly;[74] (4) that much of the information would be useless because the CLEC will know where its own facilities are located and can identify potential points of interconnection;[75] and (5) that non-proprietary information requested about non-ILEC interconnection are already publicly available. He also noted it would require CenturyLink EQ to provide information even though it might not be needed for a particular interconnection request and that HTI had not proposed language requiring it to compensate CenturyLink EQ for creating and maintaining such a database.[76]

51. At the hearing, Mr. Easton generally described another approach to providing such information acceptable to CenturyLink EQ:

> [HTI] has made very clear throughout this proceeding that it has the ability to interconnect at any technically feasible point. I would argue that it should base its decision on where to interconnect, not based on where other people have necessarily done it, but it should be based on their particular network configuration, based on their particular customers that they plan to serve and where they're located.
>
> And given that and knowing that they can interconnect at any technically feasible point, I think they've got the necessary information to go to CenturyLink and say look, this is what we want to do, tell us the specifics about where we can interconnect in the particular area. It's not necessary for them to have information about the entire state.[77]

Mr. Easton also testified that limiting the disclosure requirement to a LATA where HTI wished to compete would be less burdensome, but that the more relevant information to be made available would pertain to the specific area in which HTI plans to serve customers. He suggested that the information on where other carriers were interconnected would only become relevant if CenturyLink EQ denied an interconnection request claiming that it was not technically feasible.[78]

[73] CenturyLink EQ Brief at 17-18.
[74] Tr. (Easton) at 98, lines 19-23.
[75] Tr. (Easton) at 66, line 16, to 69, line 2.
[76] *See, generally*, Issues Matrix.
[77] Tr. (Easton) at 67, lines 3-17.
[78] Tr. (Easton) at 68, line 6, to 69, line 2.

52. The Department recommends that the Commission require the inclusion of HTI's proposed language regarding disclosure of information on the locations of points of interconnection.[79]

Recommendation

53. The following language should be approved for the second paragraph proposed in Issue 24:

> CenturyLink shall disclose to CLEC all locations within a LATA where CenturyLink has established facilities interconnection with a third party carrier. This existing interconnection information shall be provided within 15 business days of a written request from CLEC that specifies the geographic area of the customers it plans to serve.

54. This language incorporates the *Local Competition Order* requirement for a specific request as suggested by CenturyLink EQ. However, CenturyLink EQ's arguments that it should not be required to provide information about the locations of its interconnections to other ILECs[80] must be rejected. Similar arguments were made by to the FCC when its rules were being adopted and were rejected.[81]

55. The information that HTI seeks is not information about the network of another carrier, but rather, the network of CenturyLink EQ.[82] Certainly CenturyLink EQ itself is the best source of that information and should have it in a reliable and ready form. The information that is available to a requesting CLEC like HTI is less complete and less reliable.

56. The interconnection agreement language proposed by HTI on this issue, as modified by the Administrative Law Judge, gives effect to the requirements of the Act that require that the ILEC provide the requesting carrier technical information about the ILEC's network facilities sufficient to allow the requesting carrier to select the location and method of interconnection.[83]

Exceptions to ALJ Report

Neither HTI nor DOC filed exceptions. CenturyLink EQ argues that practical and legal concerns are raised by HTI's language (Exceptions, pp. 14-15). CenturyLink EQ argues that its obligations as stated by the FCC are limited such that the information requested by HTI must be

[79] DOC Brief at 22.
[80] CenturyLink EQ Reply Brief at 18-19.
[81] *Local Competition Order,* ¶¶ 208-210.
[82] Ex. 101 (Burns Public Rebuttal), at 10, lines 12-19.
[83] *See* Issue 76 regarding disclosure of BFR information.

"necessary" and must be provided on a "case-by-case basis" in order to serve a "particular customer."

CenturyLink EQ asks the Commission to reject HTI's language (CenturyLink EQ offered no language on this issue at the time the Updated Joint Issues Matrix was filed). In the alternative it asks the Commission to adopt the following language:

> CenturyLink shall disclose to CLEC all locations that are not already publicly available where CenturyLink has established facilities interconnection pursuant with a CLEC or CMRS carrier within a specifically requested geographic area. The specified geographic area will be based on the CenturyLink exchanges the CLEC plans to serve. This existing interconnection information shall be provided within 15 business days of a written request from CLEC.

CenturyLink EQ states that, at a minimum, the Commission should clarify whether or not the term "geographic area of the customers it plans to serve" constitutes a limitation on the information the incumbent is required to provide.

Staff Comment

Staff believes that the CenturyLink EQ testimony quoted in ¶ 51 of the ALJ Report can be paraphrased to mean that HTI should plan its network in the absence of information as to where it is most advantageous to interconnect with CenturyLink EQ and, once HTI has developed such a plan, it should only then seek interconnection information from CenturyLink EQ.

The ALJ recommended the following language (in ¶ 53):

> CenturyLink shall disclose to CLEC all locations within a LATA where CenturyLink has established facilities interconnection with a third party carrier. This existing interconnection information shall be provided within 15 business days of a written request from CLEC that specifies the geographic area of the customers it plans to serve.

Staff believes that the inclusion of the term "all locations within a LATA" is of significant value. First, LATA boundaries are clearly defined. Where geographic boundaries are not clearly defined HTI faces a situation where it could seek information in numerous areas without knowing that it has missed a valuable interconnection opportunity simply because it asked the question in the wrong way. For example, HTI could ask for information for area A and, if

CenturyLink EQ understands A to be different from HTI's understanding, HTI may not obtain information that could allow it to more efficiently design its network.

Second, LATAs are relatively large areas (there are five in Minnesota), and any LATA-wide request for information by HTI could yield a breadth of information that could be valuable to HTI in designing an efficient network. Interconnection information may be of fundamental importance to network design. Further, defining "geographic area" to be relatively small could hamper competitive entry. If HTI has the right to request interconnection information for any and all sub-LATA regions then little is gained by restricting requests to sub-LATA regions. However, a reading of the FCC's language as stated in ¶ 48 of the ALJ Report, and as proposed by CenturyLink EQ, could be used to limit HTI's requests to a small number of sub-LATA regions. Such a limitation may pose a barrier to competitive entry.

In its Exceptions CenturyLink EQ seeks clarification as to whether or not the term "geographic area of the customers it plans to serve" constitutes a limitation on the information the incumbent is required to provide. Staff believes that the limitation is the LATA boundary.

Staff supports the recommendation of the ALJ. It clearly defines the maximum search area (LATA) and broadens the types of interconnection facilities for which information may be sought by HTI, that is, for third-party carriers as opposed to only CLEC and CMRS (Commercial Mobile Radio Service, that is, wireless) carriers. Such information is of critical importance for HTI to develop a network that can provide competitive services.

Commission Options re: Issue 24, part 2: Disclosure of Connections with Other Carriers

1. Do not modify the ALJ Report.

2. Modify the ALJ Report to strike the ALJ's recommended language.

3. Modify the ALJ Report to adopt the language that CenturyLink EQ proposed in its Exceptions.

4. Clarify the ALJ Report with respect to the limitations of the term "geographic area of the customers it plans to serve."

5. Take other action.

Staff recommends option 1.

Issue 24, part 3: Included Traffic Types

57. The third paragraph of Issue 24 concerns a list of traffic types covered by the proposed agreement.

58. HTI proposed to add the following sentence:

> This Section describes the trunk group requirements for the transmission and routing of Switched Access Traffic, Non Access Telecommunications Traffic, Transit Traffic and Jointly Provided Switched Access Service Traffic.[84]

59. In the Issues Matrix and prefiled hearing testimony, CenturyLink EQ objected to the HTI proposal because the list of traffic types is not correct in that Switched Access Traffic should not be exchanged over interconnection trunks and thus should not be included in the list, and other types of traffic that can be exchanged should have been included, such as IntraLATA LEC Toll Traffic and Toll VoIP-PSTN Traffic.[85]

60. It is not clear whether HTI agrees with CenturyLink EQ's arguments, because it has not submitted any support for its proposal. Similar language has been deleted in other issues now resolved by the parties such as closed Issues 9, 10, and 12.

Recommendation

61. It is recommended that HTI's proposal for a third paragraph in Issue 24 not be approved. It is not clear whether HTI agrees with CenturyLink EQ's arguments and CenturyLink EQ has not proposed alternative language. This issue may have been resolved by the parties.

Exceptions to ALJ Report

No exceptions were filed.

[84] Issues Matrix at 24.
[85] Issues Matrix at 24; Ex. 1 (Easton Direct) at 20, lines 24-27; at 30, line 18, to 31, line 2.

Commission Options re: Issue 24, part 3: Included Traffic Types

1. Do not modify the ALJ Report.

2. Modify the ALJ Report to adopt HTI's language as stated in ¶ 58.

3. Take other action.

Staff recommends option 1.

Issue 7: Meet Point Interconnection Arrangement Method

62. Regarding the **method** of interconnection, as opposed to the **point** of interconnection, "an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier."[86] Technically feasible methods of obtaining interconnection or access to unbundled network elements include, but are not limited to physical collocation and virtual collocation at the premises of an incumbent LEC; and meet point interconnection arrangements.[87]

63. The FCC's rules provide the following definitions:

> *Meet point.* A *meet point* is a 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.
>
> *Meet point interconnection arrangement.* A *meet point interconnection arrangement* is an arrangement by which each telecommunications carrier builds and maintains its network to a meet point.[88]

64. In the *Local Competition Order* discussed the obligation of each party to a meet point interconnection arrangement to pay its portion of the costs to build out to the meet point as follows:

> [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

[86] 47 C.F.R. § 51.321(a).
[87] 47 C.F.R. § 51.321(b).
[88] 47 C.F.R. § 51.5.

> meet point. We believe that, although the Commission has authority to require incumbent LECs to provide meet point arrangements upon request, such an arrangement only makes sense for interconnection pursuant to section 251(c)(2) but not for unbundled access under section 251(c)(3). New entrants will request interconnection pursuant to section 251(c)(2) for the purpose of exchanging traffic with incumbent LECs. In this situation, the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement. Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement. In an access arrangement pursuant to section 251(c)(3), however, the interconnection point will be a part of the new entrant's network and will be used to carry traffic from one element in the new entrant's network to another. We conclude that in a section 251(c)(3) access situation, the new entrant should pay all of the economic costs of a meet point arrangement. Regarding the distance from an incumbent LEC's premises that an incumbent should be required to build out facilities for meet point arrangements, we believe that the parties and state commissions are in a better position than the Commission to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection. [89]

65. The parties agree to the definition of "Meet Point" in 47 C.F.R. § 51.5 and have incorporated it into the definitions section of the proposed agreement as follows:

> "**Meet Point**" is [a] 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).[90]

66. In Issue 7, HTI proposes to also include a definition of **Meet Point Interconnection Arrangement** that paraphrases and cites the 47 C.F.R. § 51.5 definition of the term as follows:[91]

> "**Meet Point Interconnection Arrangement"** means each telecommunications carrier builds and maintains its network to a Meet Point. (47 C.F.R. § 51.5)."[92]

67. CenturyLink EQ acknowledges that HTI's proposed definition of Meet Point Interconnection Arrangement is consistent with the FCC definition.[93] However,

[89] *Local Competition Order*, ¶ 553 (footnotes omitted).
[90] Ex. 1 (Easton Direct) at Ex. WRE-2 (Proposed Agreement) at 6.
[91] Issues Matrix, Issue 7.
[92] Ex. 1 (Easton Direct) at 12, line 25, to 13, line 2. *See* 57 C.F.R. § 51.5 (defining "meet point interconnection arrangement").
[93] Tr. (Easton) at 55, line 23, to 56, line 3.

CenturyLink EQ argues that the definition is not needed because the term is not included in CenturyLink EQ's version of the proposed agreement.[94]

68. Despite their agreement to incorporate the definition of "Meet Point" from 47 C.F.R. § 51.5, the parties have a fundamental difference as to what it means.

69. CenturyLink EQ argues that the obligation to interconnect at any technically feasible point is separate and distinct from the obligation to offer what it calls a "meet point interconnection." CenturyLink EQ claims that the FCC made clear in 47 C.F.R. § 51.5 and *Local Competition Order* ¶ 553 that a meet point is a point designated by two carriers and in such an arrangement, each party will "bear a reasonable portion of the economic costs of the arrangement." CenturyLink EQ states that HTI seeks to unilaterally designate a meet point without regard for the proportion of costs incurred by both parties, which the FCC has determined is an appropriate consideration for a meet point interconnection arrangement.[95]

70. The Department states:

> CenturyLink appears to argue that, because the definition of "meet point" refers to a point "designated" by carriers, State commissions may not in arbitration require meet point interconnection at any otherwise technically feasible point used by other carriers. CenturyLink EQ cites no authority for this theory, and the Department has found none. CenturyLink EQ's argument appears plainly inconsistent with the Act, which makes technical feasibility the cornerstone of the obligation to interconnect, and which requires parity and prohibits unreasonable discrimination. The Commission should not adopt this novel interpretation.[96]

71. HTI argues that CenturyLink EQ is "misapplying the regulation."[97] It claims that the reference to a meet point being designated by two telecommunications carriers reflects nothing more than a recognition that a meet point interconnection necessarily requires cooperation between the interconnection carriers and argues that the reference does not trump the ILEC's statutory obligation to allow a CLEC to interconnect at any technically feasible point. Doing so, HTI argues, would effectively give the ILEC veto power over the POI location, contrary to the clear language of Section 251(c)(2) of the Telecommunications Act.[98]

[94] Tr. (Easton) at 54, lines 6-14.
[95] HTI Reply Brief at 7-8.
[96] DOC Brief at 13.
[97] HTI Reply Brief at 3.
[98] HTI Reply Brief at 3-4, *citing Local Competition Order* ¶ 1373 ("[O]ur 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.")

Recommendation

72. For Issue 7, the definition of Meet Point Interconnection Arrangement should be modified to read as follows:

> CenturyLink may deny a meet point at a particular point requested by CLEC on the grounds that its build-out of facilities from that point would exceed the limited build-out that would constitute a "reasonable accommodation of interconnection" under *Local Competition Order* ¶ 553. CenturyLink must prove that fact to the state commission.
>
> "**Meet Point Interconnection Arrangement"** means each telecommunications carrier builds and maintains its network to a Meet Point. (47 C.F.R. § 51.5).

73. CenturyLink EQ is at least partially correct in its interpretation of 47 C.F.R. § 51.5 and *Local Competition Order* ¶ 553. The words, "designated by two telecommunications carriers," cannot simply be ignored as suggested by HTI and the Department. The words must be given effect.

74. *Local Competition Order* ¶ 553 describes meet point arrangements as being commonly used between neighboring LECs, as being fairly simple connections with just "some" build out for the ILEC, such as at the main distribution frame or trunk side of the switch, from which "the limited build-out of facilities to the interconnection point may then constitute an accommodation of interconnection." It finds that in the case of interconnection, as opposed to unbundled access, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement. It concludes that, "the parties and state commissions are in a better position than the Commission to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection."

