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October 3, 2014

The Honorable Steve Mihalchick  
Office of Administrative Hearings  
P.O. Box 64620  
St. Paul, MN 55164-0620

**Re: In the Matter of the Petition of Hutchinson Telecommunications Inc.  
for Arbitration of Interconnection Agreements with CenturyLink  
under 47 U.S.C. § 252(b)  
MPUC Docket No. P-421, 5561, 430/IC-14-189  
OAH Docket No. 48-2500-31383**

Dear Judge Mihalchick:

Enclosed for filing is the Post-Hearing Brief of Embarq Minnesota Inc. dba CenturyLink EQ regarding the above-referenced matter.

Very truly yours,

/s/ Jason D. Topp

Jason D. Topp

JDT/bardm

Enclosures

cc: Service List

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

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

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AFFIDAVIT OF SERVICE

STATE OF MINNESOTA )  
  ) ss  
COUNTY OF HENNEPIN )

Dianne Barthel hereby certifies that on the 3rd day of October, 2014, she e-filed a true and correct copy of the Post-Hearing Brief of Embarq Minnesota Inc. dba CenturyLink EQ by posting it on [www.edockets.state.mn.us](http://www.edockets.state.mn.us). Said document was also served on the service list via U.S. mail and e-mail as designated with the Minnesota Public Utilities Commission.

/s/ Dianne Barthel  
Dianne Barthel

Subscribed and sworn to before me  
this 3rd day of October, 2014.

/s/ LeAnn M. Cammarata  
Notary Public

My Commission Expires Jan 31, 2015

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121 Seventh Place East, Suite 350  
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Beverly Jones Heydinger	Chair
David Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipshultz	Commissioner
Betsy Wergin	Commissioner

**In the Matter of the Petition of  
Hutchinson Telecommunications Inc.  
for Arbitration with Embarq  
Minnesota, Inc., Pursuant to 47 U.S.C.  
Section 252 of the Federal  
Telecommunications Act**

**Docket No. P-421,5561, 430/IC-14-189**

**OAH Docket No. 48-2500-31383**

**POST-HEARING BRIEF OF  
EMBARQ MINNESOTA INC. DBA CENTURLINK EQ**

Embarq Minnesota Inc., dba CenturyLink EQ (“CenturyLink EQ”) submits this post-hearing brief in the arbitration proceeding filed by Hutchinson Telecommunications Inc. (“HTI”) on March 3, 2014. This arbitration arises out of HTI’s desire to expand its service territory to include Glencoe, Minnesota.<sup>1</sup> In order to provide such service, HTI seeks to interconnect with CenturyLink EQ’s network, which provides service to Glencoe out of its Osseo central office located approximately 45 miles away.<sup>2</sup> HTI seeks to replace its existing interconnection agreement (“ICA”) with CenturyLink EQ to allow for the exchange of this traffic.

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<sup>1</sup> Ex. 100 (Burns Direct), 2:16-19.

<sup>2</sup> *Id.*

HTI seeks to accomplish this interconnection through what it defines as a “meet point interconnection.” HTI asserts that it has the unilateral right to designate where the parties’ networks would meet in such an interconnection arrangement and that CenturyLink EQ should bear the entire financial responsibility for transporting the traffic from HTI’s chosen point. This specific interconnection request seeks to interconnect for the exchange of traffic with Glencoe along with its extended area of service (“EAS”) that includes Brownton, Lester Prairie, Plato and Silver Lake in the Minneapolis LATA in addition to current service CenturyLink provides for the exchange of traffic between Litchfield and Grove City in the St. Cloud LATA. However, the terms of the interconnection agreement are not limited to these EAS areas.<sup>3</sup>

In addition, HTI proposes to include a list of what it considers technically feasible points in the interconnection agreement to define the Point of Interconnection in the ICA rather than CenturyLink EQ’s proposal which includes both standard, productized methods of interconnection, along with the option of a Bona Fide Request (“BFR”) to accommodate any new non-standard, technically feasible method HTI might request. HTI also rejects certain CenturyLink EQ language which seeks to clarify the methods of interconnection which would be easily ordered and implemented within CenturyLink EQ’s standard processes.

