

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

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

In the Matter of the Arbitration of Interconnection Agreement between Hutchinson Telecommunications Inc. and CenturyLink	PUC Docket No. P-421, 5561, 430/IC-14-189 OAH Docket No. 48-2500-31383
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REBUTTAL TESTIMONY

OF

THOMAS BURNS

ON BEHALF OF

HUTCHINSON TELECOMMUNICATIONS, INC.

JULY 25, 2014

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Information that has been designated by CenturyLink as a Trade Secret pursuant to the Protective Order in this case has been redacted from this document.

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1 **PURPOSE OF TESTIMONY**

2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 A. My testimony will address certain of Mr. Easton's assertions as stated in his direct testimony.

4 **Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY?**

5 A. I will address issues primarily related to transport and compensation for transport: POI
6 definition, POI location and apportionment of financial responsibility for transport. The need for
7 CenturyLink EQ to disclose existing POIs it has with other carriers is discussed. I also address the
8 FCC rules regarding Bill and Keep reciprocal compensation, and other miscellaneous items such
9 as the types of compensable traffic to be exchanged and the number of trunk groups
10 CenturyLink may require.

11 **POI DEFINITION**

12 **Q. DO YOU AGREE WITH MR. EASTON'S ASSERTION THAT HTI ERRS BY "EQUAT[ING] THE POI TO**
13 **THE POINT AT WHICH THE TWO NETWORKS PHYSICALLY INTERCONNECT"?¹**

14 **A.** No. The HTI-proposed definition for the term "Point of Interconnection" is consistent with the
15 way the FCC uses that term. As Ms. Doherty notes in her testimony² on behalf of the
16 Department, although the FCC's rules do not define "Point of Interconnection" or "POI,"
17 specifically, the FCC's rules do define "interconnection" as the "linking of two networks for the
18 mutual exchange of traffic."³ Further, the FCC uses the term "point of interconnection" when
19 defining meet point⁴:

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. [Emphasis added]

20 The plain, common sense reading of these provisions is that the Point of Interconnection is the
21 "point" (i.e., location) where two networks "interconnect" (i.e., physically link). CTL's definition

¹ Easton Direct, p. 4.

² Doherty Direct, p. 16.

³ 47 C.F.R. §51.5.

⁴ Ibid

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1 of “Point of Interconnection” incorrectly blurs the concept of the location of the POI with the
2 concept of cost recovery.

3 **Q. HOW DOES THE POI DEFINITION RELATE TO THE ISSUE OF COST RECOVERY?**

4 A. In the Local Competition Order the FCC explained: “[I]n a meet point arrangement, each party
5 pays its portion of the costs to build out facilities to the meet point.”⁵ Under the FCC’s rules, the
6 CLEC’s choice of a POI governs the apportionment of the parties’ financial responsibility; not the
7 other way around. The concept of a “financial POI” – i.e., a POI that is designated for purposes
8 of apportioning financial responsibility, as something distinct from the location where the
9 networks are linked⁶ – is not one that is supported by the FCC’s rules.

10 **POI LOCATION**

11 **Q. WHAT DO THE FCC RULES PROVIDE REGARDING THE LOCATION OF THE POI?**

12 A. The FCC provides CLECs with the right to interconnect with the ILEC network at a single POI per
13 LATA, at any technically feasible point. Where a particular interconnection method is currently
14 employed between two networks or has been successfully used in the past, there is a rebuttable
15 presumption “that such a method is technically feasible for substantially similar network
16 architectures.”⁷ The ILEC bears the burden of proving the technical infeasibility of a particular
17 method of interconnection or access at any individual point.⁸ Whether it is technically feasible
18 for a CLEC to interconnect to the ILEC’s network at a particular point is to be determined
19 without regard to cost.⁹

20 **Q. DO YOU AGREE WITH MR. EASTON’S STATEMENT¹⁰ REGARDING THE PURPOSE OF THE POI**
21 **LOCATION SECTION OF THE INTERCONNECTION AGREEMENT?**

22 A. No. Mr. Easton errs when he states a key purpose of this section is to address the financial
23 responsibilities of the parties regarding the facilities costs. Clearly the POI location affects the

⁵ Local Competition Order, ¶1553.

⁶ See Easton Direct, p. 4; see also Doherty Direct, p. 10.

⁷ Local Competition Order, ¶1554.

⁸ Ibid, ¶1554.

⁹ Ibid, ¶1373.

¹⁰ Easton Direct p.26

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1 financial responsibilities of each party, but the primary purpose of this section is to identify
2 network points where the parties may interconnect. Accordingly, HTI has proposed the POI
3 locations within the CenturyLink EQ network which are used by CTL for cross-connection and
4 should be available to HTI for that purpose, i.e., establishing a POI.