75. Thus, the parties should, indeed, cooperate in establishing a meet point interconnection. Both parties' economic costs of the arrangement should be considered. Usually, the ILEC's costs to build-out to the meet point will be limited, which justifies normally requiring each party to pay its own build-out costs. However, the ILEC may object to a meet point at a particular point requested by the CLEC on the grounds that its build-out of facilities from that point exceeds the limited build-out that constitutes an accommodation of interconnection under *Local Competition Order,* ¶ 553. That issue may be resolved in arbitration before the state commission.

76. *Local Competition Order* ¶ 553 discusses only the economic costs of "the arrangement." It does not address transport costs or other economic costs of the parties beyond building and maintaining their networks to the meet point

Exceptions to ALJ Report

Neither HTI nor DOC filed exceptions. CenturyLink EQ filed Exceptions to Issue 7 in combination with Exceptions to Issues 8 and 39 (see Exceptions pp. 4-8). Issues 8 and 39 also address Meet Points but are more focused on a particular type of Meet Point, a Mid-Span Fiber Meet Point.

CenturyLink EQ restates its arguments that HTI cannot unilaterally choose a Meet Point, that it must come to agreement with CenturyLink as to the location of a meet point. CenturyLink EQ also argues that the costs of establishing a Meet Point should include dedicated transport.

CenturyLink EQ also argues that the ALJ's recommendation for Issue 7 is inconsistent with the recommendation for Issues 8 and 39.

Staff Comment

In its Exceptions CenturyLink EQ seeks to define the costs of interconnection very broadly to include the cost of transport on its side of the meet point. Staff believes this broad interpretation of costs is flawed. The purpose of the meet point interconnection sought by HTI is to establish interconnection. The FCC defines interconnection, transport and termination as follows:

> *Interconnection* is the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic. (47 C.F.R § 51.5)
>
> [T]ransport is 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, or equivalent facility provided by a carrier other than an incumbent LEC. (47 C.F.R § 51.701(c))
>
> [T]ermination is the switching of Non-Access Telecommunications Traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises. (47 C.F.R § 51.701(c))

In its *Local Competition Order* (¶ 176) the FCC discusses the distinction between these terms:

> We conclude that the term "interconnection" under section 251(c)(2) [addressing an ILEC's duty to interconnect with a requesting carrier] refers only to the physical linking of two networks for the mutual exchange of traffic. Including the

> transport and termination of traffic within the meaning of section 251(c)(2) would result in reading out of the statute the duty of all LECs to establish "reciprocal compensation arrangements for the transport and termination of telecommunications," under section 251(b)(5). In addition, in setting the pricing standard for section 251(c)(2) interconnection, section 252(d)(1) states it applies when state commissions make determinations "of the just and reasonable rate for interconnection of *facilities and equipment* for purposes of subsection (c)(2) of section 251." [footnotes omitted; emphasis in original]

Staff agrees with the arguments of HTI, DOC and the ALJ that CenturyLink EQ's reading of the term "designated by two telecommunications carriers" (in the definition of Meet Point) would grant CenturyLink EQ the ability veto HTI's choice of a meet point, a veto beyond the Commission's reach to arbitrate. This interpretation runs counter to goals and bedrock principles established by Congress and the FCC, principles promoting competition through interconnection, requiring negotiation in good faith, and establishing the authority of a CLEC to interconnect at any technically feasible point of the CLEC's choice.

With respect to the distribution of cost of the facilities and equipment required for interconnection pursuant to § 251(c)(2) the FCC has discussed the accommodation that must be made by ILECs:

> [I]t is reasonable to interpret Congress's use of the term "feasible" in sections 251(c)(2) and 251(c)(3) as encompassing more than what is merely "practical" or similar to what is ordinarily done. That is, use of the term "feasible" implies that interconnecting or providing access to a LEC network element may be feasible at a particular point even if such interconnection or access requires a novel use of, or some modification to, incumbent LEC equipment. This interpretation is consistent with the fact that incumbent LEC networks were not designed to accommodate third-party interconnection or use of network elements at all or even most points within the network. If incumbent LECs were not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers, the purposes of sections 251(c)(2) and 251(c)(3) would often be frustrated. [*Local Competition Order*, ¶ 202]

And,

> New entrants will request interconnection pursuant to section 251(c)(2) for the purpose of exchanging traffic with incumbent LECs. In this situation, the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement. Under these circumstances, it is reasonable to

> require each party to bear a reasonable portion of the economic costs of the arrangement. [*Local Competition Order*, ¶ 553]

Staff believes that the ALJ's recommended language provides relief to CenturyLink EQ in the event HTI seeks to impose unreasonable costs on CenturyLink EQ by HTI's choice of a point of interconnection. Appropriately, given Congress's desire to open local markets and remove barriers to entry, Staff believes the burden for establishing unreasonableness is appropriately placed on CenturyLink EQ.

Issue 7 focuses on the definition of Meet Point Arrangements. The ALJ rejects the notion that CenturyLink EQ can veto (a term HTI uses) HTI's choice of points of interconnection. In the language recommended by the ALJ for Issue 7 there is no reference to a "mutually agreed upon point," language that appears in the ALJ's recommendation for Issues 8 and 39, issues that refer to Mid-Span Fiber Meet Points. There, the ALJ recommended adoption of HTI's language which uses the phrase "mutually agreed upon point" (¶ 78). Staff does not see an inconsistency. The phrase "mutually agreed upon point" also appeared in CenturyLink EQ's proposed language (¶ 77). Staff believes that the ALJ's recommendation for Issues 8 and 39 can be seen as a reflection of the parties' agreed upon phrasing and that HTI's inclusion of the term "mutually agreed upon point" in its proposed language can be seen as a negotiated concession to Century Link EQ on a specific, relatively narrow, issue.

Commission Options re: Issue7: Meet Point Interconnection Arrangement Method

1. Do not modify the ALJ Report.

2. Modify the ALJ Report to strike the language recommended by the ALJ in ¶ 72.

3. Take other action.

Staff recommends option 1.

Issues 8 and 39: Mid-Span Fiber Meet Method of Interconnection

77. In Issue 8, CenturyLink EQ, proposes the following definition:

> "**Mid-Span Fiber Meet**" 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.[99]

In Issue 39, CenturyLink EQ further describes interconnection via a Mid-Span Fiber Meet for section 39.9.2.1.1 of the proposed agreement, as follows:

> 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.[100]

78. HTI proposes the following modified version of CenturyLink EQ's definition at Issue 8 that adds the first sentence and deletes the requirement that the it be between CenturyLink's Serving Wire Center End Office and CLEC's Premises:

> "**Mid-Span Fiber Meet**" 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.[101]

For Issue 39, HTI proposes to delete CenturyLink EQ's language and replace 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.[102]

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[99] Ex. 1 (Easton Direct) at 13, lines 6-14.
[100] Ex. 1 (Easton Direct) at 56, lines 6-12.
[101] Issues Matrix at Issue 8.
[102] Ex. 1 (Easton Direct) at 56, lines 19-25.

79. CenturyLink EQ states that its proposed "Mid-Span Fiber Meet" is CenturyLink EQ's standardized form of interconnection that requires the parties to jointly designate a meet point and share costs associated with that interconnection of fiber on a reasonably equal basis.[103] It is consistent with the standardized product CenturyLink EQ has created and historically offered to CLECs.[104] It is CenturyLink EQ's form of meet point interconnection arrangement. [105]

80. CenturyLink EQ argues that HTI's proposed changes pose a number of issues. First, CenturyLink EQ does not have such a standardized product offering available. Second, as previously argued, it could be used by HTI to force CenturyLink EQ to provide a meet point outside of its territory. Third, as previously argued, it would give HTI the right to unilaterally designate a meet point location, instead of by mutual agreement between the parties, making CenturyLink EQ responsible for a grossly-disproportionate share of the transport costs.[106]

81. CenturyLink EQ points out that this Commission has addressed this type of situation and ordered a party to pay for additional interconnection costs caused by a unique interconnection arrangement. In a 2009 arbitration between Charter Fiberlink and Qwest, the Commission ruled in favor of Qwest on this same type of dispute even though, as in this case, the parties had agreed to a bill and keep methodology of reciprocal compensation for exchanging traffic.[107] CenturyLink EQ believes that this precedent holds true under current FCC rules and requires HTI to assume a reasonable share of the transport costs caused by its choice of a unique, non-standard interconnection arrangement.[108]

82. CenturyLink EQ points out that numerous interconnection agreements approved by the Commission provide for CLEC compensation associated with direct trunked transport, and those terms generally do not vary between agreements that are bill and keep in nature or provide for reciprocal compensation. Thus, CenturyLink EQ argues, the Commission has the authority to order HTI to pay for dedicated transport (direct trunked transport) caused by its choice of a non-standard interconnection arrangement.[109]

83. HTI argues that 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 in several ways, including:

[103] CenturyLink EQ Brief at 5.
[104] Ex. 1 (Easton Direct) at 14, lines 22-25.
[105] Hearing Transcript (Easton) at 57, lines 7-16.
[106] CenturyLink EQ Brief at 5-7.
[107] *In the Matter of the Petition of Charter Fiberlink for Arbitration of an Interconnection Agreement with Qwest Pursuant to 47 U.S.C. §252(b),* Docket P-5535, 421/M-08-952, Order Resolving Arbitration Issues and Requiring Filed Interconnection Agreement at 9-11 (July 10, 2009).
[108] CenturyLink EQ Brief at 10-11.
[109] CenturyLink EQ Brief at 11-12.

a. 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."[110]

b. 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. This is contrary to the requirements of the Act which leave it to the CLEC to determine the interconnection location and method that best meets its needs.

c. CenturyLink EQ limits the POI location to the interconnection of facilities between the CenturyLink EQ serving wire center and the CLEC switch, contrary to the CLEC's right to interconnect at any technically feasible point.

d. CenturyLink EQ's language includes economic feasibility as a limitation on the establishment of its meet point interconnection. CenturyLink EQ does not attempt to show that these limitations are required as a matter of technical feasibility.[111]

Recommendation

84. For Issues 8 and 39, the language proposed by HTI should be adopted and the language proposed by CenturyLink EQ should be rejected.

85. There are technically feasible methods of obtaining interconnection in addition to physical collocation, virtual collocation, and meet point interconnection arrangements.[112] CenturyLink EQ has elected to designate its Mid-Span Fiber Meet as its only meet point interconnection arrangement offering. However, CenturyLink EQ imposes restrictions on its offering that violate its obligation to provide "any technically feasible method of obtaining interconnection at a particular point upon a request by a telecommunications carrier."[113]

86. As HTI argues, requirements that the Mid-Span Fiber Meet be "mutually agreed upon," or at a point between the serving wire center and the CLEC switch, or be based upon economic considerations, are contrary to the requirements the FCC's rules that leave it to the CLEC to choose the technically feasible interconnection location and technically feasible method that best meets its needs. Because the Mid-Span Fiber Meet is CenturyLink EQ's meet point interconnection arrangement offering, the economic considerations that could be addressed go to whether CenturyLink EQ's

[110] Tr. (Easton) at 57, lines 7-16; Ex. 1 (Easton Direct) at 27, lines 1-4.
[111] Ex. 1 (Easton Direct) at 57, lines 2-6 ("Mid-Span Fiber Meet is the standard method that CenturyLink EQ uses to provide network interconnection at a "Meet Point").
[112] 47 C.F.R § 51.321(b).
[113] 47 C.F.R § 51.321(a).

build-out would the limited build-out that would constitute a "reasonable accommodation of interconnection" under *Local Competition Order* ¶ 553 discussed in Issue 7.

87. HTI's proposals for Issues 8 and 39 should be adopted because they are consistent with the Telecommunications Act and the FCC's rules. In the alternative, both CenturyLink EQ's and HTI's proposals for Issues 8 and 39 could be rejected.

Exceptions to ALJ Report

Neither HTI nor DOC filed exceptions. CenturyLink EQ filed Exceptions to Issues 8 and 39 in combination with Exceptions to Issue 7 (see Exceptions pp. 4-8). As discussed above in the context of Issue 7, CenturyLink EQ restates its arguments that HTI cannot unilaterally choose a Meet Point, that HTI must come to agreement with CenturyLink as to the location of a meet point. CenturyLink EQ also argues that the costs of establishing a Meet Point should include dedicated transport.

Staff Comment

Staff agrees with the ALJ's recommendation to adopt HTI's language. CenturyLink EQ's language would inappropriately restrict HTI's right to choose points of interconnection that are technically feasible. CenturyLink EQ has unilaterally determined what forms of interconnection are to be labeled "standard" and wishes to establish in the ICA the ability to reject forms of interconnection that it alone determines to be "non-standard." The ALJ, in a discussion of BFR processes related to Issues 43 and 68 (¶ 131) noted:

> CenturyLink EQ claims that the BFR process it is proposing here is different from the former BFR processes and establishes a process for addressing the *costs associated with a non-standard form of interconnection*. CenturyLink EQ states that it uses the BFR process to evaluate/develop or *reject non-standard methods of interconnection*. [emphasis added; footnotes omitted]

The ALJ recommended, in the alternative, that the Commission reject the language of both parties. The parties appear to desire some language to govern their use of Mid-Span Meet Points.

Commission Options re: Issues 8 & 39: Mid-Span Fiber Meet Method of Interconnection

1. Do not modify the ALJ Report.

2. Modify the ALJ report to adopt CenturyLink EQ's language as referenced by the ALJ in ¶ 77.

3. Modify the ALJ report to reject the language of both parties.

4. Take other action.

Staff has preference for option 1.

Issues 25, 26, 27, 28, 29, 30, 31, 32, 34, 38, 48: Single POI per LATA

88. HTI and the Department claim that CenturyLink EQ's proposals on these issues would improperly require the CLEC to interconnect at more than one point per Local Access and Transport Area (LATA).