CenturyLink EQ believes that what HTI is requesting does not constitute a meet point interconnection. Instead, FCC rules require that a meet point location be “designated by two

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<sup>3</sup> *See, generally*, Ex. 1 (Easton Direct), Exhibit WRE-2 (setting forth the proposed interconnection agreement which contains general terms rather than terms focused on the specific Glencoe interconnection request (and its EAS areas)). *See also*, CenturyLink EQ’s Local Exchange Tariff Section 1, page 3 (listing the exchanges included within EAS areas).

telecommunications carriers”<sup>4</sup> and that if HTI insists on interconnecting at a point that it unilaterally chooses and in a manner that does not fit within standard interconnection products, HTI should be financially responsible for the costs that this non-standard request creates, including any additional transport costs involved.<sup>5</sup>

Although this arbitration involves many disputed issues, the definition of “meet point interconnection” and the financial responsibilities that result from HTI’s interconnection request lie at the heart of the parties’ disagreements.<sup>6</sup> It is the consequences of that dispute which give rise to many of the additional language disputes between the parties. The parties disagree over whether HTI’s request to interconnect in Glencoe, Minnesota, constitutes a meet point interconnection without the mutual consent of both parties. The parties disagree about whether the physical point at which the networks interconnect should always be the point at which financial responsibility is delineated. The parties disagree about the types of network information that an ILEC is required to provide to a CLEC related to existing interconnection arrangements. The parties disagree about whether or not an interconnection must take place within the service territory of the incumbent and whether or not CenturyLink EQ’s existing interconnection options and BFR process need to be expanded.

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<sup>4</sup> 47 C.F.R. § 51.05.

<sup>5</sup> First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325 (Rel. Aug. 8, 1996) (“Local Competition Order”), ¶ 553 (“Under these circumstances, it is reasonable for each party to bear a reasonable portion of the economic costs of the arrangement.”)

<sup>6</sup> Although there has been much discussion about “technical feasibility,” the testimony at the hearing clarified that there is no dispute about the technical feasibility of HTI’s proposed interconnection request, and there is no dispute regarding its definition. *See* Transcript (Easton), 41:1-6 (clarifying that no dispute exists about technical feasibility).

In addition to the fundamental disputes between the parties mentioned above, a number of additional language disputes exist. This brief will address many of those disputes and explain why CenturyLink EQ's proposed language should be adopted.

## **DISCUSSION**

At the time the parties filed their initial issues matrix, there were 77 disputed issues in this proceeding. At the time of the hearing, the parties resolved a number of issues, leaving 57 disputed issues. Since the time of the hearing, the parties have continued to exchange proposals on certain issues and a total of 31 issues have now been resolved, leaving 46 unresolved issues.<sup>7</sup> The parties have also revised their proposals in certain areas.

CenturyLink has modified its proposals related to the term "POI" and eliminated certain restrictions on the location where parties physically interconnect.<sup>8</sup> HTI has added proposed language related to the provision of usage records in a new issue marked on the matrix as Issue 67.1. This brief will address the issues as revised by the parties.<sup>9</sup>

- I. CenturyLink EQ's Proposals Related to Points of Interconnection and Financial Responsibility for Facilities Correctly Reflect FCC and Commission Decisions.**
  - A. HTI May Not Unilaterally Designate a Meet Point and its Language Suggesting Such a Right Should be Rejected. (Issues 7, 8, 11, 24, 39, 41, 42, 44, 47)**

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<sup>7</sup> See Issues noted as closed. The revised and updated Issues Matrix will be filed the week of October 5, 2014.

<sup>8</sup> See Issues 11, 25-31, 34, 37, 48 and 67. The revised and updated Issues Matrix will be filed the week of October 5, 2014.

<sup>9</sup> To the extent a particular issue is not addressed directly in this brief, CenturyLink relies on its position statement in the Matrix, as well as the testimony of William Easton and Dan Gordon that was prefiled and presented at the hearing.



**1. The Interconnection Agreement Should Include Language Related to Mid-Span Fiber Meet Rather Than a Generic Meet Point.**

CenturyLink EQ has proposed language that allows for a “Mid-Span Fiber Meet” which 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.<sup>10</sup> HTI proposes to eliminate the term Mid-Span Fiber Meet and instead use the more general term “meet point.”<sup>11</sup> HTI further proposes that it should have the unilateral right to designate a meet point location and shoulder CenturyLink EQ with the financial consequences associated with that decision.<sup>12</sup>

HTI argues that 47 C.F.R. § 51.321(a) gives it the right to unilaterally determine the location of a meet point.<sup>13</sup> In doing so, HTI confuses the duty to interconnect with the definition of a meet point. The duty to interconnect does require interconnection at any technically feasible point. By contrast, a meet point is defined as “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.”<sup>14</sup> The FCC has made clear 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

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<sup>10</sup> Issue 8.