5 **Q. DO YOU AGREE WITH MR. EASTON’S TESTIMONY REGARDING THE LIST OF POI LOCATIONS**
6 **WHICH HTI ASSERTS ARE TECHNICALLY FEASIBLE?**

7 A. No. Mr. Easton dismisses HTI’s list of POI locations proposed as technically feasible by simply
8 calling the listing “overly broad.”¹¹ Then, without further discussion, Mr. Easton goes on to
9 summarize what CTL EQ offers for POI locations. HTI has the right to interconnect at any point
10 on the CTL EQ network, and the listed POI locations proposed by HTI should be included as a
11 non-exhaustive list. The FCC’s standard for technical feasibility is clear:

We also conclude that preexisting interconnection or access at a particular point evidences the technical feasibility of interconnection or access at substantially similar points. Finally, *we conclude that incumbent LECs must prove to the appropriate state commission that a particular interconnection or access point is not technically feasible.* [Emphasis added]

12 Clearly, CTL EQ has not attempted to disprove the technical feasibility of each of those POI
13 locations because it cannot. The list of potential locations proposed by HTI – CenturyLink hand
14 holes and manholes, CenturyLink controlled environment vaults, CenturyLink central offices, and
15 third party locations, such as carrier hotels – are all locations where CenturyLink EQ performs
16 cross-connects, both for itself and for other carriers and, therefore, represent technically
17 feasible POIs.

18 **Q. DO YOU AGREE WITH MR. EASTON’S TESTIMONY THAT HTI HAS PROPOSED POI LOCATIONS**
19 **NOT ON THE CENTURYLINK NETWORK?**

20 A. No. Mr. Easton is incorrect when he states that HTI has proposed POI locations which are “not
21 even on CenturyLink EQ’s network.”¹² I note that, as Mr. Easton admits in his testimony, that
22 HTI’s proposed language provides that “CLEC shall be entitled to establish a POI *at any*
23 *Technically Feasible point on the CenturyLink EQ network . . .*” (Emphasis added.) Mr. Easton

¹¹ Easton Direct, p. 29.

¹² Easton Direct p6.

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1 does not explain the basis for his claim. One instance Mr. Easton's statement may be intended
2 to reference is the St. Cloud POI location which is used by both CenturyLink QC and HTI to
3 exchange Litchfield EAS traffic with the CenturyLink EQ. In that instance CenturyLink EQ owns or
4 controls the facility to a third party location, the CenturyLink QC St. Cloud central office, and
5 each party is responsible for its cost on its side of the POI (Bill and Keep reciprocal
6 compensation). Further, the FCC has interpreted the Act to affirm:

7 In a meet point arrangement, the "point" of interconnection for purposes of
8 sections 251(c)(2) and 251(c)(3) remains on "the local exchange carrier's network."¹³

9 Accordingly, where CenturyLink EQ owns or controls facilities, and such facilities are used in a
10 meet point interconnection arrangement, the POI shall be considered a point on the
11 CenturyLink EQ network.

12 **TRANSPORT COST ALLOCATION**

13 **Q. DO YOU AGREE WITH MR. EASTON'S ASSERTION THAT THE GLENCOE POI LOCATION HTI HAS**
14 **REQUESTED DOES NOT FAIRLY ALLOCATE TRANSPORT COSTS BETWEEN THE PARTIES?**¹⁴

15 A. No, and for several reasons: 1) HTI proposes to minimize CenturyLink EQ's non-recurring costs
16 by providing fiber to a POI manhole adjacent to the Glencoe central office. Each party will bear
17 its own costs to light the fiber from their respective offices. CenturyLink will incur minimal
18 incremental costs on its side of the POI to carry *its traffic* back to its Osseo switch. HTI will have
19 incurred the majority of the non-recurring expense by placing new facilities and equipment for
20 delivery of traffic to the Glencoe POI; 2) As stated in my direct testimony,¹⁵ CenturyLink EQ had
21 previously established a POI with Hutchinson Telephone Company in Glencoe for allocation of
22 Hutchinson-Osseo transport on a Bill and Keep basis, i.e., CenturyLink EQ provides its Glencoe-
23 Osseo transport on a Bill and Keep basis in support of Hutchinson-Silver Lake EAS. HTI's request
24 for a POI at the Glencoe location to allocate transport between the same switches on a Bill and
25 Keep basis should be granted, if only as a required to provide interconnection on a

¹³ Local Competition Order, ¶553.

¹⁴ Easton Direct, p.4, references Issues 11, 25-32, 34, 38, 42 and 48.

¹⁵ Burns Direct p. 41.