89. For these issues, CenturyLink EQ proposed that HTI be required to establish POIs at certain places. For example, in Issue 26, CenturyLink proposed:

> CLEC must establish a POI at each Tandem Switch in the LATA where it wishes to exchange (receive or terminate) Non-Access Telecommunications Traffic with CenturyLink or where it has established codes within that tandem serving area.[114]

For Issues 27 – 30, CenturyLink EQ proposed similar provisions that would require HTI to establish POIs at each end office where traffic meets certain thresholds;[115] at each CenturyLink EQ end office that subtends a non-CenturyLink tandem where traffic meets certain thresholds;[116] at each non-contiguous exchange or group of exchanges where it wishes to exchange traffic;[117] and in each rate center where it wishes to obtain numbering resources.[118]

90. HTI objected to requiring POIs at all those points and proposed substituting the term "Local Interconnection Trunk Group" or "trunk group" for CenturyLink EQ's term "POI." Thus, for example, HTI is now proposing that Issue 26 provide:

> CLEC must establish a Local Interconnection Trunk Group at each Tandem Switch in the LATA where it wishes to exchange (receive or terminate) Non-Access Telecommunications Traffic with CenturyLink or where it has established codes within that tandem serving area.[119]

91. After the hearing, CenturyLink EQ changed its proposals on these issues to allow HTI the option of purchasing direct trunk transport (DTT) to each secondary CenturyLink EQ tandem, if any, if it elects to physically interconnect at a single point in a LATA. For example, on Issue 26, CenturyLink revised its proposal to read as follows:

> CLEC must establish a POI at or order DTT pursuant to Section 43.2.5 from their POI at a CenturyLink Tandem in the LATA to any other CenturyLink Tandem Switches in the LATA where it wishes to exchange

[114] Ex. 1 (Easton Direct) at 33, line 10, to 34, line 10 (Issue 26).
[115] Ex. 1 (Easton Direct) at 34, line 14, to 35, line 21 (Issue 27); see also Ex. 1 (Easton Direct), at 40, line 10, to 42, line 13 (Issue 31) (calculation of threshold for establishing direct trunking).
[116] Ex. 1 (Easton Direct) at 35, line 25, to 37, line 2 (Issue 28).
[117] Ex. 1 (Easton Direct) at 37, line 6, to 38, line 23 (Issue 29).
[118] Ex. 1 (Easton Direct) at 39, line 4, to 40, line 6 (Issue 30).
[119] Ex. 1 (Easton Direct) at 33, line 10, to 34, line 10 (Issue 26).

(receive or terminate) Non-Access Telecommunications Traffic with CenturyLink or where it has established codes within that tandem serving area.[120]

92. CenturyLink made similar language changes in Issues 25, 27, 28, 31, 34, 37 and 48. [121] Issue 38 is a different, but related proposal that CenturyLink EQ considers to be "fundamental" to its POI language. In its view, its language "provides for the establishment of the POIs in such a manner as to ensure that each party pays its fair share of the interconnection cost of the two networks and that the POI is on CenturyLink EQ's network.[122] Issues 25 and 48 are also related proposals.[123]

93. HTI and the Department point out that FCC and court decisions have consistently stated that CLECs have the right to establish a single point of interconnection per LATA with an ILEC[124] and that the FCC has observed that the "single point of interconnection" rule was designed to benefit the CLEC by permitting it to interconnect for delivery of its traffic to the ILEC at a single point.[125]

94. HTI argues that CenturyLink EQ's original provisions would have required it to interconnect at numerous points in a single LATA in violation of the Telecommunications Act's requirement that a CLEC is entitled to interconnect at a single point of interconnection in each LATA.[126] HTI further argues that the revised language still improperly limits HTI's ability to identify a POI that best meets its needs because CenturyLink EQ's revised language would require that HTI's POI be at the CenturyLink EQ tandem. HTI adds that CenturyLink EQ's new proposed language, like its previous proposals, is intended allow it to bill HTI reciprocal compensation charges for which HTI should not be responsible.[127]

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[120] CenturyLink EQ Brief at 24.
[121] Issues Matrix, CenturyLink Proposal, Issue 28.
[122] Ex. 1 (Easton Direct) at 55, line 6, to 56, line 2 (Issue 38).
[123] Ex. 1 (Easton Direct) at 31, line 6, to 33, line 6 (Issue 25); Ex. 1 (Easton Direct) at 67, line 18, to 68, line 32 (Issue 48).
[124] Ex. 200 (Doherty Direct) at 4 and n. 8; *Petition of WorldCom, Inc., FCC Memorandum Opinion and Order ("Verizon Virginia Arbitration Order"),* DA 02-1731 at ¶ 52, 17 FCC Red 27039, *27064, 2002 FCC LEXIS 3544, *56 (released July 17, 2002). (stating that, "[u]nder the Commission's rules, competitive LECs may request interconnection at any technically feasible point. This includes a single point of interconnection in a LATA.") *See also*, *Southwestern Bell Tele. Co. v. Public Utilities Comm. of Texas*, 348 F.3d 482, 485 (5th Cir. 2003) (CLEC may choose to interconnect with ILEC at any technically feasible point, including a single POI per LATA); *In the Matter of the Application by SBC Communications Inc., et al. pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, "Memorandum Opinion and Order" at ¶ 78 (Rel. June 30, 2000) (holding that a CLEC has the option to interconnect at only one technically feasible point in each LATA); *In Re: In the Matter of Developing a Unified Intercarrier Compensation Regime*, "Notice of Proposed Rulemaking," CC Docket No. 01-92, ¶ 112 (Rel. April 27, 2001) (holding that an ILEC must allow a requesting carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA).
[125] *Verizon Virginia Arbitration Order,* DA 02-1731 at ¶ 71.
[126] HTI Brief at 18.
[127] HTI Brief at 19.

95. The Department agrees, arguing that CenturyLink's revised language, which presumptively requires HTI to order direct trunked transport to each CenturyLink EQ tandem where HTI wishes to exchange traffic in lieu of establishing a POI at each tandem, has the same effect financially as language requiring that HTI establish multiple POIs. The Department recommends that the Commission reject CenturyLink EQ's proposals for these issues, because these proposals, for economic reasons alone, require multiple points of interconnection in a LATA. CenturyLink EQ's proposals are inconsistent with the Telecommunications Act's requirements that (1) the sole basis for denial of an interconnection request is lack of technical feasibility, and (2) a CLEC must be allowed to interconnect at only one point in each LATA.[128]

96. The Department and HTI each recommend using the term "Local Interconnection Trunk Group" rather than "POI" for issues 26 through 30, and 34.[129]

97. CenturyLink EQ argues that to eliminate the use of the term "POI" and instead use HTI's proposed term of "Local Interconnection Trunk Group" for Issues 26 through 30 and for Issue 34 would allow the CLEC to use the interconnection trunk group without compensation whereas its proposed language provides for CenturyLink EQ to be compensated for the dedicated facilities required after one POI in the LATA has been established.[130]

Recommendation

98. For Issues 25, 26, 27, 28, 29, 30, 31, 32, 34, 38, and 48, the language proposed by HTI should be adopted and the language proposed by CenturyLink EQ should be rejected.

99. The proposed agreement cannot contain terms that mandate that a requesting carrier establish multiple points of interconnection in any LATA. As HTI and the Department argue, CenturyLink EQ's proposals on these issues do that and therefore are inconsistent with the Telecommunications Act's requirements that a CLEC must be allowed to interconnect at a technically feasible single point of its choosing in each LATA.[131]

Exceptions to ALJ Report

No exceptions were filed.

[128] DOC Proposed Findings of Fact at 6.
[129] DOC Brief at 6-7.
[130] CenturyLink EQ Reply Brief at 23-24.
[131] *See* cases cited in Footnote 124.

Commission Options re: Issues 25-32, 34, 38, 48: Single POI per LATA

1. Do not modify the ALJ Report.

2. Modify the ALJ Report to adopt CenturyLink EQ's language as stated by the ALJ in ¶ 89.

3. Take other action.

Staff recommends option 1.

Issues 44 and 77: HTI's Specific Interconnection Requests

100. HTI proposed two specific meet point interconnection arrangements. CenturyLink EQ has accepted neither and made one of its own. HTI's first proposal was for a meet point at the CenturyLink QC (Qwest) central office in St. Cloud, which is the parties' current interconnection arrangement that has been in place since 1999.[132] CenturyLink EQ then made a proposal for interconnection at Glencoe, Minnesota, using virtual colocation.[133] HTI's second interconnection proposal is for a meet point at CenturyLink EQ's remote switch at Glencoe. This interconnection would be 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. It would use the HTC facilities.[134]

101. In both instances, CenturyLink EQ acknowledges that HTI's interconnection requests are technically feasible, but has not accepted those requests because CenturyLink EQ see them as seeking "nonstandard" interconnection. With respect to the existing interconnection at the Qwest St. Cloud central office, CenturyLink EQ states that the arrangement "isn't something we would agree to do today."[135] CenturyLink EQ does not claim that the interconnection arrangement is not technically feasible. CenturyLink EQ takes the position that the arrangement is "inappropriate" and that it has no obligation to continue to make it available to HTI on a non-discriminatory basis.[136]

102. CenturyLink EQ also declined the proposal for interconnection at Glencoe because HTI would not agree to pay compensation for its use of transport between Glencoe and the host switch in Osseo.[137]

103. HTI argues that CenturyLink EQ's refusal to provide the meet point interconnection at Glencoe is directly contrary to its obligation under the Telecommunications Act to provide interconnection on terms that are non-discriminatory and at least equal in quality to that provided to any other carrier.[138]

104. The Department recommends that the Commission find it reasonable for CenturyLink EQ to build and maintain its network to the meet point interconnection at Glencoe as requested by HTI.[139]

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[132] HTI Brief at 20; Ex. 100 (Burns Direct) at 6, lines 6-7, Fig. 2.
[133] That proposal is Attachment 1 to the copy of the proposed interconnection agreement attached to HTI's petition. The Petition was not a hearing exhibit, but it is in the record as the first document in PUC eDockets file 14-189. Ex. 1 (Easton Direct) at 94-95.
[134] HTI Brief at 20; Ex. 100 (Burns Direct) at 31, line 9, to 32, line 9, Fig. 11.
[135] Tr. (Easton) at 102, line 18; 103, line. 12.
[136] Ex. 2 (Easton Rebuttal) at 31, line 15, to 32, line 14.
[137] Ex. 2 (Easton Rebuttal) at 2-3.
[138] 47 U.S.C. § 252(c)(2); HTI Brief at 21.
[139] Ex. 201 (Doherty Surrebuttal) at 5.

Recommendation

105. For Issues 44 and 77, HTI's position should be adopted and CenturyLink EQ's position should be rejected. HTI may choose either meet point interconnection arrangement that it has requested because they are both technically feasible methods at technically feasible points. The compensation issue is discussed next.

Exceptions to ALJ Report

No exceptions were filed.

Staff Comment

As noted in footnote 133 CenturyLink EQ's proposal for interconnection at Glencoe can be found in Attachment 1 of HTI's initial petition (March 3, 2014). It is a document of several pages in length.

Commission Options re: Issues 44 and 77: Specific Interconnection Requests

1. Do not modify the ALJ Report.

2. Modify the ALJ Report to adopt CenturyLink EQ's Glencoe proposal.

3. Take other action.

Staff recommends option 1.

Issues 33, 37, 41, 42, and 47: Reciprocal Compensation

106. These issues concern CenturyLink EQ's proposed contract language that would enable it to begin charging HTI for transport of HTI's traffic from the meet point to the CenturyLink EQ end office switch.

107. The Telecommunications Act requires all carriers to establish reciprocal compensation for the transport and termination of telecommunications.[140] "Transport" is "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…."[141] "Termination" is "the switching of Non-Access Telecommunications Traffic at the terminating carrier's end office switch…."[142]

108. On December 29, 2011, the FCC issued the *Connect America Fund Order* (*CAF Order*) that, among many items, adopted new rules that overhauled the intercarrier compensation system.[143][144] It adopted "bill-and-keep" as "the default methodology for all intercarrier compensation traffic."[145] Under the 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."[146] Each carrier bills its customers and keeps what they pay. One of the new rules immediately capped all reciprocal compensation rates as follows:

> 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.[147]

109. Under the parties' current agreement, neither party charges the other reciprocal compensation for either transport or termination.[148] That reciprocal compensation arrangement was initially entered into in 1999. The parties agreed to continue the same arrangement in 2006. As a result, the reciprocal compensation

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[140] 47 U.S.C. § 251(b)(5).
[141] 47 C.F.R. § 51.701(c).
[142] 47 C.F.R. § 51.703(d).
[143] 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*) ¶ 9.
[144] The new rules relevant here were codified at 47 C.F.R. §§ 51.700-.715.
[145] *CAF Order* ¶ 741.
[146] *CAF Order* ¶ 737.
[147] 47 C.F.R. § 51.705(c)(1).
[148] Ex. 100 (Burns Direct) at TGB-1, at 29, 39, 41; *see also* Tr. (Easton) at 78, lines 2-7.

arrangement in effect at the time the *CAF Order* took effect was bill-and-keep for both transport and termination.[149]

110. HTI's proposed language for Issue 33 adds a new subsection "c." to Section 39.3 (POI Thresholds), to ensure that each party will bear responsibility for transport on its side of the POI:

> c. 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. [150]

111. Issue 42 addresses the "Third Party Carrier Meet Point using Leased Facilities" method, which would apply if HTI were to interconnect using the HTC interconnection facilities at the Glencoe remote. CenturyLink EQ proposed:

> Third Party Carrier Meet Point using Leased Facilities. If CLEC chooses to interconnect with CenturyLink using a third party's Meet Point Arrangement, (i.e., leased switched access facilities jointly provisioned by CenturyLink and a third party ILEC), then any portion of such facilities provided by CenturyLink will be ordered from CenturyLink's access tariff.[151]

This language would require HTI to pay for transport on CenturyLink EQ's side, so HTI proposed a modification that provides that each party will bear the costs on its side of the POI:

> Third Party Carrier Meet Point using Leased Facilities. 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.[152]

112. HTI argues that CenturyLink EQ is seeking to begin charging for transmission of traffic 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. CenturyLink EQ's language would enable it to begin charging for

[149] Tr. (Easton) at 84-85.
[150] Ex. 1 (Easton Direct) at 43-44; Issues Matrix Issue 33.
[151] Ex. 1 (Easton Direct) at 60, lines 13-21; Issues Matrix Issue 42.
[152] *Id.*

transport under its access tariff.[153] According to HTI, the *CAF Order,* by its plain language, does not permit this increase in charges.

113. CenturyLink EQ argues that the *CAF Order* does not apply to its proposals because Direct Trunk Transport, a form of dedicated transport, is different from the type of transport that is capped by the *CAF Order.*

114. CenturyLink EQ argues that the FCC "specifically excluded dedicated transport from the bill and keep regime" established by the *CAF Order* by specifically reserving the question of dedicated transport and other rate elements for future proceedings in *CAF Order* ¶¶ 739, 821, 1297.[154] CenturyLink EQ highlights the language of those paragraphs as follows:

> ¶ 739: We recognize, however, that we need to further evaluate the timing, transition, and possible need for a recovery mechanism for those rate elements – including originating access, common transport elements not reduced, and ***dedicated transport*** - that are not immediately transitioned; we address those elements in the FNPRM. (Emphasis added).
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> ¶ 821: *Other Rate Elements.* Finally, we note that the transition set forth above caps rates but does not provide the transition path for all rate elements or other charges, such as ***dedicated transport charges***. In our FNPRM, we seek comment on what transition should be set for these other rate elements and charges as part of comprehensive reform, and how we should address those elements. (Emphasis added).
>
> ¶ 1297: Although we specify the implementation of the transition for certain terminating access rates in the Order, we did not do the same for other rate elements, including originating switched access, ***dedicated transport***, tandem switching and tandem transport in some circumstances, and other charges including dedicated transport signaling, and signaling for tandem switching. (Emphasis added).[155]

115. CenturyLink EQ also cites the following language in Section 36.1.2. of the existing contract between the parties as treating Bill and Keep as distinct from transport:[156]

> 36.1.2 Bill and Keep applies to EAS Traffic between either Parties' (sic) End Office and the Physical POI. Each Party is responsible for any necessary transport on its side of the POI as described in Appendix 2.[157]

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[153] *See* Ex. 200 (Doherty Direct) at KAD-1, at 13-14 (CenturyLink's Supplemental Responses to HTI's First Set of IRs).
[154] CenturyLink EQ Reply Brief at 13; Ex. 2 (Easton Rebuttal) at 19-20; *see also* Tr. (Easton) at 81-82.
[155] CenturyLink EQ Brief at 15-16.
[156] CenturyLink EQ Brief at 16.