<sup>11</sup> Issue 7.

<sup>12</sup> Issue 11 (disputed language regarding financial responsibilities for facilities); Issue 24 (HTI proposed language regarding Points of Interconnection); Issue 39 (language requiring Mid-Span Fiber Meet interconnection arrangements be mutually agreeable); Issue 41 (dispute over language related to the percentage of facilities CenturyLink would provide in a Mid-Span Fiber Meet); Issue 42 (language related to financial responsibility); Issue 44 (proposed language setting forth an agreement to establish a POI at the Osseo switch); Issue 47 (language related to financial responsibility in a meet point interconnection arrangement).

<sup>13</sup> Ex. 200 (Burns Direct) at p. 35.

<sup>14</sup> 47 C.F.R. § 51.05 (definition of “Meet Point”) (emphasis added).

arrangement.”<sup>15</sup> As such, HTI does not have the right to unilaterally designate the meet point location as it is proposing to do here, forcing CenturyLink EQ to pay for 44 miles of transport while HTI only pays for 14 miles. Such a result would be completely inconsistent with the FCC’s definition of a Meet Point and the equitable proportioning of the costs that is made explicit by the FCC. Thus, CenturyLink EQ’s proposal more closely tracks the approach required by the FCC and should be adopted.

**2. CenturyLink EQ’s Definition of Mid-Span Fiber Meet Should be Adopted. (Issue 8)**

HTI objects to CenturyLink EQ’s language related to Mid-Span Fiber Meet.

CenturyLink EQ’s language defines this product as “limited to the interconnection between the CenturyLink EQ Serving Wire Center and the location of the CLEC switch or other equipment located within the area served by the CenturyLink EQ Serving Wire Center.”

Mr. Easton has testified that this language is consistent with the standardized product CenturyLink EQ has created and historically offered to CLECs.<sup>16</sup> He has testified that other types of interconnection are available for arrangements that fall outside this limitation, including Third Party ILEC Meet Point using Leased Facilities covered by language in Section 39.9.1.a of the agreement or other arrangements available through the BFR process.<sup>17</sup>

To eliminate the restriction on Mid-Span Fiber Meet arrangements as HTI suggests poses a number of issues. First, CenturyLink EQ does not have such a standardized product offering available, and therefore, the ordering, provisioning and other details associated with the product are not in place. Second, redefining a Mid-Span Fiber Meet as a meet-point

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<sup>15</sup> Local Competition Order, ¶ 553.

<sup>16</sup> Ex. 1 (Easton Direct), 14:22-25.

<sup>17</sup> Ex. 2 (Easton Rebuttal), 18:1-14.

arrangement, as HTI is requesting, could be used by HTI to try and force CenturyLink EQ to provide a meet point outside of its territory in violation of 47 U.S.C. § 251(c)(2)(B) which requires interconnection within the carrier's network.<sup>18</sup> Third, HTI proposes language giving it the right to unilaterally designate a meet point location, instead of by mutual agreement between the parties, and CenturyLink EQ would be responsible for a grossly-disproportionate share of the transport costs.

### **3. CenturyLink EQ Does Not Have The Obligation To Interconnect Outside Of Its Service Territory.**

HTI suggested at the hearing that CenturyLink EQ would have the obligation to provide interconnection outside of its service territory.<sup>19</sup> This position is directly contradicted by the definition of an incumbent local exchange carrier as defined in statute:

(h) "Incumbent local exchange carrier" defined

(1) Definition

For purposes of this section, the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that—

(A) on February 8, 1996, provided telephone exchange service in such area; and

(B)

(i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or

(ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i).<sup>20</sup>

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<sup>18</sup> Ex. 1 (Easton Direct), 14:20-15:3.

<sup>19</sup> Transcript (Easton), 61:4-11.

<sup>20</sup> 47 U.S.C. § 251(h).