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1 nondiscriminatory basis;¹⁶ and finally 3) As discussed in my direct testimony,¹⁷ the FCC's 2011
2 Inter Carrier Compensation Reform Order abandons the previously employed Calling Party
3 Network Pays cost causation model, in favor of a Bill and Keep compensation regime. The FCC's
4 Bill and Keep implementation plan provides a glide path for carriers with reciprocal
5 compensation rates in place on December 29, 2011, capping those rates, and reducing those
6 rates annually until the desired Bill and Keep end state is reached (2018). For carriers with Bill
7 and Keep reciprocal compensation arrangements in place as of December 29, 2011, e.g., HTI and
8 Embarq, the arrangement cannot be changed without HTI's consent.¹⁸

9 **Q. MR. EASTON HAS ARGUED THAT HTI IS SEEKING TO FORCE CTL EQ TO BUILD FACILITIES FOR**
10 **PREDOMINANTLY CLEC TRAFFIC, WHICH WOULD FORCE CTL EQ TO BEAR AN UNREASONABLE**
11 **PORTION OF THE COST FOR NEW MEET POINT FACILITIES.¹⁹ PLEASE RESPOND TO THAT**
12 **ASSERTION.**

13 A. It is important to understand what it means to "build facilities" in this context. The CTL EQ
14 facilities HTI proposes to use for establishing a meet point already exist; CTL EQ will not be
15 required to plow in new fiber between Osseo and Glencoe. Rather, when Mr. Easton talks about
16 building facilities, what he really means is lighting the new fiber HTI has placed, and merging or
17 connecting that new capacity with the existing CTL-EQ Glencoe-Osseo facilities. HTI will incur
18 similar costs on its side of the POI to light the new fiber. Further, Mr. Easton's objection that CTL
19 EQ is being forced to bear an unreasonable portion of the cost of "CLEC traffic" is a relic, based
20 on the Calling Party Network Pays rule that the FCC has now abandoned. In explaining why Bill
21 and Keep is consistent with cost causation principles, the FCC observed that "More recent
22 analyses have recognized that both parties generally benefit from participating in a call and,
23 therefore, that both parties should split the cost of the call. That line of economic research finds
24 that the most efficient termination charge is less than incremental cost, and could be
25 negative."²⁰

¹⁶ 47 U.S.C. § 251(c)(2)(D).

¹⁷ Burns Direct p. 9.

¹⁸ 47 C.F.R. § 51.705(c)(1).

¹⁹ Easton Direct, p. 58.

²⁰ Intercarrier Compensation Reform Order, ¶744.

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1 **Q. CAN YOU COMMENT ON CENTURYLINK’S INTERNAL CORRESPONDENCE RELATING TO THE HTI**
2 **MEET POINT INTERCONNECTION REQUEST?**

3 A. Yes. Internal CenturyLink correspondence produced in response to discovery in this case shows
4 that CenturyLink clearly understands HTI’s interconnection requirements and how the costs
5 associated with those requirements are properly apportioned. I’ll summarize the key
6 documents as follows:²¹

7 **CenturyLink’s network and or policy personnel understand the estimated Glencoe-**
8 **Osseo facilities required for interconnection with HTI:** In a February 17, 2014, email between
9 “CTL network policy” persons summarizing a telephone negotiation session between the parties
10 shows that HTI explained to CenturyLink that its Glencoe-Osseo transport requirement is
11 approximately 4 DS1s.²²

12 **CenturyLink’s network and or network policy personnel brushed aside a product**
13 **manager’s query about the use of CenturyLink Glencoe-Osseo interoffice dark fiber for HTI’s**
14 **meet point request.** In an email exchange between CTL EQ product management and network
15 personnel (or policy personnel), CenturyLink dismissed the use of existing dark fiber capacity for
16 a CLEC mid-span meet point.²³ This response is telling because, while using dark fiber is perhaps
17 not an optimum design for this purpose, it shows CTL EQ rejecting out of hand a lower cost
18 solution in favor of a maximum cost solution. This communication further reinforces HTI’s
19 concerns about how CTL EQ could potentially use its proposed BFR process to unnecessarily
20 inflate HTI’s costs.

21 **A CenturyLink network design which is engineered to meet HTI’s meet point**
22 **interconnection request is apparently scuttled.** William Stauch provided a preliminary design
23 which places the POI at Glencoe. The design calls for a new Hutchinson-Glencoe meet point
24 system which interfaces with the existing CenturyLink Glencoe-Osseo facilities. Mr. Stauch
25 provides comment that, **[BEGIN TRADE SECRET** [REDACTED]

26 [REDACTED]
27 [REDACTED]

²¹ Documents referred to are attached as Exhibit TGB-4.
²² Document CTLEQ-000100 (Philp Linse email to Paul Diamond (each identified as CenturyLink Network Policy));
see also CTLEQ-000115 (Philip Linse email to Richard Gacke regarding network design).
²³ Document CTLEQ-000027 (Charlie Woyczik email exchange with Sandy Stulen).

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1 [REDACTED]
2 **END TRADE SECRET]** Mr. Stauch goes on to observe that **[BEGIN TRADE SECRET:** [REDACTED]
3 [REDACTED] **END TRADE SECRET]**.²⁴

4 The network design diagrams accompanying this email are dated July 11, 2013.

5 CTL LABEL OF “NON-STANDARD INTERCONNECTION METHOD” AND THE PROPOSED BFR PROCESS

6 **Q. HOW HAS HTI ATTEMPTED TO ADDRESS CTL’S BFR CONCEPT IN ITS PROPOSED ICA?**

7 A. First, HTI has proposed language that would limit CenturyLink EQ’s use of its BFR process to
8 arrangements that are not substantially similar to what CenturyLink EQ has previously provided
9 to other carriers. Second, HTI has proposed language that would require CenturyLink to disclose
10 locations where CenturyLink EQ has established interconnection with a third party carrier.
11 CenturyLink EQ has objected to both of these provisions.