116. Finally, CenturyLink EQ argues that its proposed language does not eliminate a current bill and keep arrangement because the parties have agreed to language in resolved Issue 52 that all Local Traffic will be exchanged on a Bill and Keep basis.[158]

117. HTI acknowledges that the cited paragraphs do say that the FCC is deferring taking any action to establish a transition plan for certain reciprocal compensation rate elements, including dedicated transport. HTI argues however that the paragraphs do not exclude dedicated transport from the prohibition on any party unilaterally increasing reciprocal compensation rates, including established rates for dedicated transport, above the rates that were in effect on December 29, 2011.

118. HTI further argues that 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 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.[159] CenturyLink EQ does not charge HTC for transport between the Glencoe remote and the Osseo central office. Therefore, according to HTI, the Telecommunications Act does not permit CenturyLink EQ to charge HTI.

119. CenturyLink EQ argues that the issue of reciprocal compensation in this case is controlled by precedent in the Commission's decision in the interconnection arbitration between Qwest and Charter and "requires HTI to assume a reasonable share of the transport costs caused by its choice of a unique, non-standard interconnection arrangement."[160] CenturyLink EQ notes that the Commission agreed with the following finding in the Arbitrator's Report:

> Because of the manner in which Charter has configured its network, it will face additional switching costs to terminate Qwest originated traffic, but it will not face much in the way of additional transport costs (other than the distance from the POI to its switch). Qwest, on the other hand, will face additional costs for both transport and termination of traffic originated on Charter's network. Use of a bill-and-keep method for transport, as advocated by Charter, would require Qwest to forego compensation for its more substantial transport costs. In this situation, reciprocal billing for transport of the other party's traffic is a more fair and reasonable method of recovering these costs.

120. The Department argues that the *Charter Arbitration* decision is distinguishable, both as a matter of a law and as a matter of fact. First, as a matter of

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[157] Ex. 100 (Burns Direct), Attachment TGB-1 at 29.
[158] CenturyLink EQ Brief at 14-15.
[159] Tr. (Easton) at 101, line 24, to 102, line 25.
[160] DOC Brief at 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*").

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 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.[161]

121. Second, as noted by Department witness, Ms. Doherty, the facts of this case differ from the facts of the *Charter Arbitration* in a number of significant respects.[162] For example, because there is already ample capacity between Glencoe and Osseo, HTI's request will not require CenturyLink EQ to construct new facilities. Also, CenturyLink EQ's extra costs are not due to HTI's choice, they are the result of how CenturyLink EQ decided to configure its network. The Department sees no unfairness arising from requiring CenturyLink EQ to bear that cost.[163]

122. CenturyLink EQ responds that the Department's understanding of the proposed configuration is flawed and questions whether splitting the transport costs "24% vs 76%" would be considered reasonable under the *Charter Arbitration*.[164]

123. CenturyLink EQ agrees that it is responsible for transporting HTI originated traffic from its tandem to CenturyLink EQ end users in Glencoe or other destinations served by the Osseo tandem/host office. CenturyLink EQ disagrees, however, that it is financially responsible for providing the transport between Glencoe and Osseo that is required due to the fact that Glencoe is a remote switch, so the traffic must go through Osseo. CenturyLink EQ claims that HTI is clearly attempting to gain access to the EQ tandem network without paying for any of it. CenturyLink EQ quotes part of Paragraph 199 of the *Local Competition Order* to support its position:

> Of course, a requesting carrier that wishes a "technically feasible" but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit.[165]

124. The Department recommends that the Commission find it reasonable for CenturyLink EQ to be responsible for transport costs on its side of to the meet point interconnection at Glencoe the point of interconnection, just as the parties and their affiliates have done since the 1990's. Further, the Department argues It is reasonable for CenturyLink EQ to be responsible for the transport between Osseo and Glencoe on its side of the meet point where those 44 miles are entirely within CenturyLink EQ's network because this is the result of how *CenturyLink EQ* configured its network with a

[161] DOC Brief at 18-19.
[162] Ex. 201 (Doherty Surrebuttal) at 4-5.
[163] DOC Brief at 19-21.
[164] CenturyLink EQ Reply Brief at 14.
[165] CenturyLink EQ Brief at 13-14.

host switch at the Osseo tandem switch and a distant remote office in Glencoe, driving the transport distance that is at issue.[166]

Recommendation

125. HTI's language should be adopted for Issues 33 and 42, and the reciprocal compensation for transport for the Glencoe interconnection should be bill-and-keep. HTI should be not financially responsible for providing the transport between Glencoe and Osseo.

126. The *CAF Order* did, as CenturyLink EQ argues, identify dedicated transport as an element for further study and comprehensive reform. However, the reason for the delay was not to allow increases in rates for dedicated transportation, it was to ultimately reduce those rates, among others.[167]

127. The FCC did not make the distinction in the meaning of "transport" that CenturyLink EQ urges. Again, for the purposes of the FCC's rules, "transport" is "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. …"[168] This definition includes the dedicated transport at issue here, it does not exclude it.

128. Moreover, CenturyLink EQ has not demonstrated that HTI's requested connection requiring 44 miles of dedicated transport would be "expensive" under *Local Competition Order* ¶ 199; or "unreasonable" under the *Charter Arbitration* Order; or would "exceed the limited build-out" that would constitute a reasonable accommodation of interconnection under *Local Competition Order* ¶ 553. Because HTI would interconnect where HTC is connected and use HTC's equipment, and because CenturyLink EQ would not have to add extra capacity, CenturyLink EQ's costs would be minimal. It will be required to give up the potential revenue from that capacity, but it has not complained about that in the past. CenturyLink EQ would have the revenue from its customers that that call HTI's customers. Bill and Keep Reciprocal Compensation would be just and reasonable under 47 U.S.C. § 252(d)(1).

129. Regarding the existing St. Cloud interconnection arrangement under the current interconnection agreement that HTI requested be continued with the point of interconnection at the (Qwest) St. Cloud Tandem, CenturyLink EQ claims that the St. Cloud POI is not on its network because it is not in its service area, so HTI cannot request interconnection there. This argument was accepted in Issue 24 regarding the carrier hotels in Minneapolis because they were not "within" CenturyLink EQ's network. The network configuration in the St. Cloud LATA appears to be much different. Mr. Easton's Ex. WRE-3 shows the CenturyLink CQ tandem in St. Cloud serving ten

[166] Ex. 201 (Doherty Surrebuttal) at 5.
[167] *See CAF Order* ¶ 818. (Although we do not establish the transition for rate reductions to bill-and-keep in this Order, we seek comment in the FNPRM on the appropriate transition and recovery mechanism for ultimately phasing down originating access charges.)
[168] 47 C.F.R. § 51.701(c).

CenturyLink EQ end office switches around the tandem with names indicating them to be in central to western Minnesota. That tandem is a significant part of CenturyLink EQ's network and substantially within it.[169]

Exceptions to ALJ Report

Neither HTI nor DOC filed exceptions. CenturyLink EQ filed Exceptions (pp. 12-13) to the ALJ Report. CenturyLink EQ argues that the language recommended by the ALJ represents a seismic shift in Minnesota law. In standard interconnection agreements, a CLEC has the obligation to pay for dedicated transport to reach the serving tandem or end office switch unless the parties mutually negotiate a mid-span meet point arrangement at that tandem or end office. This particularly makes sense when the incumbent is forced to lease facilities from a third party to complete the interconnection.

CenturyLink EQ also filed Exceptions addressing ¶ 129, footnote 169, of the ALJ Report (Exceptions, pp. 19-20). Footnote 169 states: "The question of whether CenturyLink QC should be considered a third party appears more clearly in this situation." CenturyLink EQ argues that no party presented evidence about ownership of the St. Cloud tandem, no party suggested that the Commission should ignore the distinction between CenturyLink corporate entities, and no party argued that the St. Cloud tandem should be considered part of CenturyLink EQ's network. The statement is gratuitous, irrelevant, without foundation and should be stricken.

Staff Comment

The Telecommunications Act of 1996, § 251(b)(5) requires all LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." Section 252(d)(2) sets pricing standards for transport and termination that state commissions must apply in resolving disputes. Charges for transport and termination must "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier" and that pricing arrangements shall not be construed to "preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)… ."

Thus, in 1996, Congress dictated that, where transport and termination pricing is in dispute, state commissions may determine prices for transport and termination, or may implement a bill-and-

[169] The question of whether CenturyLink QC should be considered a third party appears more clearly in this situation.

keep arrangement. In 2011 the FCC adopted its *CAF Order*. There it discusses the increasing imperative to shift the industry to bill-and-keep:

> [W]e adopt bill-and-keep as the default methodology for all intercarrier compensation traffic. We believe setting an end state for all traffic will promote the transition to IP networks, provide a more predictable path for the industry and investors, and anchor the reform process that will ultimately free consumers from shouldering the hidden multi-billion dollar subsidies embedded in the current system. [¶ 736]
>
> Bill-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 choose 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 inherent in the current system, eliminating carriers' ability to shift network costs to competitors and their customers. [¶ 738; footnotes omitted]
>
> Bill-and-keep will address arbitrage and marketplace distortions arising from the current intercarrier compensation regimes, and therefore will promote competition in the telecommunications marketplace. Intercarrier compensation rates above incremental cost have enabled much of the arbitrage that occurs today, and to the extent that such rates apply differently across providers, have led to significant marketplace distortions. Rates today are determined by looking at the average cost of the entire network, whereas a bill-and-keep approach better reflects the incremental cost of termination, reducing arbitrage incentives. For example, based on a hypothetical calculation of the cost of voice service on a next generation network providing a full range of voice, video, and data services, one study estimated that the incremental cost of delivering an average customer's total volume of voice service could be as low as $0.000256 per month; on a per minute basis, this incremental cost would translate to a cost of $0.0000001 per minute. Moreover, non-voice traffic on next generation networks (NGNs) is growing much more rapidly than voice traffic, and under any reasonable methods of cost allocation, the share of voice cost to total cost will continue to be small in an NGN. Record evidence indicates that the incremental cost of termination for circuit-switched networks is likewise extremely small. [*CAF Order*, ¶ 752, footnotes omitted]
>
> Our conclusion that the incremental cost of call termination is very nearly zero, coupled with the difficulty of appropriately setting an efficient, positive intercarrier

> compensation charge, further supports our adoption of bill-and-keep. Exact identification of efficient termination charges would be extremely complex, and considering the costs of metering, billing, and contract enforcement that come with a non-zero termination charge, we find that the benefits obtained from imposing even a very careful estimate of the efficient interconnection charge would be more than offset by the considerable costs of doing so. [*CAF Order*, ¶ 753, footnotes omitted]

Staff agrees with the findings and recommendation of the ALJ. Section 51.705(c)(1) of the FCC Rules, as quoted by the ALJ in ¶ 108, is a compelling statement that does not make provision for the exclusion of one type of transport – dedicated transport. Furthermore, Staff believes the FCC's policy (as noted above) is sufficient to support the ALJ's recommendation.

Note Staff's discussion regarding Issue 24, part 1. The FCC, in its *WorldCom Order*, and the Texas District Court prohibited the ILEC from charging the CLEC transport costs to deliver traffic to the CLEC at the point of interconnection.

Note that the ALJ recommended HTI's language for Issues 33 and 42 and made no explicit reference to Issues 37, 41 and 47. Staff understands this to mean that the ALJ does not recommend adoption of either party's language for these issues. Staff believes this consistent with the ALJ's explicit recommendation. Bill-and-keep has been imposed by 47 C.F.R. 51.705(c)(1). If the parties require explicit language to recognize that requirement they may offer it as an agreed-upon term when the Commission reviews the remainder of the ICA.

Commission Options re: Issues 33, 37, 41, 42, and 47: Reciprocal Compensation

1. Do not modify the ALJ Report.

2. Modify the ALJ Report to adopt CenturyLink EQ's language, to reject HTI's language, and to strike footnote 169.

3. Modify the ALJ Report to strike footnote 169.

4. Modify the ALJ Report to modify ¶ 129 as follows:

   Regarding the existing St. Cloud interconnection arrangement under the current interconnection agreement that HTI requested be continued with the point of interconnection at the (Qwest) St. Cloud Tandem, that tandem is a significant part of CenturyLink EQ's network and substantially within it.~~CenturyLink EQ claims that the St. Cloud POI is not on its network because it is not in its service area, so~~

~~HTI cannot request interconnection there. This argument was accepted in Issue 24 regarding the carrier hotels in Minneapolis because they were not "within" CenturyLink EQ's network. The network configuration in the St. Cloud LATA appears to be much different.~~ Mr. Easton's Ex. WRE-3 shows the CenturyLink ~~CQ~~QC tandem in St. Cloud serving ten CenturyLink EQ end office switches around the tandem with names indicating them to be in central to western Minnesota. ~~That tandem is a significant part of CenturyLink EQ's network and substantially within it.~~

5. Take other action.

Staff recommends option 4.

Issues 43 and 68: Proposed Bona Fide Request (BFR) Process

130. According to the *Local Competition Order*, the bona fide request (BFR) processes that ILECs had been using before the FCC's rules were adopted, and were now recommending be included in the rules, had been a problem historically:

> We also find that incumbent LECs may not require requesting carriers to satisfy a "bona fide request" process as part of their duty to negotiate in good faith. Some of the information that incumbent LECs propose to include in a bona fide request requirement may be legitimately demanded from the requesting carrier; some of the proposed requirements, on the other hand, exceed the scope of what is necessary for the parties to reach agreement, and imposing such requirements may discourage new entry. For example, parties advocate that a "bona fide request" requirement should require requesting carriers to commit to purchase services or facilities for a specified period of time. We believe that forcing carriers to make such a commitment before critical terms, such as price, have been resolved is likely to impede new entry. Moreover, we note that section 251(c) does not impose any bona fide request requirement. In contrast, section 251(f)(1) provides that a rural telephone company is exempt from the requirements of 251(c) until, among other things, it receives a "bona fide request" for interconnection, services, or network elements. This suggests that, if Congress had intended to impose a "bona fide request" requirement on requesting carriers as part of their duty to negotiate in good faith, Congress would have made that requirement explicit.[170]

131. CenturyLink EQ claims that the BFR process it is proposing here is different from the former BFR processes and establishes a process for addressing the costs associated with a non-standard form of interconnection.[171] CenturyLink EQ states that it uses the BFR process to evaluate/develop or reject non-standard methods of interconnection.[172]

132. At Issue 43, CenturyLink EQ's proposed the following language:

> 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.[173]

[170] Local Competition Order ¶ 156; Ex. 100 (Burns Direct) at 54; CenturyLink EQ Brief at 20.
[171] CenturyLink EQ Brief at 20-21.
[172] Issues Matrix Issue 68.
[173] Ex. 1 (Easton Direct) at 62, lines 1-5.