Research has not revealed any cases where a CLEC has even made the argument that an ILEC has the obligation to interconnect outside of its serving territory. To the contrary, Section 1.3 of Qwest interconnection agreements clearly limits obligations to its serving territories:

1.3 This Agreement sets forth the terms, conditions and pricing under which Qwest will offer and provide to any requesting CLEC network Interconnection, access to Unbundled Network Elements, Ancillary services, and Telecommunications Services available for resale within the geographical areas in which both Parties are providing local Exchange Service at that time, and for which Qwest is the incumbent Local Exchange Carrier within the state of Minnesota (the "State") for purposes of providing local Telecommunications Services. This Agreement is available for the term set forth herein.<sup>21</sup>

In the context of analyzing the status of an affiliated CLEC and whether or not that CLEC should be considered an ILEC, the FCC has stated that the ILEC's service territory should be a determining factor:

We also agree with Ameritech that a BOC affiliate should not be deemed an incumbent LEC subject to the requirements of section 251(c) solely because it offers local exchange services; rather, section 251(c) applies only to entities that meet the definition of an incumbent LEC under section 251(h).<sup>22</sup>

HTI seeks an interconnection agreement to exchange traffic pursuant to Section 251(c)(2). CenturyLink EQ does not meet the definition of an incumbent LEC outside of its service territory. Therefore, HTI's proposals in this regard should be rejected.

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<sup>21</sup> Section 1.3 of Qwest AT&T Interconnection Agreement approved in P-442, 421/IC-03-759 (Feb. 9, 2004).

<sup>22</sup> *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 & 272 of the Commc'ns Act of 1934, As Amended*, 11 F.C.C. Rcd. 21905 (1996), ¶ 312 (footnotes omitted).

**B. The Physical Point Where Networks Interconnect Should Not Be the Point Where Financial Responsibility is Handed Off in Non-Standard Interconnection Situations. (Issues 11, 24-34, 37-42, 44, 47-50)**

Many disputed issues revolve around whether or not HTI will be required to pay transport costs in situations where HTI's requested method of interconnection would cause CenturyLink EQ to incur a disproportionate share of transport costs.<sup>23</sup> CenturyLink EQ acknowledges that HTI has a right to physically interconnect at any technically feasible point on its network, but asserts that HTI is required to bear a reasonable portion of the costs associated with its requested interconnection arrangement. CenturyLink EQ proposes language requiring HTI to purchase direct trunk transport in certain circumstances so that HTI bears a reasonable portion of the interconnection costs. In contrast, HTI has proposed language that would require CenturyLink EQ to bear all of the transport costs in all such situations.<sup>24</sup>

**1. The Commission Has The Authority To Require HTI To Pay For Dedicated Transport Costs Caused By HTI.**

This dispute has both a legal and a factual basis. On the legal front, HTI argues that the Commission is prohibited from ordering HTI to compensate CenturyLink EQ for transport costs beyond the point of interconnection. In support of its position, it relies upon

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<sup>23</sup> A number of additional issues exist related to the point of interconnection, such as language originally proposed by CenturyLink EQ that requires HTI to have a point of interconnection at each tandem and other restrictions on the location of a subsequent POI. CenturyLink EQ has revised its proposals on those issues to resolve a number of those side issues and make the language in the agreement more consistent with existing agreements in place with CenturyLink QC. (*See Revised Issues Matrix, Issues 27, 28, 29, 30, 31, 34, 37 and 48.*) CenturyLink believes the heart of the dispute relates to transport costs.

<sup>24</sup> *See HTI's Proposed Language on Issue 11 ("Each POI also establishes the demarcation point to delineate each Party's financial obligations for facility costs").*

the definition of the term “meet point” contained in FCC rules,<sup>25</sup> Paragraph 553 of the Local Competition Order<sup>26</sup> and the ICC/USF rules creating a glide path towards bill and keep compensation.<sup>27</sup>

HTI’s legal position is flawed. As an initial matter, the very definition it relies upon – a meet point interconnection arrangement – does not apply to the interconnection situation at issue here. FCC rules define a “meet point” as “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.”<sup>28</sup> By its own plain language, a meet point interconnection only exists when carriers mutually designate a meet point location. Such is not the case here. Much of the testimony at issue in this proceeding relates to a proposed interconnection arrangement at a Glencoe Remote Switch. The choice to interconnect at Glencoe is solely HTI’s.<sup>29</sup> Such an interconnection would not constitute a “meet point.”