12 **Q. DO YOU AGREE WITH MR. EASTON’S TESTIMONY THAT THE BONA FIDE REQUEST PROCESS IS**
13 **APPROPRIATE FOR INTERCONNECTION METHODS WHICH CENTURYLINK EQ HAS DEEMED ARE**
14 **“NON-STANDARD FORM[S] OF INTERCONNECTION”?**

15 A. No. The BFR process, as discussed in my direct testimony,²⁵ is not intended to address network
16 interconnection methods under 251(c).²⁶ Further, the FCC addressed the CLEC’s option of
17 choosing the method of interconnection in the Local Competition Order:

We conclude that, under sections 251(c)(2) and 251(c)(3), any requesting carrier may choose any method of technically feasible interconnection or access to unbundled elements at a particular point. Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection or access to unbundled elements.²⁷

18 Clearly, CenturyLink EQ intends to use the costs and delays inherent in the BFR process it has
19 designed as an obstacle to be avoided, thereby steering CLECs toward its preferred
20 interconnection points and methodology, i.e., a “standard method of interconnection.”

²⁴ Document CTLEQ-000115 (William Stauch email (Trade Secret) is forwarded from Richard Gacke to Philip Linse but does not appear to have been forwarded to anyone in product management or further considered.)

²⁵ Burns Direct, p. 54

²⁶ Local Competition Order, ¶156

²⁷ Intercarrier Compensation Reform Order, ¶549.

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1 CTL's proposed interconnection in Glencoe and the resulting pricing proves this point: CTL
2 proposed that HTI lease third party facilities which terminate in the Glencoe office. The Glencoe
3 office is the point where the Parties' networks interconnect, which is the POI as the FCC uses
4 that term. CTL uses the "non-standard" label to assign the Glencoe-Osseo facility costs beyond
5 the POI to HTI.

6 **Q. WHAT IS THE SIGNIFICANCE OF THE FCC RULES THAT PERMIT THE CLEC TO INTERCONNECT AT**
7 **ANY TECHNICALLY FEASIBLE POINT?**

8 A. The FCC rules which require ILECs to allow interconnection at "any technically feasible point
9 within the ILEC network" are intended to ensure a CLEC can design its network in a manner that
10 best meets its needs, rather than requiring it to mirror or mimic the network architecture of the
11 ILEC network architecture. The identification of specific network points on the "national list"
12 e.g., trunk side of the switch,²⁸ was intended to eliminate challenges to interconnection on a
13 technical feasibility basis for those methods expected to be most prevalent.

14 **Q. WHAT IS YOUR UNDERSTANDING OF THE PURPOSE OF CREATING A PRESUMPTION OF**
15 **TECHNICAL FEASIBILITY FOR SUBSTANTIALLY SIMILAR NETWORK ARCHITECTURES?**

16 A. The presumption of technical feasibility was established, at least in part, so a CLEC's market
17 entry would not be delayed by ILEC challenges to a proven network interconnection
18 methodology. The FCC specifically stated meet point interconnection arrangements are
19 technically feasible methods of interconnection. CenturyLink EQ's labeling of the existing HTI
20 St. Cloud interconnection as "non-standard method of interconnection" is disingenuous and
21 misleading at best. HTI's current interconnection with CTL EQ in St. Cloud represents an
22 interconnection architecture that would, under CTL EQ's proposed ICA language, be considered
23 "non-standard" and, therefore, subject to CTL EQ's proposed BFR process. Obviously, there can
24 no serious question regarding the technical feasibility of HTI's current interconnection. HTI
25 sought and received network interconnection with CTL EQ in St. Cloud for Litchfield-Grove City
26 EAS traffic only because: 1) it became aware that CTL EQ had established a POI in St. Cloud with
27 CTL-QC for such traffic; and 2) HTI demanded non-discriminatory treatment regarding the POI

²⁸ Local Competition Order, ¶¶210, 553

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1 and the compensation arrangement for this traffic. A method of interconnection which has
2 been deployed by CTL (or other carriers) is presumed to be technically feasible to ensure there is
3 not discriminatory treatment.