HTI proposed the following language for Issue 43:[174]

> 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.[175]

133. For Issue 68, HTI proposed the following:

> 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.[176]

CenturyLink EQ objects to the language saying HTI seeks to change the use of BFR by requiring it to be used in very limited situations. CenturyLink EQ proposes no language of its own for Issue 68.[177]

134. HTI's proposal tracks the language of 47 C.F.R. § 51.321(c) 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."

135. CenturyLink EQ argued that a "particular arrangement … previously provided" is more narrow than "substantially similar," as it should be to allow it to determine if the request is in fact an arrangement that has been used in the past.[178]

136. At the hearing, CenturyLink EQ witness Mr. Easton admitted that "particular arrangement" was "less than crystal clear."[179]

137. 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.[180]

138. 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 predecessors and HTI's ILEC affiliate, HTC, for many years.

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[174] HTI Brief at 31.
[175] Ex. 1 (Easton Direct) at 62, lines 7-15.
[176] Ex. 1 (Easton Direct) at 85, lines 9-15.
[177] Issues Matrix Issue 68.
[178] Ex. 1 (Easton Direct) at 62, line 19, to 63, line 2; Tr. (Easton) at 95, line 20, to 96, line 3.
[179] Tr. (Easton) at 96, lines 5-14.
[180] Tr. (Easton) at 98, line 4, to 99, line 9.

Nonetheless, CenturyLink EQ maintains that the interconnection requested by HTI is "nonstandard" and would therefore, be subject to the BFR.[181]

139. HTI argues that CenturyLink EQ proposed to use its BFR process for the Glencoe interconnection to require HTI to establish, at significant expense to HTI, a virtual collocation that HTI does not need and does not want.[182] Under a virtual collocation arrangement, the CLEC provides the necessary equipment and CenturyLink EQ installs, operates, and maintains the equipment.[183] 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.[184] 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 CenturyLink EQ's BFR language is adopted.[185]

140. HTI also points out that CenturyLink EQ would charge a $1,585 "processing fee" for a CLEC required to use CenturyLink EQ's BFR process.[186]

141. CenturyLink EQ argues that HTI's proposals ignore the significant costs associated with a non-standard form of interconnection, ignore the almost universal inclusion of BFR language in interconnection agreements, and should therefore be rejected.[187]

Recommendation

HTI's language should be adopted for Issues 43 and 68. CenturyLink EQ has not provided any justification for requiring that either of HTI's requested interconnection points and methods go through CenturyLink EQ's BFR process.

Exceptions to ALJ Report

Neither HTI nor DOC filed exceptions. CenturyLink EQ filed exceptions arguing that the ALJ's recommendation creates confusion, uncertainty and the potential for numerous disputes (Exceptions, pp. 16-18). CenturyLink EQ argues that its proposed language covers within the contract the manner in which all terms and conditions associated with an interconnection request will be determined. CenturyLink EQ asks the Commission to adopt the language that it was proposing at the time of the Evidentiary Hearing or, in the alternate, adopt the following modification to the HTI language:

[181] Tr. (Easton) at 102, line 2, to 103, line 12.
[182] Ex. 100 (Burns Direct) at 55, line 1, to 56, line 14.
[183] Ex. 100 (Burns Direct) at 55, lines 1-5; Tr. (Gordon), at 127, lines 18-24.
[184] Ex. 100 (Burns Direct) at 55, line 10, to 56, line 3; Ex. 101 (Burns Public Rebuttal) at 12, lines 1-15.
[185] Response to Petition, Ex. C.
[186] CenturyLink EQ Answer to Petition for Arbitration, Ex. B at 81.
[187] CenturyLink EQ Brief at 21.

> Issue 43: 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 for the purpose of determining whether or not the request is technically feasible. If not already developed, the parties may establish through negotiations or the BFR process: a description of each interconnection arrangement or service to be provided, a tentative availability date, the applicable rates, the installation intervals, BFR development and processing costs and the terms and conditions under which access to the requested Interconnection Method, arrangement or service will be offered
>
> ~~Issue 68: 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.~~

Staff Comment

The ALJ has noted the potential difficulties that BFR processes can pose for establishing interconnection between networks (quoting the FCC in ¶ 130). This does not suggest that BFR processes generally create difficulties beyond their value. Indeed, neither party rejects the need for BFR processes out-of-hand. The difficulty lies in the balancing of BFR harms and BFR benefits. BFR processes can be useful for developing detailed technical requirements for interconnection. BFR processes can also impede interconnection by unnecessarily slowing down interconnection efforts or increasing interconnection costs where (i) sufficient information is already available and/or (ii) where Congress and the FCC have clearly obligated ILECs to provide interconnection to requesting CLECs at any technically feasible point on the ILEC's network (§ 251(c)(2), 47 C.F.R §51.321). The disagreement between the parties on this issue goes to the balancing of BFR benefits and costs.

A key to understanding the disagreement between the parties can be found in ¶ 131 of the ALJ Report, which states, in full:

> CenturyLink EQ claims that the BFR process it is proposing here is different from the former BFR processes and establishes a process for addressing the *costs associated with a non-standard form of interconnection*. CenturyLink EQ states that it uses the BFR process to evaluate/develop or *reject non-standard methods of interconnection*. [emphasis added; footnotes omitted]

The difficulty here is that CenturyLink EQ has unilaterally determined what forms of interconnection are to be labeled "standard" and wishes to establish in the ICA the ability to reject forms of interconnection that it alone determines to be "non-standard." Staff agrees with CenturyLink EQ that HTI seeks to limit the situations in which the BFR process is used. HTI makes reference to the high costs that can be associated with BFR processes and seeks a way to avoid those costs when it requests a "substantially similar arrangement [that] has been previously provided to a third party, or is offered by CenturyLink as a product …" (¶ 132, ALJ Report). Given Congress's clear directive to establish competitive markets, Staff agrees with the ALJ's recommendation and Staff believes HTI's language provides a way for the Commission to reasonably reduce interconnection costs where possible.

In its Exceptions, CenturyLink EQ has offered alternative language, modifying HTI's language. It appears that CenturyLink EQ has agreed to dispense with the BFR process for determining technical feasibility. However, it seeks to deny provisioning substantially similar arrangements through a "normal ordering and provisioning processes." Staff does not have the advantage of HTI's opinion regarding this proposed modification. However, Staff continues to support the ALJ's recommendation. Staff believes that CenturyLink EQ's modified proposal would not allow HTI to avoid significant costs and delays such as those described in ¶139 of the ALJ Report.

Commission Options re: Issues 43 & 68: Proposed Bona Fide Request Process

1. Do not modify the ALJ Report.

2. Modify the ALJ Report adopting CenturyLink EQ's language as stated by the ALJ in ¶ 132.

3. Modify the ALJ Report adopting CenturyLink EQ's language proposed in its Exceptions.

4. Take other action.

Staff recommends option 1.

Miscellaneous Remaining Issues

Issue 1: Definition of "End User"

142. There do not appear to be significant conceptual differences between the parties on this issue; they agree that wholesale providers and the parties themselves are not appropriately considered end users.[188] They differ on how to describe those entities. CenturyLink EQ proposes:

> "**End User**" - 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.[189]

HTI edits out much of the verbiage contained in the first two sentences of CenturyLink EQ's definition and proposes:

> "**End User**" - A 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.[190]

143. CenturyLink EQ claims that a simple comparison of the language demonstrates that its proposal is clearer than HTI's and more likely to avoid future disputes.[191] It claims that HTI's definition "fails to include the requirement that the end user cannot be a reseller nor can it be the Party itself."[192] HTI countered that its 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.[193]

144. CenturyLink EQ also argued that its definition "appropriately describes that type of wholesale customers that would meet the definition of End User as it is used in

[188] Tr. (Easton) at 51, line 7, to 53, line 24.
[189] Matrix, Issue 1.
[190] Revised Matrix, Issue 1, HTI proposed language.
[191] CenturyLink EQ Brief at 29.
[192] Ex. 1 (Easton Direct) at 8, lines 25-26.
[193] Tr. (Easton) at 52, lines 14-18.

this agreement."[194] 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.[195]

Recommendation

145. HTI's language should be adopted for Issue 1.

146. CenturyLink EQ's definition only adds complexity; it does not increase clarity. It is very difficult to understand.

Exceptions to ALJ Report

No exceptions were filed.

Commission Options re: Issue 1: Definition of "End User"

1. Do not modify the ALJ Report.

2. Modify the ALJ Report adopting CenturyLink EQ's language as stated by the ALJ in ¶ 142.

3. Take other action.

Staff recommends option 1.

[194] Ex. 1 (Easton Direct) at 8, lines 28-30.
[195] Tr. (Easton) at 53, lines 21-24.

Issue 14: Definition of "Transit Traffic"

147. Again the parties disagree about the detail required in this definition. 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.[196]

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.[197]

148. CenturyLink EQ believes that it is important to specify the types of transit traffic that will be exchanged to avoid future disputes proposed definition specifically identifies the types of traffic included within the definition and defines Transit Traffic in both directions. It includes traffic routed from third parties, including VoIP-PSTN Traffic, through CenturyLink EQ to HTI and traffic routed from HTI, excluding CMRS traffic, through CenturyLink EQ for termination with third parties.[198]

149. HTI objects to the language proposed by CenturyLink EQ on the ground that it is unnecessarily complicated.[199] Further, according to HTI, as the transit provider, CenturyLink EQ will generally not be in a position to be able to distinguish among various types of traffic (for example, IntraLATA Toll Traffic from Toll VoIP-PSTN Traffic),[200] and therefore the additional detail of CenturyLink EQ's language adds nothing.[201]

Recommendation

150. CenturyLink EQ's language should be adopted for Transit Traffic in Issue 14.

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[196] Ex. 1 (Easton Direct) at 19, lines 9-14.
[197] Ex. 1 (Easton Direct) at 18, line 20, to 19, line 7.
[198] Ex. 1 (Easton Direct) at 19, line 18, to 20, line 4.
[199] Ex. 1 (Easton Direct) at 19, line 21, to 20, line 4.
[200] Ex. 100 (Burns Direct) at 16, line 11 to end of page.
[201] Ex. 100 (Burns Direct) at 16, line 11 to end of page.

151. Contrary to HTI's assertion, this language is not particularly complicated. It may be helpful.

Exceptions to ALJ Report

No exceptions were filed.

Commission Options re: Issue 14: Definition of "Transit Traffic"

1. Do not modify the ALJ Report.

2. Modify the ALJ Report adopting HTI's language as stated by the ALJ in ¶ 147.

3. Take other action.

Staff recommends option 1.

Issue 46: Financial Responsibility for Indirect Interconnection

152. Indirect Traffic is originated by one party and terminated by the other party and a third party ILEC's tandem switch provides the intermediary transit service and serves CenturyLink EQ's End Office.[202] The parties disagree on which should be responsible for the cost of the transit service on CenturyLink EQ's side of the intermediary.

153. HTI has proposed the following language:

> 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 enter into transiting arrangements with the third party providing the transit services. Each Party is responsible for the facilities to the ILEC 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.[203]

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.[204]

154. 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.[205]

155. At the hearing, CenturyLink EQ witness Mr. Easton admitted that the last sentence of HTI's proposed language does, in fact, clearly specify responsibility for third

[202] Proposed Agreement § 42.1.
[203] Ex. 1 (Easton Direct) at 65, lines 5-17.
[204] Ex. 1 (Easton Direct) at 64, line 20, to 65, line 2.
[205] Ex. 1 (Easton Direct) at 65, lines 20-27.

party transit charges satisfying CenturyLink EQ's concerns in that regard and also addresses CenturyLink EQ's other concerns.[206]

Recommendation

156. HTI's proposed language for Issue 46 should be adopted. The language fairly places the responsibility on the parties.

Exceptions to ALJ Report

No exceptions were filed.

Commission Options re: Issue 46: Financial Responsibility for Indirect Interconnection

1. Do not modify the ALJ Report.

2. Modify the ALJ Report adopting CenturyLink EQ's language as stated by the ALJ in ¶ 153.

3. Take other action.

Staff recommends option 1.

[206] Tr. (Easton) at 104, line 6, to 105, line 18.

Issue 50: Requirements for Establishment of Direct Interconnection

157. 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 ASR order to establish direct connection within thirty days of being informed that the threshold has been met.[207] The dispute is about CenturyLink EQ's proposal to require HTI to reimburse it for charges it incurs if the direct connection is not established within the 30 days.

158. For Issue 50, CenturyLink EQ proposes:

> 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.[208]

HTI objects to the last two sentences and proposes they be deleted. Its proposed language is:

> 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.[209]

159. HTI argues that 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 the interconnection. Further, 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.[210]

160. CenturyLink EQ argues that it needs the additional language to provide a necessary incentive to insure that the additional interconnection is established.[211]

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[207] Ex. 1 (Easton Direct) at 69, lines 21-28.
[208] Ex. 1 (Easton Direct) at 69, lines 6-20.
[209] Issues Matrix Issue 50.
[210] HTI Brief at 43.
[211] Ex. 1 (Easton Direct) at 70, lines 1-3.

Recommendation

161. The following language should be adopted for Issue 50 be adopted:

> CenturyLink will notify CLEC when traffic triggers in Sections 42.3 or 42.4 triggers have been met or exceeded. CLEC will issue ASRs within thirty (30) days of receiving such notice for required additional interconnection. The parties shall cooperate in good faith to insure the prompt establishment of the requested interconnection.

162. This is HTI's proposed language, with some language revised for clarity. HTI should move promptly when a threshold is reached so that CenturyLink EQ is not negatively affected. At the same time, CenturyLink EQ must cooperate in the process and it would be unfair to penalize HTI for delays caused by CenturyLink EQ.

Exceptions to ALJ Report

Note: ASR refers to an Access Service Request.

No exceptions were filed.

Commission Options re: Issue 50: Establishment of Direct Interconnection

1. Do not modify the ALJ Report.
2. Modify the ALJ Report adopting CenturyLink EQ's language as stated by the ALJ in ¶ 158.
3. Modify the ALJ Report adopting HTI's language as stated by the ALJ in ¶ 158.
4. Take other action.

Staff recommends option 1.

Issues 54 and 57: Establishment of Bi-Directional, Two-Way Trunk Groups/Conversion of One Way Trunk Groups

163. Despite the title, the primary issue in these two trunk group issues is whether language that does not affect HTI, but that may affect other carriers that might want to opt into this proposed agreement, should be included. CenturyLink EQ would prefer an agreement with broader provisions for those that may opt in; HTI would prefer that it be tailored just to HTI's needs.