Importantly, 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

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<sup>25</sup> Ex. 101 (Burns Rebuttal), 1:19.

<sup>26</sup> Ex. 101 (Burns Rebuttal), 2:3-9.

<sup>27</sup> Ex. 101 (Burns Rebuttal), 5:1-8.

<sup>28</sup> 47 C.F.R. § 51.5 (emphasis added).

<sup>29</sup> It is undisputed that interconnection at Glencoe is technically feasible.

bill and keep methodology of reciprocal compensation for exchanging traffic.<sup>30</sup> Specifically, 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.<sup>31</sup>

Although the mileage discrepancies initially are less extreme than in the Charter case, the same principles apply and would become more extreme as HTI expands its service area.

Like the present case, the Charter proceeding involved a bill and keep intercarrier compensation arrangement for reciprocal compensation. Like the present case, Qwest sought to charge for transport on the ILEC side of the location where the networks physically connect. In addition, like the present case, the Charter proceeding involved a dispute over how the parties should share the costs of interconnection caused by the CLEC's choice of a burdensome interconnection structure. 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.

HTI's position is also contradicted by numerous interconnection agreements approved by this Commission. Qwest interconnection agreements routinely provide for CLEC

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<sup>30</sup> *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, pp. 9-11 (July 10, 2009).

<sup>31</sup> *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, Arbitrator's Report at ¶ 89.

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.<sup>32</sup> Thus, this Commission clearly has the authority to order HTI to pay for dedicated transport (direct trunked transport) caused by its choice of a non-standard interconnection arrangement.

From the perspective of encouraging economically efficient deployment of infrastructure, CenturyLink EQ's proposals make much more sense than HTI's position. HTI incorrectly claims it has the unilateral right to designate a point of interconnection but that CenturyLink EQ bears the financial responsibility associated with HTI's choice. HTI will naturally be incented to interconnect at a point that minimizes its costs with no regard for CenturyLink EQ's costs. HTI should not also have the right to saddle CenturyLink EQ with such inequitable costs.

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<sup>32</sup> For example, Section 7.3.2 of Qwest's interconnection agreement with AT&T (<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=viewDocument&documentId={65356565-3697-4EEA-88F6-6E3962E17FAE}&documentTitle=1641396&userType=public>), which provides for reciprocal compensation, is nearly identical to the same sections in its agreements with Charter (<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPopup&documentId={7C6E184C-DBFE-44D5-8BF0-E446CDB31482}&documentTitle=20098-40637-01>) and Y-Max (<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=viewDocument&documentId={4996F5B6-9486-4AC2-B466-8F8B918E1D78}&documentTitle=3148069&userType=public>), which involve bill and keep arrangements.



**2. The Commission Should Adopt CenturyLink EQ's Proposed Language Related to Financial Responsibility and Generally Make The Point Of Financial Demarcation At The Appropriate CenturyLink EQ's Tandem Or End Office To Which The CLEC Connects. (Issue 37)**

The genesis of the dispute in this arbitration relates to HTI's desire to interconnect at CenturyLink EQ's Remote Switch location in Glencoe, Minnesota. This choice requires CenturyLink EQ to haul HTI's traffic back to its host switch/tandem in Osseo, Minnesota, where the switching actually occurs, and then haul the traffic back to Glencoe. It further gives HTI the facilities that would allow it to compete in all of the local areas served by the Osseo tandem should HTI choose to do so.

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. Simply put, by physically connecting at a remote switch and calling it a meet point interconnection, in conjunction with seeking to shift the transport costs associated with the necessary transport to the Osseo tandem onto CenturyLink EQ, HTI is clearly attempting to gain access to the EQ tandem network without paying for any of it. Paragraph 199 of the Local Competition Order supports

CenturyLink EQ's 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. (Footnotes omitted).

The Local Competition Order makes clear that it is the requesting carrier, HTI, who should bear the costs of an expensive (i.e., non-standard) interconnection. Yet, under HTI's

proposed language in the interconnection agreement, responsibility for transport costs on CenturyLink EQ's side of the physical hand-off always fall to CenturyLink EQ.

HTI takes this position despite admitting that a standard form of interconnection known as an entrance facility imposes financial responsibility at the host switch and not where the networks of the two companies interconnect.<sup>33</sup> The Department of Commerce rejects HTI's position on this issue. Ms. Doherty testified:

Q But through this testimony, you are rejecting Mr. Burns' contention that where the networks physically meet is always the point of financial demarcation?