4 **Q. MR. EASTON CITES THE FCC'S RULES FOR THE PROPOSITION THAT A MEET POINT IS WHERE**
5 **TWO PARTIES "MUTUALLY DESIGNATE" A POINT OF INTERCONNECTION FOR THE EXCHANGE**
6 **OF TRAFFIC.²⁹ DOES THE RULE THAT MR. EASTON REFERS TO GIVE THE ILEC THE ABILITY TO**
7 **LIMIT THE CLEC'S CHOICE OF A POI LOCATION BASED ON COST?**

8 A. Certainly not. The FCC's rules define "Meet Point" to mean "a point of interconnection between
9 two networks, designated by two telecommunications carriers, at which one carrier's
10 responsibility for service begins and the other carrier's responsibility ends."³⁰ To read this, as
11 Mr. Easton apparently does, as giving the ILEC the ability to veto the CLEC's choice of a POI
12 location based on cost would be to read out of the FCC's rules altogether the definition of
13 technical feasibility. The reference to a meet point being "designated by two
14 telecommunications carriers" reflects nothing more than the recognition that a meet point
15 interconnection necessarily requires cooperation between the interconnecting carriers. I note
16 that, unlike the ICA language being advocated by CTL EQ, the FCC rules says nothing about the
17 location of the meet point being "mutually agreed."

18 **Q. WHAT IS THE BASIS OF CENTURYLINK EQ'S OBJECTION TO THE PROPOSED LIMITATION ON THE**
19 **APPLICATION OF THE BFR PROCESS TO INTERCONNECTION ARRANGEMENTS THAT ARE NOT**
20 **SUBSTANTIALLY SIMILAR TO EXISTING ARRANGEMENTS?**

21 A. CenturyLink EQ takes the position that the phrase "substantially similar" is "unnecessarily
22 vague."³¹ This criticism is curious insofar as this is the language used by the FCC to help to define
23 technical feasibility.³² Where an interconnection arrangement has been established in the past,
24 use of a BFR process only serves to add unnecessary cost and delay.

²⁹ Easton Direct, p. 52.

³⁰ 47 C.F.R. §51.5.

³¹ Easton Direct, p. 62.

³² Local Competition Order at ¶554.

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1 **Q. WHAT IS THE BASIS OF CENTURYLINK EQ'S REJECTION OF HTI'S PROPOSED DISCLOSURE**
2 **REQUIREMENT?**

3 A. CenturyLink EQ asserts the disclosure of POIs established with other carriers is "overly broad
4 and unduly burdensome."³³ CenturyLink EQ also asserts the location of CLEC POI locations is
5 proprietary and should not be shared with a competitor.

6 **Q. DO YOU AGREE WITH MR. EASTON'S TESTIMONY REGARDING HTI'S PROPOSED DISCLOSURE**
7 **REQUIREMENT?**

8 A. No. While identifying the location of POIs where CenturyLink has provided network
9 interconnection to other carriers may be inconvenient for CenturyLink, ILECs have a duty to
10 provide CLECs with the network information necessary to enable informed decisions relating to
11 network interconnection:

... Further, incumbent LEC have a duty to make available to requesting carriers general information indicating the location and technical characteristics of incumbent LEC 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.³⁴

12 Mr. Easton also asserts the location of CLEC POI locations is proprietary and should not be
13 shared with a competitor. HTI has not requested proprietary information about a third party
14 network, or the identification of the third party, HTI has requested information about the
15 CenturyLink EQ network, and specifically the POI locations where CTL has interconnected with
16 other carriers. CenturyLink EQ is able to provide this information without disclosing the identity
17 or any other proprietary information regarding the interconnected carriers. How else can
18 CenturyLink, the Commission, or CLECs assess whether CenturyLink has met the burden of
19 providing network interconnection on nondiscriminatory terms?

³³ Easton Direct, p 30.

³⁴ Ibid, ¶205 The FCC interpreted the Act to obligate ILECs to provide network information pursuant to 251(c)(2) and 251(c)(3).

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1 **Q. MR. EASTON ARGUES THAT HTI SHOULD BE REQUIRED TO ORDER AND PAY FOR VIRTUAL**
2 **COLLOCATION IN ORDER TO INTERCONNECT VIA WHAT HE REFERS TO AS A NON-STANDARD**
3 **ARRANGEMENT IN A REMOTE CENTRAL OFFICE.³⁸ DO YOU AGREE?**

4 A. No, a virtual collocation is not required to use leased, third party facilities for interconnection. If
5 HTI chose to lease facilities from a third party carrier with capacity at a CTL EQ central office,
6 that carrier would have already established those facilities pursuant to a CTL EQ tariff or
7 contract, and that carrier has the right to resell the capacity to HTI. The industry standard
8 process for use of third party carrier facilities includes a Letter of Authorization (LOA) which
9 included a Connecting Facility Assignment (CFA). Generally, the ICA would address the use of
10 third party carrier facilities as a method of network interconnection. HTI would present the
11 LOA/CFA to CenturyLink Embarq as documentation accompanying the trunk order for
12 interconnection. The imposition of the virtual collocation process and cost is totally unnecessary
13 and unwarranted. The industry has used LOA/CFA without virtual collocation for decades.
14 Further, although the language in Section 39 addressing the use of third party facilities is
15 disputed, there is no mention of the need for a virtual collocation.