164. 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 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. [212]

165. 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.[213] CenturyLink EQ points out that HTI would not be harmed by its additional language, while other parties could opt into this agreement without negotiating or arbitrating these issues. The same issues that exist with Issue 54 apply to CenturyLink EQ's proposed language on Issue 57. Again, CenturyLink EQ asserts that HTI would not be affected by this language and it makes sense to adopt it so that other parties can opt into this agreement without negotiating or arbitrating these issues.[214]

166. HTI argues that by not allowing a "Statement of Generally Available Terms" or "SGAT" generally instead of in limited situations under 47 C.F.R. § 51.271(c)(1)(B), "Congress" recognized the need for individual CLECs to be able to enter into agreements that are specific to their particular competitive needs. It notes that the FCC's "all-or-nothing" rule, which requires a CLEC to opt into an existing

[212] Ex. 1 (Burns Direct) at 18; Tr. (Easton) at 107, line 12, to 108, line 10.
[213] Ex. 2 (Easton Rebuttal) at 53, lines 1-15; Tr. (Easton) at 109, lines 11-17.
[214] Ex. 1 (Easton Direct) at 74, line 1, to 75, line 10.

interconnection agreement in its entirety, was intended to produce creative agreements that are better tailored to meet carriers' individual needs.[215]

Recommendation

167. CenturyLink EQ's proposed language should be adopted for Issues 54 and 57.[216]

168. CenturyLink EQ has presented reasonable justification for the proposed agreement being structured to facilitate other carriers choosing to opt into it. It would make it easier for them to do so. It would also facilitate CenturyLink EQ's compliance with its obligation under the Telecommunications Act to make any interconnection provided under an approved ICA to which it is a party available to any other requesting telecommunications carrier upon the same terms and conditions.[217] HTI's arguments were less compelling on this issue.

Exceptions to ALJ Report

No exceptions were filed.

Staff Comment

Staff respectfully disagrees with the decision of the ALJ on this issue. Recall, as background, that CenturyLink EQ is obligated make available to any requesting telecommunications carrier the entire HTI-CenturyLink EQ agreement that the Commission approves (§252(i); 47 CFR §51.809(a)). That is to say another CLEC may approach CenturyLink EQ in the future and request terms identical to the HTI-CenturyLink EQ agreement.

The ALJ has indicated that the parties have agreed to language regarding two-way trunk groups (¶ 164) but not to language regarding one-way trunk groups. HTI does not want the one-way trunk group language included in the ICA because it does not make use of such facilities. CenturyLink EQ seeks inclusion of the additional language, not for purposes of its relationship with HTI, but rather as a template for "any other requesting telecommunications carrier" that may choose to adopt the HTI-CenturyLink EQ language pursuant to §252(i) – a party that is not engaged in this arbitration and has not yet even been identified. The transcripts of the Evidentiary Hearing of August 6, 2014, make CenturyLink EQ's position clear (p. 108, line 22 to p. 109, line 16):

[215] HTI Brief at 45-46.
[216] Because of changes in language that were not incorporated in the last Issues Matrix, the exact language proposal was not available to the Administrative Law Judge.
[217] 47 U.S.C. § 252(i).

Q [HTI] This concerns conversion of one-way trunk groups, correct?
A [EQ] Correct.
Q [HTI] And HTI doesn't have any one-way trunk groups or directionalized two-way trunks, correct?
A [EQ] That is my understanding, so I believe this language would not apply to Hutchinson.
Q [HTI] And a party that did have either one-way trunk groups or directionalized two-way trunk groups would need to amend this provision to reflect that, correct?
A [EQ] If Hutchinson's language was accepted, that's correct.
Q [HTI] And, again, the only objection that CenturyLink has to HTI's language is that this diverges from CenturyLink's standard interconnection agreement language?
A [EQ] Agreed. But, again, you know, I don't know why that is a concern for Hutchinson since it doesn't apply to Hutchinson in this situation.

CenturyLink EQ appears to seek the additional language **solely** for the purpose of creating a template for other requesting carriers not a party to this arbitration, not for defining the terms of its relationship with HTI.

With respect to the practical value of the inclusion of the disputed language, there is no way to determine at this time on this record whether the disputed language is a benefit or hindrance to some unnamed requesting carrier. And, if the CenturyLink EQ's language is of value to a requesting carrier, that carrier may adopt the ICA without the disputed language and, on the same day, file a petition for amendment to add the language that CenturyLink has stated that it seeks. Administratively, there is little difference between the burden of reviewing two such agreements and the burden of reviewing one. Adoptions pursuant to § 252(i) and negotiated amendments are typically placed on the Commission's consent agenda and approved with little fanfare. From the perspective of a negotiating carrier that agrees to CenturyLink EQ's language, the administrative burden should be minimal.

Staff believes the Commission should not set this precedent. Such a precedent could allow CenturyLink EQ (and/or QC) over time to build in language to make an ICA unattractive to other requesting CLECs, forcing them to expensive arbitration if they disagree.

If the parties now agree to this language (and Staff is not aware that they do) Staff does not oppose its inclusion. But Staff does not recommend adoption of the ALJ's reasoning.

Commission Options re: Issues 54 & 57: Establishment of Trunk Groups

1. Do not modify the ALJ Report.

2. Modify the ALJ Report to exclude the language regarding one-way trunk groups that is not agreed to by the parties.

3. Take other action.

Staff recommends option 2.

Issues 59-61: Trunk forecasting

169. Issues 59-61 concern CenturyLink EQ proposed language regarding the consequences of over-forecasting trunk requirements. HTI originally proposed to delete this language in its entirety; however, this language provides a necessary and important incentive to provide accurate trunk forecasts. CenturyLink EQ believes that if it provisions unnecessary trunking based on an inaccurate forecast by HTI, then HTI should be held responsible for expenses incurred by CenturyLink EQ as a result of the inaccurate forecast. The language in Issue 61 ensures that expenses will only be recouped in cases where CenturyLink EQ actually suffers financial harm as a result of over-forecasting. Should the over-forecasting not lead to financial harm, no additional expenses will be recouped.[218]

170. HTI is willing to accept the CenturyLink EQ language for Issues 59 and 61 if CenturyLink EQ is willing to accept the following language for proposed by HTI for Issue 60:

> 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 (84 DS1s) equates to an over-forecast of 11.9%.[219]

171. CenturyLink EQ opposes HTI's language for Issue 60 and proposes the following language in its place:

> 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.[220]

172. CenturyLink EQ prefers its language because it believes the purpose of trunk forecasting is to provision sufficient trunk capacity to handle actual traffic volumes. The CenturyLink EQ calculation is straight forward and is based on the number of DS1 equivalents for the total actual traffic volume. It says that HTI's proposed calculation language does not describe how actual traffic volumes are used to determine the over-forecast condition.[221]

173. HTI claims its 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

[218] CenturyLink EQ Brief at 27.
[219] Ex. 100 (Burns Direct) at 20-21; Ex. 1 (Easton Direct) at 77, lines 6-16.
[220] Ex. 1 (Easton Direct) at 76, lines 7-12.
[221] Ex. 1 (Easton Direct) at 75-77; Ex. 2 (Easton Rebuttal) at 55.

circumstances under which those financial consequences would apply. HTI's proposal is reasonable and will help to avoid future disputes.[222]

Recommendation

174. The language in Issues 59 and 61 says that if CLEC over-forecasts its trunking requirement by 20%, CenturyLink EQ may recoup any expense it incurs, unless the facility cannot be used for another purpose during the next year. Neither of the proposals is clear as to how the over-forecast number is calculated. Undoubtedly, the parties know how the calculation is done, but no witness explained the calculation. HTI's proposal divides the number of DS1 equivalents over-forecasted by the total capacity of the facility cross-section, so that part is clear. The CenturyLink EQ calculation does not say what it uses for the divisor. It may be the forecasted requirement, but it is not clear.

175. Because the HTI proposal has a bit more clarity to it, the Administrative Law Judge recommends that it be adopted for Issues 59, 60, and 61.

Exceptions to ALJ Report

No exceptions were filed.

Commission Options re: Issues 59-61: Trunk Forecasting

1. Do not modify the ALJ Report.

2. Modify the ALJ Report adopting CenturyLink EQ's language.

3. Take other action.

Staff recommends option 1.

[222] HTI Brief at 47-48.

Issues 64-67: Transit Traffic Obligations

176. Issues 64-67 relate to disputes regarding obligations associated with Transit Traffic.[223] Issue 64 involves which party should take responsibility for resolving issues associated with blocking for traffic originating from HTI. Issue 65 involves which party should take responsibility for compensating carriers that terminate traffic that HTI originates. Issue 66 involves HTI's proposal to defer the issue of the rate it pays for transit records to another proceeding. Issue 67 involves HTI's liability in the event it improperly routes traffic.

Issue 64: Blocked Traffic

177. Issue 64 concerns responsibilities when transit traffic is blocked by a third party. 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.[224]

HTI proposes the following language:

> In the event Transit Traffic routed by one Party to the other Party is blocked by a third party, CenturyLink agrees to accept a trouble ticket on the matter and shall not unreasonably withhold providing commercially reasonable assistance.[225]

178. According to HTI, trouble tickets are processed and cleared pursuant to known procedures, but there are no similar standards for what constitutes "commercially reasonable assistance." Thus, eliminating language requiring that it accept a trouble ticket effectively eliminates the ability to track CenturyLink's performance.[226]

179. The type of call that would be blocked in this situation is HTI originated traffic using CenturyLink EQ's transit service to reach a third party. If CenturyLink EQ received a trouble ticket, it would investigate it and resolve it with the third party or refer it to HTI if the problem is a disagreement between HTI and the third party about a non-technical issue. CenturyLink EQ does not want to "accept," as opposed to "receive," the trouble ticket and thereby become responsible for resolving a non-technical issue between HTI and the third party.[227]

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[223] "Transit traffic" is traffic that originates on the network of one carrier, travels across ("transits") the network of a second carrier, and is delivered by the second carrier to a third carrier. HTI Brief at 48.
[224] Ex. 1 (Easton Direct) at 79, lines 13-19.
[225] Ex. 1 (Easton Direct) at 79, lines 20-25.
[226] HTI Brief at 48-49.
[227] Ex. 1 (Easton Direct) at 80.

Recommendation

180. CenturyLink EQ's language should be adopted. The "commercially reasonable assistance" it would provide appears to be appropriate for the troubles that might arise. HTI should be in a better position to resolve issues with the third party that CenturyLink EQ would refer to it.

Exceptions to ALJ Report

No exceptions were filed.

Commission Options re: Issue 64: Blocked Traffic

1. Do not modify the ALJ Report.

2. Modify the ALJ Report adopting HTI's language as stated by the ALJ in ¶ 177.

3. Take other action.

Staff recommends option 1.

Issue 65: Financial Responsibility for Transit Traffic

181. The parties have already agreed in Section 55.2.2. of the proposed agreement that, for transit traffic, CenturyLink does 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.[228] The dispute regarding Issue 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.[229]

182. HTI objects to this proposal and asks that the provision be omitted in its entirety. HTI points out that 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 Section 55.2.2. language and is redundant and unnecessary.[230]

183. HTI's greater concern is the language that requires HTI to defend, indemnify, and hold CenturyLink EQ harmless for such charges, including attorneys' fees and expenses. It believes CenturyLink EQ's language creates the potential for unlimited financial exposure because HTI does not control what termination charges a third party carrier may bill CenturyLink EQ, does not have control over what CenturyLink EQ elects to pay, and would be prevented from exercising an important right to dispute such charges when appropriate. HTI suggests that if CenturyLink EQ were entitled to an unlimited right to indemnification, it would have little incentive to dispute such charges.[231]

184. CenturyLink EQ describes its language as necessary to clarify CLEC responsibilities and the fact that it is not responsible as the transit provider in this case for any charges the terminating carrier may assess. Rather, HTI as the originating carrier is responsible for such charges and should indemnify CenturyLink EQ for any such charges it may be assessed.[232] When asked whether the Section 55.2.2. language

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[228] Ex. 1 (Easton Direct); Ex. WRE-2 at 62; Tr. (Easton) at 109, line 17, to 110, line 3.
[229] Ex. 1 (Easton Direct) at 81, lines 5-18.
[230] HTI Brief at 49.
[231] HTI Brief at 50.
[232] Ex. 1 (Easton Direct) at 81, line 24, to 82, line 2.

adequately addressed its concerns, CenturyLink EQ described its language as "a little stronger and takes it a step further." It also pointed out that as the transit provider, it would be the middle person between the originating and terminating carriers.[233]

Recommendation

185. CenturyLink EQ's proposal for Issue 65 should be rejected.

186. The only substantive addition that CenturyLink EQ's legalistic language makes to the Section 55.2.2. language is attorneys' fees. Attorneys' fees are a very serious threat to most people; well beyond a "little stronger" and "a step further." They are out of place in this situation, which CenturyLink EQ testified is not likely to occur because the bill will go to HTI in the first place. The attorney' fees language is not appropriate; the remainder of the proposal is redundant and not needed.

Exceptions to ALJ Report

No exceptions were filed.

Commission Options re: Issue 65: Financial Responsibility for Transit Traffic

1. Do not modify the ALJ Report.

2. Modify the ALJ Report adopting CenturyLink EQ's language as stated by the ALJ in ¶ 181.

3. Take other action.

Staff recommends option 1.

[233] Tr. (Easton) at 110, line 17, to 111, line 3.

Issue 66: Filing of Rates for Providing Usage Records

187. 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.[234] CenturyLink EQ proposed the following language to state that agreement:

> Upon request by CLEC and to the extent possible, CenturyLink agrees to provide the CLEC information on Transit Traffic which is routed to CLEC utilizing CenturyLink's Transit Service. CenturyLink shall bill for message provisioning and, if applicable data tape charges, related to the provision of usage records. Record charges are listed in Table 1 as Message Provisioning.[235]

HTI agrees to everything except the last sentence. It proposes to delete it and replace it with: "Record charges must be filed with a rate with the MN PUC."

188. HTI supports its proposal by arguing that it will assist the Commission in carrying out its regulatory responsibility under Minn. Stat. § 237.06 to assure that rates for telecommunications services are fair and reasonable.[236]

189. CenturyLink EQ rejects HTI's proposal. It believes that the Messaging Provision rate included in the Table 1 Rate Sheet attached to the proposed agreement that will be filed with the Commission for approval is sufficient and that no further filing with the Commission will be necessary.[237]

Recommendation

190. CenturyLink EQ's language should be adopted for Issue 66.

191. Attaching a Rate Sheet as Table One to the interconnection agreement is an appropriate method of filing the rates. Mr. Easton's version of the proposed agreement has a Table One Rate Sheet attached showing several rates including one for "Messaging Provision.[238] This is not a new process. CenturyLink EQ has filed over 50 interconnection agreements with rates with the Commission and none have been rejected.[239] The format need not be changed at this point.