A Well, my understanding of Mr. Burns' testimony with respect to that is that he is talking about the particular -- a particular meet point type of interconnection. I don't agree that in all cases -- if Mr. Burns is saying that in all cases the financial demarcation and the physical point of interconnection are the same, I don't agree with that either.<sup>34</sup>

CenturyLink EQ's proposed language is more consistent with the FCC's Local Competition Order, the Commission's approach in the Charter arbitration and with the approval of other interconnection agreements with CLECs in Minnesota. CenturyLink EQ's proposed language should be adopted.

### **3. CenturyLink EQ's Language Proposals Maintain Existing Bill and Keep Arrangements.**

HTI suggests that CenturyLink EQ's proposed language violates the ICC/USF Order by eliminating a current bill and keep arrangement.<sup>35</sup> The record demonstrates otherwise. Section 43.2.2 of the proposed interconnection agreement provides that all Local Traffic will be exchanged on a Bill and Keep basis:

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<sup>33</sup> Transcript (Burns), 28:24-29:23.

<sup>34</sup> Transcript, 144:6-17.

<sup>35</sup> Ex. 200 (Burns Direct), p. 14.

43.2.2 Local Traffic shall be exchanged on a “Bill and Keep” basis, subject to Section 43.2.3 below. The “Bill and Keep” arrangement which may be in effect between the Parties at any time shall not affect the respective rights and obligations of the Parties under this Agreement with respect to any transit charges that may be assessed for any Transit Traffic.<sup>36</sup>

HTI’s position attempts to lump usage-based intercarrier compensation arrangements, which in this case are Bill and Keep, with dedicated transport costs, and is completely contrary to FCC rulings. Consistent with the FCC’s ICC/USF Order, the Bill and Keep arrangement only includes usage based elements (e.g., tandem switching, tandem transmission or common transport, end office switching).<sup>37</sup> Dedicated transport, such as flat rated direct trunked transport, is not included in the Bill and Keep ordered by the FCC in the ICC/USF Order.<sup>38</sup>

HTI points to the ICC/USF order as purportedly changing the law in this area since the time of the Charter arbitration. Mr. Easton pointed out that in the FCC’s ICC/USF Order, the Bill and Keep arrangement only includes usage based elements (e.g., tandem switching, tandem transmission or common transport, end office switching).<sup>39</sup> In fact, the FCC has specifically excluded dedicated transport from the Bill and Keep regime it established in the ICC/USF Order:

¶ 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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<sup>36</sup> Ex. 1 (Easton Direct), Ex. WRE-2 at p. 46.

<sup>37</sup> As discussed in Mr. Gordon’s testimony, common transport is billable in situations where CenturyLink EQ is not the tandem provider.

<sup>38</sup> *In the Matter of Connect America Fund*, “Report and Order and Further Notice of Proposed Rulemaking,” FCC 11-161 (released Nov. 18, 2011), (“ICC/USF Order”), ¶¶ 739, 821, 1297 quoted above (making it clear that dedicated transport is not a part of the transition plan).

<sup>39</sup> Ex. 2 (Easton Rebuttal), 19:14-20:29.

¶ 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).

Consistent with this approach, the existing contract between the parties makes a distinction between Bill and Keep and transport:

36.1.2 Bill and Keep applies to EAS Traffic between either Parties' 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.<sup>40</sup>

Thus, transport is a concept separate and apart from the usage sensitive elements addressed in the ICC/USF Order, and this Commission's existing precedent on the issue remains valid.

**C. CenturyLink EQ Meets Its Obligation To Provide Adequate Information Necessary To Interconnect And HTI's Proposed Language Should Be Rejected. (Issue 24)**

Another significant dispute discussed at the hearing relates to HTI's proposed language imposing broad and burdensome obligations on CenturyLink EQ to provide information about existing points of interconnection available to HTI.<sup>41</sup> HTI indicated at the hearing that it seeks four pieces of information about every interconnection in a LATA: (1) the CenturyLink EQ switch code; (2) the Point of Interconnection CLLI code<sup>42</sup> or physical

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<sup>40</sup> Ex. 100 (Burns Direct), Attachment TGB-1, p. 29.

<sup>41</sup> Transcript (Burns), 13:11-14:22.