16 **Q. PLEASE DISCUSS THE HUTCHINSON-GLENCOE FACILITY IN THE CONTEXT OF THE LANGUAGE**
17 **HTI HAS PROPOSED FOR SECTION 39.9.3 THIRD PARY ILEC MEET POINT USING LEASED**
18 **FACILITIES**

19 A. HTI has reconsidered its proposed Section 39.9.3 language. The Glencoe meet point
20 arrangement is used by Hutchinson Telephone Company and CTL EQ for private line services and
21 Extended Area Service (EAS). Similarly, the St. Cloud POI CTL EQ has with CTL QC is used for EAS.
22 CenturyLink's proposed language regarding using third party meet point facilities is limited to
23 leased switched access facilities that establish an ILEC meet point arrangement. This language, if
24 adopted, would prevent HTI from availing itself of either of these existing meet point
25 arrangements. HTI proposes new language around the use of third party meet point facilities:

26 **CTL EQ PROPOSED LANGUAGE:**

Third Party ILEC Meet Point using Leased Facilities. If CLEC chooses to interconnect
with CenturyLink using a third party ILEC Meet-Point arrangement (i.e., leased

³⁸ Easton Direct, p. 6.

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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.

1 **HTI PROPOSED LANGUAGE:**

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

HTI's proposed language would avoid unwarranted limitations on the use of third party meet point facilities, consistent with FCC mandate that a CLEC must be permitted to interconnect with the ILEC at any technically feasible point.

2 **Q. MR. EASTON REFERS TO A 2009 DECISION IN AN ARBITRATION PROCEEDING INVOLVING**
3 **QWEST AND CHARTER AND ARGUES THAT THE RESULT IN THAT PROCEEDING SHOULD**
4 **GOVERN THE DISPUTE HERE.³⁹ ARE YOU AWARE OF ANY DEVELOPMENTS SINCE THAT 2009**
5 **DECISION THAT ARE RELEVANT TO THIS CASE?**

6 A. Yes, as I stated in my direct testimony, the FCC's Intercarrier Compensation Reform Order,
7 which was issued in November 2011, represents a sea-change in intercarrier compensation.⁴⁰
8 Mr. Easton states, in conclusory fashion, that "CenturyLink EQ believes that this precedent holds
9 true under current FCC rules"⁴¹ but he does not mention the Intercarrier Compensation Reform
10 Order and he makes no effort to reconcile that prior decision with the FCC's clearly expressed
11 favor for "Bill and Keep" as the preferred method of intercarrier compensation. In her
12 testimony, Ms. Doherty quite properly expresses doubt whether the analysis of that prior
13 decision applies here.⁴² I agree that CenturyLink EQ has not adequately explained how that
14 previous decision of the Minnesota Commission supports CenturyLink EQ's position in this case,
15 particularly in light of the Intercarrier Compensation Reform Order.

³⁹ Easton Direct, p. 6.

⁴⁰ Burns Direct, p. 9.

⁴¹ Easton Direct, p. 6.

⁴² Doherty Direct, p. 19.

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1 **Q. THE PARTIES HAVE AGREED TO INTERCARRIER COMPENSATION ON A BILL AND KEEP BASIS.⁴³**
2 **DOESN'T THIS AGREEMENT SATISFY THE REQUIREMENTS OF THE INTERCARRIER**
3 **COMPENSATION REFORM ORDER?**

4 A. Only in part. Although the parties have agreed to Bill and Keep for usage-based charges,
5 CenturyLink EQ is still insisting that it should be entitled to assess facilities charges for direct
6 trunk transport.⁴⁴ As Ms. Doherty correctly notes, CenturyLink EQ's responses to HTI's
7 information requests disclose that CenturyLink EQ is proposing in this case to insert new
8 transport elements into the existing intercarrier compensation arrangement.⁴⁵ Because these
9 charges are not provided for by the parties' current interconnection agreement,⁴⁶ this
10 represents an increase in a rate for transport and termination, which is not permitted by the
11 FCC's Intercarrier Compensation Reform Order.⁴⁷

12 **Q. MR. EASTON CONTENDS THAT HTI IS ATTEMPTING TO AVOID HAVING TO PAY FOR ITS FAIR**
13 **SHARE OF TRANSPORT.⁴⁸ DO YOU AGREE?**

14 A. No. Mr. Easton interprets HTI's network interconnection request using norms from the now
15 out-dated cost causation model, i.e., Calling Party Network Pays. Even using that "old" cost
16 model CenturyLink EQ agreed to establish a Bill and Keep meet point arrangement for
17 Hutchinson-Oseo transport with the POI at Glencoe with another carrier. Providing the same
18 location for the POI to HTI would be "fair" and nondiscriminatory treatment of a competitor.
19 Precedent and nondiscrimination issues aside, HTI has the right to interconnect with
20 CenturyLink EQ's network at a technically feasible point, without leasing transport from
21 CenturyLink, i.e., Bill and Keep. HTI has that right because a Bill and Keep arrangement was in
22 place with CenturyLink EQ on November 29, 2011, and that arrangement cannot be changed
23 without the mutual consent of the parties.⁴⁹

⁴³ See ICA, Section 43.2.2.