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[234] HTI Brief at 50.
[235] Ex. 1 (Easton Direct) at 82, lines 10-17; Issues Matrix Issue 66.
[236] HTI Brief at 50.
[237] Ex. 1 (Easton Direct) at 83, lines 1-10; Issues Matrix Issue 66.
[238] Ex. 1 (Easton Direct) at WRE-2.
[239] Tr. (Gordon) at 116.

Exceptions to ALJ Report

No exceptions were filed.

Commission Options re: Issue 66: Filing of Rates for Providing Usage Records

1. Do not modify the ALJ Report.
2. Modify the ALJ Report adopting HTI's language as stated by the ALJ in ¶ 187.
3. Take other action.

Staff recommends option 1.

Issue 67: Transit traffic thresholds

192. The parties agree to proposed language that would require HTI to establish a direct connection when the amount of Transit Traffic meets certain volume thresholds. They disagree as to a final sentence stating the remedy if HTI fails to establish a direct connection within 60 days of being notified of the need to do so.[240] The portion they agree to, with some minor edits made by CenturyLink EQ on September 26, 2014, states:

> Notwithstanding any other provision to the contrary, once the volume of Transit Traffic exchanged between CLEC and a third party exceeds the equivalent of three (3) DS1s of traffic, CenturyLink may, but shall not be obligated to require CLEC to establish a direct connection to the parties with whom they are exchanging traffic. CenturyLink also reserves the right to require CLEC to establish a direct connection to the third party if, the tandem is at or approaching capacity limitations. These limitations may include but are not limited to a lack of trunk port capacity or processor capacity based on the then existing tandem and network configuration. Within sixty (60) Days after CenturyLink notifies CLEC of the requirement to direct connect, CLEC shall establish a direct interconnection with such third party.[241]

193. CenturyLink EQ had originally proposed an additional sentence that, upon failure of HTI to establish direct connection, allowed CenturyLink EQ to charge HTI at double the normal transit rate or discontinue transit service. HTI objected to that as illegal and proposed replacing the last sentence with the following Language:[242]

> After sixty (60) Days, if CLEC has not established a direct interconnection, CenturyLink may thereafter follow the process outlined in section 24 Dispute Resolution.[243]

194. CenturyLink EQ provided a revised proposal for the last sentence on September 26, 2014, that reads as follows:

> After sixty (60) Days, if CLEC has not established a direct interconnection, CenturyLink may thereafter charge CLEC for such transit service including Transit Traffic that terminates with CLEC at the transit rate set forth in Table One, or after following the Dispute Resolution process outlined in section 24 and with the approval of the Commission, discontinue providing transit service to CLEC.[244]

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[240] Ex. 1 (Easton Direct) at 83, line 15, to 84, line 10.
[241] Issues Matrix Issue 67.
[242] Ex. 1 (Easton Direct) at 84, lines 12-31.
[243] Issues Matrix Issue 67.
[244] *Id.*

195. HTI considers CenturyLink EQ's revised proposal a step in the right direction, but argues that it would still impose consequences on HTI for circumstances beyond its control. It claims that in some instances, 60 days may not be a sufficient amount of time to establish interconnection.[245]

196. CenturyLink EQ chose to specify 60 days because it is a reasonable time frame to establish the required direct connection to an end office. That is a "very" standard process that would not be subject to the BFR process.[246]

Recommendation

197. CenturyLink EQ's proposal should be adopted for Issue 67 as follows:

> Notwithstanding any other provision to the contrary, once the volume of Transit Traffic exchanged between CLEC and a third party exceeds the equivalent of three (3) DS1s of traffic, CenturyLink may, but shall not be obligated to require CLEC to establish a direct connection to the parties with whom they are exchanging traffic. CenturyLink also reserves the right to require CLEC to establish a direct connection to the third party if, the tandem is at or approaching capacity limitations. These limitations may include but are not limited to a lack of trunk port capacity or processor capacity based on the then existing tandem and network configuration. Within sixty (60) Days after CenturyLink notifies CLEC of the requirement to direct connect, CLEC shall establish a direct interconnection with such third party. After sixty (60) Days, if CLEC has not established a direct interconnection, CenturyLink may thereafter charge CLEC for such transit service including Transit Traffic that terminates with CLEC at the transit rate set forth in Table One, or, after following the Dispute Resolution process outlined in section 24 and with the approval of the Commission, discontinue providing transit service to CLEC.

198. The requirements are clear and attainable and the remedy is fair to both parties.

Exceptions to ALJ Report

No exceptions were filed.

[245] HTI Brief at 51.
[246] Tr. (Easton) at 111, line 21, to 112, line 13.

Commission Options re: Issue 67: Transit Traffic Thresholds

1. Do not modify the ALJ Report.

2. Modify the ALJ Report adopting HTI's language as stated by the ALJ in ¶¶ 192 and 193.

3. Take other action.

Staff recommends option 1.

Issues 67.1, 18, and 36: Billing Records

199. Neither party currently terminates any toll traffic to the other party under their current interconnection agreement.[247] HTI then learned that CenturyLink EQ does intend to route VOIP-PSTN toll traffic to HTI both directly and indirectly.[248] HTI does not object to the concept of VOIP-PSTN toll traffic being routed under the parties' proposed agreement, but it wants to assure that when that happens, it is able to bill the originating carrier for that traffic, whether that carrier is CenturyLink EQ or another carrier.[249]

200. It is not technically feasible for HTI to discern and measure CenturyLink EQ-originated IntraLATA VoIP PSTN traffic that is terminated to the HTI network commingled with traffic from other carriers. Accordingly, HTI proposed the following provision as Issue 67:

> 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,"[250] it has not provided critical details, such as data content, format, and media, regarding the information to be provided.[251]

201. CenturyLink EQ argues that these toll records should be made instead by HTI, or that HTI may use the transit records already discussed and that by shifting the issue to a future amendment, HTI seeks to require CenturyLink EQ to participate in a record exchange that it does not agree will occur – even on a future date.[252]

202. CenturyLink EQ Witness Mr. Easton testified 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 qualified and billed.[253] But neither of these provisions 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 of HTI obtaining billing records so that it can properly bill CenturyLink EQ for the traffic.

203. Based upon its prior understanding, HTI proposed contract language at Issue 18 providing that the parties would not route toll traffic to one another, either

[247] Ex. 101 (Burns Rebuttal Public) at 17, line 1.
[248] Ex. 101 (Burns Rebuttal Public) at 16, lines 5-8.
[249] Ex. 101 (Burns Rebuttal Public) at 16, line 8, to 17, line 7.
[250] *See* Issue 66.
[251] Ex. 101 (Burns Rebuttal Public) at 16, lines 15-21.
[252] CenturyLink EQ Brief at 28.
[253] Ex. 2 (Easton Rebuttal) at 43, lines 8-12.

directly or indirectly. It proposed related language for Issue 36 and 51 as well. It appears that Issue 51 has now been resolved and closed.[254]

Recommendation

204. HTI's language should be adopted for Issues 67.1, 18, and 36.

205. It appears that HTI was not fully informed by CenturyLink EQ that it was or would be providing transit service to providers that serve VoIP providers and that IP-originated traffic would be sent to HTI. HTI should be allowed to prepare for that before it happens so it can set up a bill or other process to allow it to be paid properly for that service.

Exceptions to ALJ Report

No exceptions were filed.

Commission Options re: Issues 67.1, 18 & 36: Notice re: IntraLATA VoIP PSTN Traffic

1. Do not modify the ALJ Report.

2. Modify the ALJ Report adopting CenturyLink EQ's proposed language.

3. Take other action.

Staff recommends option 1.

[254] Issues Matrix Issues 18, 36, and 51.

Issues 69, 70, 73, 74, 75, 76: BFR Process Timelines and Disclosures

206. Issues 69, 70, 73, 74, and 75 relate to different timelines that will apply when the BFR process is used. In general, CenturyLink EQ has proposed timelines that are the same as contained in its other interconnection agreements. HTI has proposed timelines, sometimes based upon language in a the Minnesota ATT-US West arbitrated agreement, to either afford itself more time or CenturyLink EQ less time in light of its needs and capabilities as a small company that must rely heavily on outside consultants for these kinds of issues.[255]

Issue 69

207. In Issue 69, CenturyLink EQ proposed that it acknowledge receipt of a BFR request within ten business days, the same as in its other CLEC agreements. HTI proposes to reduce that to two business days because it is a simple task and because similar language from the Minnesota ATT-US West arbitrated agreement used two days.[256]

208. CenturyLink EQ witness Mr. Easton testified that CenturyLink EQ cannot easily and quickly adopt the short timeframes and streamlined processes that its affiliate CenturyLink QC has developed over the past decade. Its systems are separate and changes to CenturyLink EQ's BFR and other processes have been delayed for a number of years.[257]

Recommendation

209. HTI's proposal should be adopted for Issue 69.

210. Sending out an acknowledgement should not take ten days.

Exceptions to ALJ Report

No exceptions were filed.

[255] HTI Brief at 51-52.
[256] Issues Matrix Issue 69.
[257] Ex. 1 (Easton Direct) at 87, lines 3-13.

Commission Options re: Issue 69: Acknowledgement of BFR

1. Do not modify the ALJ Report.

2. Modify the ALJ Report adopting CenturyLink EQ's proposal for a 10-day acknowledgement requirement.

3. Take other action.

Staff recommends option 1.

Issue 70

211. For Issue 70, CenturyLink EQ proposed:

> Except under extraordinary circumstances, within thirty days of receipt of a complete and accurate Request, CenturyLink will approve or deny the Request (Preliminary Analysis). If CenturyLink denies CLEC's Request, the Preliminary Analysis will provide the reason(s) for such denial.

HTI proposes to modify the language to read:

> Within thirty (30) Days of its receipt of a complete and accurate Request, the analysis shall specify CenturyLink's conclusions as to whether or not the requested Interconnection complies with the requirements of the Act or state law. CenturyLink will approve or deny the Request (Preliminary Analysis). If CenturyLink denies CLEC's Request, the Preliminary Analysis will provide the reason(s) for such denial.

212. CenturyLink EQ says it may need more than 30 days to respond in extraordinary circumstance, such as a request for multiple different interconnections. It also claims again that it is not Qwest and does not have the streamlined process flows to handle even the few BFRs it has received to date.[258]

Recommendation

213. HTI's proposal for Issue 70 should be modified to read as follows and adopted:

> Within thirty (30) Days of its receipt of a complete and accurate Request, CenturyLink will approve or deny the Request (Preliminary Analysis). If CenturyLink denies CLEC's Request, the analysis shall specify CenturyLink's conclusions as to whether the requested Interconnection complies with the requirements of the Act and state law and provide the reason(s) for such denial.

214. As this case has demonstrated and as CenturyLink EQ is now admitting, CenturyLink EQ has not been processing BFRs in a reasonably expeditious manner. It may not yet be capable of doing so. That, however, is not an excuse for maintaining the BFR process and not acting upon requests for very long periods. CenturyLink EQ should respond to a request within 30 days.

Exceptions to ALJ Report

No exceptions were filed.

[258] Ex. 1 (Easton Direct) at 88, line 19, to 89, line 8.

Commission Options re: Issue 70: Request for Preliminary Analysis

1. Do not modify the ALJ Report.

2. Modify the ALJ Report adopting CenturyLink EQ's language as stated by the ALJ in ¶ 211.

3. Modify the ALJ Report adopting HTI's language as stated by the ALJ in ¶ 211.

4. Take other action.

Staff recommends option 1.

Issue 73

215. In Issue 73, the proposals allow the CLEC to respond to the Preliminary Analysis. CenturyLink EQ proposed a 30 day time frame to do so, the same as in its other CLEC agreements. HTI proposes to enlarge that to 60 days because of it limited financial and technical resources.[259]

216. CenturyLink EQ argued that if it has only 30 days to act on a BFR, HTI should be able to act within the same period.[260]

Recommendation

217. CenturyLink EQ's proposal should be adopted for Issue 73.

218. HTI would have been working on its interconnection request since before it sent it to CenturyLink EQ and should be able to act within 30 days.

Exceptions to the ALJ Report

No exceptions were filed.

Commission Options re: Issue 73: Response to Preliminary Analysis Request

1. Do not modify the ALJ Report.

2. Modify the ALJ Report adopting HTI's proposed 60-day response period.

3. Take other action.

Staff recommends option 1.

[259] Issues Matrix Issue 73.
[260] Ex. 1 (Easton Direct) at 90, lines 13-16.

Issue 74

219. In Issue 74, the proposals require CenturyLink EQ to set a tentative availability date of when the interconnection will be installed and ready. CenturyLink EQ proposed that it be required to make reasonable efforts to do so within 90 days from receipt of the CLEC's Final Acceptance. The parties have agreed to language saying that if the BFR is not completed by the availability date, the parties will then determine a mutually agreeable availability date. HTI proposes to reduce the time frame to 45 days, saying that should be adequate and because when that is not possible, relief is available.[261]

220. CenturyLink EQ argued that a BFR is by definition non-standard and usually requires a longer time to be made available. It said it would make every effort to meet the request in less than 90 days.[262]

Recommendation

221. HTI's proposal should be adopted for Issue 74.

222. Once the Final Acceptance is signed, it should not take three months to install the interconnection. Much of the planning for facilities, construction, and anything else required would have been completed during review of the request and preparation of the Final Quote. The language provides some flexibility.

Exceptions to the ALJ Report

No exceptions were filed.

Commission Options re: Issue 74: Tentative Availability Date

1. Do not modify the ALJ Report.

2. Modify the ALJ Report adopting CenturyLink EQ's proposed 90-day availability date.

3. Take other action.

Staff recommends option 1.

[261] Issues Matrix Issue 74.
[262] Ex. 1 (Easton Direct) at 91, lines 18-24.

Issue 75

223. In Issue 75, CenturyLink EQ proposes that within 30 days of receipt of the Final Quote, CLEC must either confirm or cancel its Request in writing or submit any disputed issues with the Final Quote for dispute resolution. HTI proposes to enlarge the time frame to 60 days saying that 60 days is reasonable given that CenturyLink EQ's financial and technical resources are far greater that HTI's.[263]

224. CenturyLink EQ argued that HTI should be able to complete its analysis within the same 30 days the CenturyLink EQ must complete its review of the request and stated that extending the period increases the risk that the quote would no longer be accurate.[264]

Recommendation

225. CenturyLink EQ's proposal should be adopted for Issue 75.

226. Thirty days should be adequate time for HTI to accept or reject the Final Quote. CenturyLink EQ's statements are believable.

Exceptions to the ALJ Report

No exceptions were filed.

Commission Options re: Issue 75: Final Quote Confirmation

1. Do not modify the ALJ Report.

2. Modify the ALJ Report adopting HTI's proposed 60-day confirmation/cancellation deadline.

3. Take other action.

Staff recommends option 1.

[263] Issues Matrix Issue 75.
[264] Ex. 1 (Easton Direct) at 92, line 24, to 93, line 4.