<sup>42</sup> 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* (18<sup>th</sup> edition), p. 162 (2002).

location (3) the interface level; and (4) the terms of the compensation agreement associated with each Point of Interconnection.<sup>43</sup> However, HTI's proposed language is less clear:

CenturyLink shall disclose to CLEC all locations within a LATA where CenturyLink has established facilities interconnection with a third party carrier. This existing POI location information shall be provided within 15 business days of CLEC's written request.

There are many problems with both the broad language HTI has proposed and the more narrow suggestion it made at the hearing. CenturyLink EQ has testified that (1) such information would include carrier proprietary information (e.g., the terms of the compensation arrangement and the level of interface); (2) it does not store such information in a single easily accessible place; (3) that retrieving the information would be time-consuming and costly;<sup>44</sup> (4) that much of the information would be useless to a CLEC because the CLEC will know where its own facilities are located and can identify potential Points of Interconnection to the incumbent network based on that knowledge;<sup>45</sup> and (5) that non-proprietary information requested about non-ILEC interconnection are already publicly available. Further, HTI has not proposed language requiring it to compensate CenturyLink EQ for creating and maintaining such a database.<sup>46</sup>

Paragraph 155 of the Local Competition Order discusses the obligation of an incumbent carrier to provide network information to a CLEC. In that paragraph the FCC states: "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

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<sup>43</sup> Transcript (Burns), 18:23-19:9.

<sup>44</sup> Transcript (Easton), 98:19-23.

<sup>45</sup> Transcript (Easton), 66:16-69:2.

<sup>46</sup> *See, generally*, Issues Matrix.

issues at stake.”<sup>47</sup> It further suggests 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*.”<sup>48</sup>

HTI’s proposed language eliminates all of the limitations identified by the FCC on the provision of network information. It imposes the requirement LATA-wide, without regard to a particular interconnection request. It seeks the information for the purpose of generally interconnecting two networks rather than for the purpose of serving a particular customer. It seeks information about *any* third party and *any* facility interconnection, which could include other ILECs and even end users. It also seeks information about third parties that by the disclosure of the location may reveal proprietary carrier information and by disclosing third party interconnection capacity may reveal third party proprietary customer information.<sup>49</sup> Finally, it would require CenturyLink EQ to provide information even though it might not be needed for a particular interconnection request.

The testimony of Mr. Easton sets forth a more reasonable approach to providing such information and does so consistent with FCC pronouncements in the area.

I would argue that [HTI] 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

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<sup>47</sup> Local Competition Order, ¶ 155 (quoted in Burns Direct at p. 7) (emphasis added).

<sup>48</sup> *Id.* (emphasis added).

<sup>49</sup> Ex 1 (Easton Direct), 30:10-31:2.

in the particular area. It's not necessary for them to have information about the entire state.<sup>50</sup>

CenturyLink EQ's position is consistent with FCC pronouncements and the language of FCC rules which require the disclosure of information "necessary" for interconnection and on a "case by case basis" without requiring that the incumbent carrier undertake the burden of laying out information completely irrelevant to the CLEC's interconnection request.

**D. CenturyLink EQ's Proposals For Use Of The BFR Process Should Be Adopted. (Issue 43)**

At the hearing, HTI complained about the standard interconnection options offered by CenturyLink EQ<sup>51</sup> and suggested that any interconnection option offered by CenturyLink EQ in the past to any party should be considered a standard interconnection arrangement.

Mr. Easton described the multiple standard interconnection options that CenturyLink EQ offers to CLECs:

1. A local interconnection entrance facility;
2. CLEC provides its own facility to transport from its switch to a collocation on CenturyLink EQ's network;
3. Mid Span Fiber Meet; and
4. Third Party ILEC Meet Point using leased facilities.<sup>52</sup>

Mr. Easton explained that these CenturyLink EQ interconnection options were developed to address the types of requests that most CLECs make and for which CenturyLink EQ has developed standardized ordering, provisioning and billing processes.<sup>53</sup> For interconnection arrangements that do not fit within the standard offerings just described, CenturyLink EQ

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<sup>50</sup> Transcript (Easton), 67:3-17. HTI's current proposal limits the disclosure to a LATA but the same analysis applies. There are five LATAs in the state of Minnesota, and there is no reasonable basis to require disclosure of all interconnection points within such a large area.

<sup>51</sup> Ex. 100 (Burns Direct), p. 15.