⁴⁴ See Doherty Direct, Exhibit KAD-1 at p. 14.

⁴⁵ Doherty Direct, p. 8.

⁴⁶ See Doherty Direct, Exhibit KAD-1 at p. 13-14.

⁴⁷ 47 C.F.R. §51.705(c)(1); Intercarrier Compensation Reform Order ¶801.

⁴⁸ Easton Direct, p. 6.

⁴⁹ 47 C.F.R. § 51.705(c)(1).

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1 **Q. MR. EASTON ARGUES THAT CENTURYLINK EQ CANNOT BE REQUIRED TO INTERCONNECT AT A**
2 **MEET POINT OUTSIDE THE SERVING AREA OF THE POI SWITCH.⁵⁰ DO YOU AGREE?**

3 A. No, the FCC rules provide that the POI must be on the ILEC's network but do not require that the
4 POI be in the ILEC's serving area. To the extent that CenturyLink EQ owns or controls facilities
5 located outside its serving area, those facilities are still considered part of CenturyLink EQ's
6 network and the CLEC is permitted to interconnect using those facilities to the extent technically
7 feasible.

8 **POINTS OF INTERCONNECTION**

9 **Q. DO YOU AGREE WITH MR. EASTON'S CHARACTERIZATION OF ISSUE 25, AS CONCERNING THE**
10 **MINIMUM NUMBER OF POIs IN THE LATA⁵¹?**

11 A. No. I suggest the primary issue is the deletion of language which, if adopted, would effectively
12 eliminate CTL EQ's obligation to connect to HTI indirectly. The undisputed portion of Section
13 42.2 already states:

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. ...

14 **CenturyLink proposed language:**

CLEC must establish a minimum of one POI on CenturyLink's network within each LATA in accordance ~~with the terms of this Agreement. CLEC shall establish additional POIs under the following circumstances:~~ [emphasis added]

15 **Consistent with Section 42.2 HTI proposes language:**

CLEC, at its sole discretion, may elect to exchange Non Access Telecommunications Traffic: either 1) directly by establishing trunks to CenturyLink Central Office(s); or 2) indirectly by establishing interconnection at ~~a~~ the same third party Tandem Switch which serves the ~~exchange~~ CenturyLink End Office(s).

CLEC may establish additional ~~POIs~~ Local Interconnection Trunk Groups under the following circumstances:

⁵⁰ Easton Direct, p. 14.

⁵¹ Ibid, p. 31.

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Although HTI believes that already agreed upon language makes clear that HTI will interconnect with CTL EQ at least one point per LATA, HTI offers this additional language to address CTL EQ's expressed concerns.

1 INTERCONNECTION TRUNKS AND COMPENSIBLE TRAFFIC

2 Q. MR. EASTON IDENTIFIES "TRAFFIC ALLOWED OVER INTERCONNECTION TRUNKS" AS ONE OF
3 THE MAJOR AREAS OF DISPUTE THAT REMAIN.⁵² PLEASE RESPOND.

4 A. It was HTI's understanding, based on the parties' negotiations that CenturyLink EQ did not
5 intend to send CenturyLink-originated toll of any kind to HTI. Accordingly, HTI proposed ICA
6 provisions that reflected that understanding. It subsequently became clear that CenturyLink EQ
7 does, in fact, plan to send to HTI CenturyLink-originated Toll VOIP-PSTN traffic, in addition to
8 that of other VOIP providers (Transit Service).⁵³ Based on that new understanding, HTI has
9 modified its position. Rather than attempt to restrict the exchange of Toll VOIP-PSTN Traffic, HTI
10 only requests that, when CenturyLink EQ sends such traffic to HTI, that it provide records
11 necessary for it to bill the originating carrier, whether CenturyLink EQ or a third party.

12 Q. ARE THERE OTHER AREAS OF DISAGREEMENT AROUND TRAFFIC TO BE EXCHANGED OVER
13 INTERCONNECTION TRUNKS?

14 A. Not to my knowledge.

15 Q. HAVE THE PARTIES AGREED ON THE REQUIREMENTS RELATING TO BILLING RECORDS FOR
16 COMPENSIBLE TRAFFIC?

17 A. No. Because CTL EQ had only raised this issue very late in the course of the parties'
18 negotiations, there have been no direct discussions regarding the provision of billing records for:
19 1) CTL EQ originated compensable traffic; or 2) Transit Traffic. CTL EQ has agreed to provide
20 "information on Transit Traffic" routed to HTI, but no substantive information, e.g., data
21 content, format and media, have not been disclosed.

⁵² Ibid, p. 3.

⁵³ See Doherty Direct, Exhibit KAD-1 at p. 4.