Issue 76

227. For Issue 76, HTI has proposed the following, which it took from the Minnesota ATT-US WEST arbitration agreement:

> 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.[265]

228. HTI wants this provision so it can obtain information to determine whether another company has made a similar request and how CenturyLink EQ addressed that request. This information is necessary for HTI to assure that it is receiving at parity and without discrimination consistent with the Telecommunications Act.[266]

229. CenturyLink EQ opposed this proposal on the grounds that such disclosure is not legally required and would impose an undue burden on it because it does not have a system in place to collect such information or to provide the information to CLECs.[267]

Recommendation

230. HTI's proposal for Issue 76 should be adopted.

231. This proposal is related to the disclosure requirement addressed in Issue 24. An ILEC is required to provide technical information about its network facilities sufficient to allow the requesting carrier to achieve interconnection consistent with the

[265] Ex. 1 (Easton Direct) at 93, line 8, to 94, line 3.
[266] HTI Brief at 53.
[267] Ex. 1 (Easton Direct) at 84, lines 5-14.

requirements of the FCC's rules.[268] The BFR information requested in this Issue 76 is precisely the type of information that must be provided. As pointed out by HTI, according to CenturyLink EQ, its BFR process is used only rarely, so complying with the disclosure requirement should not be burdensome.

Exceptions to the ALJ Report

Neither HTI nor DOC filed exceptions. CenturyLink EQ filed exceptions arguing that HTI's language should be rejected or modified (see Exceptions, pp. 18-19). CenturyLink EQ argues that the HTI language is unduly burdensome because it has not readily maintained such information from the past and that such information is irrelevant history. If the Commission adopts HTI's language CenturyLink EQ asks that it be modified to require the creation of a BFR information data base for BFRs received going forward.

Staff Comment

Staff supports the ALJ's recommendation. The ALJ determined that the information sought by HTI is consistent with the FCC's rules and that the infrequent use of CenturyLink EQ's BFR process indicates that providing the information should not be burdensome. As to the relevance of the historical information, it may be reasonable to expect that the older the BFR, the less relevant its information, but Staff is not well-placed to offer a reasonable cut-off date when such information would become irrelevant. Assessment of relevance should lie with HTI. CenturyLink EQ did not offer specific alternative language in the Updated Joint Issues Matrix or in its Exceptions.

Commission Options re: Issue 76: BFR Request History

1. Do not modify the ALJ Report.

2. Modify the ALJ Report to require the creation of a BFR information data base for BFRs received going forward.

3. Modify the ALJ Report to reject HTI's proposed language.

4. Take other action.

Staff recommends option 1.

[268] 47 C.F.R. § 51.305(g).

Did CenturyLink EQ Negotiate in Good Faith?

232. HTI does not seek a specific finding in this case that CenturyLink EQ negotiated in bad faith, but it does wish to put the issue in context.[269] CenturyLink EQ says it negotiated in good faith.[270] The comments in their briefs are restated here.

HTI's View

233. In his opening testimony, Mr. Burns explained the ways in which CenturyLink EQ had failed to negotiate in good faith, causing HTI to suffer unnecessary delay and expense.[271]

234. CenturyLink EQ's positions on all of the major issues lack any colorable legal support and are consistently contrary to the clear requirements of the Telecommunications Act. The key points of dispute do not turn on gray areas in the law. The CLEC's right to interconnect at any technically feasible point, the CLEC's right to meet point interconnection, the *CAF Order's* prohibition on any increase in reciprocal compensation rates are all well-established. Nor do they turn on disputed or complicated facts.[272]

235. Essentially, once the parties reached an impasse with regard to the issue of the POI location, negotiations ground to a halt and very few issues were resolved until well into this proceeding. CenturyLink's scorched earth tactics have driven HTI's costs to arbitrate up and should not be condoned. Many, if not most of the items on the initial arbitration list concern matters which should not have been contentious. Indeed, much of CenturyLink's effort appears to be directed toward re-opening issues that have been resolved between the parties for years. This arbitration proceeding was necessary only because of CenturyLink EQ's stubborn refusal to acknowledge its clear legal obligations.[273]

CenturyLink EQ's View

236. Mr. Easton's rebuttal testimony described CenturyLink EQ's view that it was HTI, rather than CenturyLink EQ, that caused unnecessary delay and unneeded additional work. HTI failed to attend several scheduled negotiations calls with no prior notice of cancellation.[274] HTI's non-standard application of the document redlining process also added additional delays.[275] At one point, CenturyLink EQ had to wait

[269] HTI Reply Brief at 13.
[270] CenturyLink EQ Brief at 25.
[271] HTI Reply Brief at 12.
[272] HTI Reply Brief at 13.
[273] *Id.*
[274] *See* Ex. WRE-4.
[275] *See* last 3 paragraphs in Ex. WRE-5.

several weeks to receive HTI's response to proposed language.[276] Any HTI complaints about CenturyLink EQ's behavior during the negotiations are without merit.[277]

237. HTI appears to confuse CenturyLink EQ's refusal to agree with each of HTI's proposals with the concept of bad faith negotiations. The Minnesota Commission recently addressed this issue and rejected identical advocacy from DTI. It reasoned:

> Good faith does not require such concessions. And where parties believe that a carrier has a duty to make a unilateral concession, parties need not rely on good faith; arbitration may provide a more appropriate path for relief.[278]

HTI's claims of bad faith negotiations have no basis and should be dismissed.[279]

Recommendation

238. There should be no finding that CenturyLink EQ negotiated in bad faith because HTI does not seek it and because the Administrative Law Judge would not recommend it. While HTI was largely correct on the major issues, its claim that CenturyLink EQ's positions on all of the major issues "lacked any colorable legal support" was not correct. There were several exceptions to HTI's sweeping generalizations that did not stand up. HTI is not always entitled to interconnection without compensating CenturyLink EQ for its costs and for use of its facilities.

239. It was surprising, and disturbing, that CenturyLink EQ is years behind CenturyLink QC in developing its BFR systems and processes. But that should not have the impact on CLECs of delaying interconnection that it had in this case. That impact likely translates into negative impacts upon consumers.

Exceptions to the ALJ Report

Neither HTI nor DOC filed exceptions. CenturyLink EQ filed exceptions to ¶ 239 of the Report (Exceptions, pp. 19-20). CenturyLink EQ argued that the ALJ Report cites no evidence to support the finding, and that the issue is not in dispute. CenturyLink EQ asks the Commission to strike ¶ 239 or, in the alternative, allow CenturyLink EQ to present evidence on the issue.

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[276] *See* Exhibit WRE-6.
[277] CenturyLink EQ Brief at 25.
[278] *In the Matter of Digital Telecommunications, Inc's Complaint Against Qwest Corporation*, Docket No. P-5681, 421/C-09-302, Order Denying Relief, (Sept. 10, 2014), pp. 23-24. https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={BD19EEFB-B475-4675-A89B-29FCA9128206}&documentTitle=20149-102965-01. *See* Order for proposition that the obligation to negotiate in good faith does not require a party to compromise its position.
[279] CenturyLink EQ Brief at 25-26.

Staff Comment

In ¶ 232 through ¶ 239 the ALJ made reference to statements in the record about good faith negotiations and CenturyLink EQ's (and QC's) BFR processes. Staff questions whether it is useful and/or appropriate to adopt that discussion, in whole or in part. In reference to arbitrations, § 252(b)(4)(A) of the Act states, in part:

> The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

Staff agrees with CenturyLink EQ that the relative quality of CenturyLink EQ's and CenturyLink QC's BFR processes was not raised in the initial petition (although CenturyLink EQ itself made reference to its abilities in contrast to those of CenturyLink QC (ALJ Report, ¶¶ 208 and 212).

Furthermore, Staff does not believe the question of whether or not CenturyLink EQ negotiated in good faith was raised in the initial petition by HTI or in the response by CenturyLink EQ. Although HTI witness Burns indicated in his Direct Testimony (p. 57) that he believed CenturyLink EQ had not negotiated in good faith, HTI made it clear in its Post-Hearing Reply Brief (p. 12) that it was not seeking such a finding. The ALJ acknowledged that statement in ¶ 232.

Staff believes the evidentiary record in this case was not developed for the purpose of addressing allegations of bad faith negotiation. Staff suggests that the Commission modify the ALJ Report by striking ¶¶ 232-239. Striking those paragraphs may hue closer to the dictates of § 252(b)(4)(A) and may be more parsimonious.

If the Commission is persuaded to strike ¶¶ 232-239, Staff believes the Commission should also, for consistency, strike one sentence on page 2 of the ALJ Report under the heading Summary of Recommendations:

> The Administrative Law Judge recommends that there be no finding that CenturyLink EQ negotiated in bad faith.

In the alternative, Staff recommends striking ¶ 239 as requested by CenturyLink EQ.

In another alternative, Staff suggests that the Commission modify the ALJ Report by striking ¶ 237. That paragraph makes reference to a recent Commission order in a complaint made by DTI

against Qwest Corporation (Docket 09-302). Petitions for reconsideration by SAWT, Inc. and DOC are pending before the Commission and both petitioners object to the finding referenced by the ALJ. Striking ¶ 237 may not significantly alter the ALJ's general discussion.

Commission Options re: Good Faith Negotiations (¶¶ 232-239)

1. Do not modify the ALJ Report.

2. Modify the ALJ Report by striking ¶¶ 232-239 and by striking, from page 2 of the ALJ Report, the sentence: "The Administrative Law Judge recommends that there be no finding that CenturyLink EQ negotiated in bad faith."

3. Modify the ALJ Report by striking ¶ 237.

4. Modify the ALJ Report by striking ¶ 239.

5. Modify the ALJ Report by striking ¶¶ 237 and 239.

6. Take other action.

Staff recommends option 2 and, in the alternative, option 5.

Based upon the foregoing Findings and Recommendations, the Administrative Law Judge hereby makes the following.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction, pursuant to 47 U.S.C. § 252(b), Minn. Stat. §§ 216A.05, 237.16, and Minn. R. 7812.1700 (2013), to determine all issues in dispute between the parties concerning the terms and conditions of interconnection.

2. Section 252(c) of the Telecommunications Act requires that the Commission ensure that the resolution of the disputed issues 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.

3. For the reasons discussed in the above Findings and Recommendations, the interconnection agreement language proposed in the above Findings and Recommendations to resolve the disputed issues is fully consistent with the requirements of the Telecommunications Act and its implementing regulations.

4. Any of the above Findings and Recommendations more properly considered a Conclusion is adopted as such.

Dated: January 16, 2015

s/Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Shaddix & Associates

NOTICE

The Commission may, at its own discretion, accept, modify, or reject the Administrative Law Judge's recommendations. The recommendations of the Administrative Law Judge have no legal effect unless expressly adopted by the Commission as its final order.

Exceptions to this Report, if any, by any party adversely affected must be filed under the time frames established in the Commission's rules of practice and procedure, Minn. R. 7829.2700 (2013) and 7829.3100, unless otherwise directed by the Commission. Exceptions should be specific and stated and numbered separately. Oral argument before a majority of the Commission will be permitted pursuant to Minn. R. 7829.2700, subp. 3. The Commission will make the final determination of the matter

after the expiration of the period for filing exceptions, or after oral argument, if an oral argument is held.

Additional Issues Raised by PUC Staff

¶ 16 – Tally of Disputed Issues

Paragraph 16 of the ALJ Report states, in part:

> Prior to the hearing, the parties filed a Joint Disputed Issues Matrix dated March 31, 2014, identifying 77 disputed issues, the specific contract language proposed by each party, and the parties' position statements in support of their proposed language. By the time of the arbitration hearing on August 6, 2014, the parties had resolved several more issues, leaving 57 disputed. Following the hearing, the parties continued to exchange proposals and 31 more issues were resolved, leaving 46 unresolved issues.

Staff believes the tally of issues may be confusing. CenturyLink EQ, in its Post-Hearing Brief (October 3, 2014, p. 4) noted that "a *total of 31 issues* have now been resolved, leaving 46 unresolved issues." [emphasis added] Staff believes that any confusion regarding the tally of issues could be resolved by modifying the ALJ's language in ¶ 16 as follows:

> Following the hearing, the parties continued to exchange proposals and ~~31~~11 more issues were resolved, leaving 46 unresolved issues.

Commission Options re: ¶ 16

1. Do not modify the ALJ Report.

2. Modify ¶ 16 of the ALJ Report as follows: "Following the hearing, the parties continued to exchange proposals and ~~31~~11 more issues were resolved, leaving 46 unresolved issues."

3. Take other action.

Staff recommends option 2.

¶ 21 – Undisputed Issues

Paragraphs 20 and 21 of the ALJ Report state:

> 20. Any portion of a proposed interconnection agreement to which the parties agree is subject to less scrutiny by the Commission. The Commission may only reject such portions if they discriminate against a telecommunications carrier not a party to the agreement or if the implementation of such portions is not consistent with the public interest, convenience, and necessity. Such portions are not required to meet requirements of Sections 251(b) and (c) and Section 252(d) of the Act.
>
> 21. No allegation is made in this matter of any undisputed portion being discriminatory or not consistent with the public interest, convenience, and necessity. The Administrative Law Judge recommends that all undisputed portions of the proposed agreement be approved pursuant to 47 U.S.C. § 252(e)(2)(A).

The Commission's past practice regarding the approval of ICAs containing both arbitrated and negotiated terms has been to examine the ICA in two stages: (i) arbitration of disputed issues, and (ii) review of all terms. In reference to arbitrations, § 252(b)(4)(A) of the Act states, in part:

> The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

The matter before the Commission today is the arbitration of the disputed issues. The undisputed issues have not been offered jointly by the parties and have not been reviewed by DOC. Typically, once the Commission has resolved the arbitrated issues, it asks the parties to file within 30 to 45 days the entire agreement for review. This allows parties time to incorporate the Commission's decisions into the ICA. Parties have been known to negotiate and agree to additional terms within that period (AT&T-GTE ICA, 96-939, 97-772, November 6, 1997).

Staff suggests recommends that the Commission modify the ALJ Report to strike ¶ 21. In the alternative, Staff suggests the Commission strike the final sentence of ¶ 21. Adoption of that sentence could be construed to mean the Commission is approving the undisputed terms at this time.

Commission Options re: ¶ 21

1. Do not modify the ALJ Report.
2. Modify the ALJ Report to strike ¶ 21.
3. Modify the ALJ Report to strike the last sentence of ¶ 21.
4. Take other action.

Staff recommends option 2 or, in the alternative, option 3.

Final Commission Determination

Commission Options re: Resolution of All Disputed Issues

1. Adopt the ALJ Report as modified above, and find that the ALJ Report, as modified, resolves the arbitrated issues pursuant to §§ 252 (b) through (d) of the Act.

2. Take other action.

Staff recommends Option 1.

Commission Options re: Approval/Rejection of Entire Agreement

1. Direct CenturyLink EQ and HTI to submit their entire agreement (negotiated and arbitrated terms) within 30 days for review pursuant to § 252(e) of the Act.

2. Take other action.

Staff recommends option 1. The Commission has discretion in setting the date for submission. The parties may have preference for a different deadline.