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1 Neither Party terminates toll traffic of any kind to the other Party at this time. CTL EQ
2 has stated that may change in the future, i.e. It is not technically feasible for HTI discern
3 whether CenturyLink-originated IntraLATA VoIP PSTN which is terminated to the HTI network
4 comingled with other carrier traffic. Accordingly, HTI proposes the following additional
5 language in Section 57 Provision of Usage Data:

6 CenturyLink Proposed Language:

57.2 <none>

7 HTI Proposed Language:

57.2 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.

8 **MISCELLANEOUS ISSUES**

9 **Local Calling Area**

10 **Q. CAN YOU COMMENT ON MR. EASTON'S TESTIMONY RELATED TO 'LOCAL CALLING AREA' AND**
11 **'INTRALATA TOLL' DEFINITIONS⁵⁴**

12 A. Yes. HTI has inserted the phrase "as mandated by the Commission" to address the unilateral
13 re-definition of local calling areas in CenturyLink's tariff, or possible 'de-tariffing' of local
14 services, which has been accomplished by legislation in other states. Mr. Easton is inaccurate
15 when he states the "...the Commission exercises that authority by approving tariffs, not
16 necessarily by issuing orders defining/mandating/requiring local calling areas."⁵⁵ The
17 Commission's rule 7810.0900 requires LECs to provide a minimum flat rate Local Calling Area,
18 while additional or expanded calling areas are optional.

7812.0900 LOCAL CALLING SCOPE FLEXIBILITY FOR LEC'S.

Subpart 1. Required offering. A local exchange carrier (LEC) shall offer each end-user the flat rate calling area, including any applicable extended area service (EAS), offered by the LEC as of July 28, 1997, as modified to reflect any subsequent

⁵⁴ Easton Direct, p10, Issue 4 Definition of Local Calling Area; and Issue 3 Definition of

⁵⁵ Ibid, p11

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addition or removal of EAS under the following commission orders, which are incorporated by reference ...

1 **CenturyLink EQ Self Help Provisions**

2 **Q. CAN YOU ADDRESS MR. EASTON'S COMMENTS ON POI THRESHOLDS (ISSUE 32)?**

3 **A.** Yes. Mr. Easton's testimony⁵⁶ characterizes the CTL EQ's proposed language, which requires HTI
4 to undertake establishing a direct trunk group to the CTL EQ end office switch, as intending to:

"...encourage direct interconnection where it would provide for the efficient use of
the parties' networks and thus reduce costs for both parties."

5 When carriers are indirectly interconnect through a third party tandem, each carrier is
6 responsible for costs, etc. The CTL EQ language would have HTI "fix" what CTL EQ perceives to
7 be a cost containment issue by having HTI undertake establishing new facilities, negotiating a
8 POI on the CTL EQ network, and placing orders for trunks to the CTL switch. It's completely
9 one-sided. HTI has proposed this term be deleted in its entirety.

10 **Q. CAN YOU ADDRESS MR. EASTON'S COMMENTS ON ISSUE 67, A CLAUSE WHICH DOUBLES THE**
11 **TRANSIT RATE CTL EQ MAY CHARGE HTI, AND ALLOWS CTL EQ TO DISCONTINUE TRANSIT**
12 **SERVICE?**

13 **A.** Yes. Mr. Easton describes the issue as "...actions to be taken when transit traffic volumes
14 exceed certain levels."⁵⁷ This clause allows CenturyLink to: 1) double the Transit rate for the
15 Transit Traffic HTI routes to third a party carriers if HTI does not rectify the problem within 60
16 days; and 2) discontinue providing transit service. Mr. Easton states such a term is "necessary
17 recourse." There are several issues with the CTL EQ proposed terms:

18 60 Day Interval is Insufficient. The 60 day window CTL-EQ proposes does not grant HTI
19 enough time to negotiate an interconnection agreement with a third party carrier and
20 subsequently establish a direct connection to that carrier. The FCC interval for negotiating an
21 interconnection agreement under Section 251 is 160 days. One can only imagine how CTL EQ
22 would react if a carrier were to knock on the door and request interconnection when no
23 agreement is in place.

⁵⁶ Ibid, p43

⁵⁷ Ibid, p 84

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1 The Punitive Fee (Double Rate) and the Punitive Action (Disconnection) Bears No
2 Relationship to the Harm CTL Allegedly Experiences. The penalties which CTL proposes are
3 clearly punitive, and bear no relationship to the harm or costs HTI's actions (or inactions) might
4 impose on CenturyLink EQ.

5 Potential Disruption of Service to Customers Caused by CTL Discontinuance of Transit
6 Service. If CTL EQ were allowed to discontinue transit service to a HTI, the likely harm caused to
7 HTI customers, and the customers other carriers, (the intended recipients of HTI traffic) might
8 easily outweigh damages might experience. HTI believes its proposal, which allows CenturyLink
9 to follow the Section 24. Dispute Resolution process, is the better alternative.

10 **Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?**

11 A. Yes, it does.

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