<sup>52</sup> Ex. 1 (Easton Direct), 26:1-27:4.

<sup>53</sup> Ex. 1 (Easton Direct), 62:17-63:2.

offers a BFR process to assess the technical feasibility and requirements of providing some alternate, non-standard form of interconnection.<sup>54</sup>

HTI's goal is to expand CenturyLink EQ's standard interconnection offerings to reduce its own costs of interconnection. HTI demands a form of interconnection for which CenturyLink EQ has not developed ordering, provisioning or billing processes. HTI cannot argue that there is a widespread industry need/demand for the interconnection options that it seeks, nor has HTI suggested that other ILECs offer a wider set of standard interconnection options. HTI's goal is to avoid the costs of engaging in a BFR process. In support of its contention that a BFR process is not required, HTI cited a single sentence from the Local Competition Order. However, as Mr. Easton pointed out in his rebuttal testimony, a more complete reading of the FCC's bona fide request comments makes clear that the FCC was addressing a different bona fide request process than what CenturyLink EQ is proposing here:

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. (Emphasis Added).

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<sup>54</sup> *Id.*, 25:20-26:8.



The language that has been emphasized makes clear that the FCC is concerned about a requirement that the CLEC commit to order services as a part of a BFR. CenturyLink EQ proposes no such requirement here. Instead, HTI's proposals ignore the significant costs associated with a non-standard form of interconnection and ignore the almost universal inclusion of BFR language in interconnection agreements.<sup>55</sup> HTI's proposals should therefore be rejected.

**E. CenturyLink EQ Should Be Compensated For Its Costs Of Providing A Third Party ILEC Meet Point Using Leased Facilities. (Issue 42)**

In connection with the existing St. Cloud interconnection arrangement under the current interconnection agreement, HTI alleges that CenturyLink EQ should be required to continue to provide that arrangement without compensation<sup>56</sup> and that the Point of Interconnection should be at the (Qwest) St. Cloud Tandem. This position is contrary to Section 251(c)(2)(B) of the Telecommunications Act, which requires a CLEC to interconnect on the incumbent's network. Thus, for St. Cloud, the POI should be on CenturyLink EQ's network at the Alexandria central office. The appropriate product for such an arrangement is a Third Party ILEC Meet Point using Leased Facilities. CenturyLink EQ is willing to enter into such an arrangement, but HTI should provide the transport required to establish the POI at the Alexandria switch. (Issue 42). CenturyLink EQ proposes the following language for Third Party ILEC Meet Point using Leased Facilities:

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<sup>55</sup> See, e.g., Qwest Interconnection Agreement with Eschelon (Docket No. P-5340, 421/IC-06-768).

<sup>56</sup> The existing arrangement requires CenturyLink EQ to purchase access services from a third party in order to then interconnect with HTI outside of its service territory. HTI does not compensate CenturyLink EQ for its costs in accommodating this interconnection. This interconnection arrangement was discussed extensively in the Transcript at (Easton) 69:3-70:25; 79:8-85:2.

39.9.3 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 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.

HTI proposes to change this language by deleting the language about ordering facilities from the tariff and adding language requiring that the POI be at the Third Party meet point and that each party is responsible for the costs on its side of the POI. This additional language would inappropriately move the POI to a third party's network. By redefining the location of the POI to be outside of CenturyLink EQ's network and on the network of another provider, HTI seeks to have CenturyLink EQ pay for the cost of HTI's portion of the transport.

**F. The Commission Should Reject HTI's Proposals Related To Meet Point Interconnection Arrangements (Issue 7) And Mid Span Fiber Meets. (Issues 8, 39).**

Issues 7, 8 and 39 go to the heart of competing proposals between the parties regarding the products CenturyLink EQ should offer pursuant to its obligation to offer meet point interconnection. HTI asks the Commission to add a new standard interconnection arrangement, identified as a "Meet Point Interconnection Arrangement," and suggests no limitation on the requirement to offer such arrangements and no financial consequences to the CLEC if the arrangement imposes additional costs on CenturyLink EQ. The only material restriction in HTI's proposal is that the Point of Interconnection be "logically located" between the two networks.<sup>57</sup> If the Commission adopts CenturyLink EQ's proposed language on the interconnection issues, HTI's overly-broad definition is unnecessary because it does not appear elsewhere in the agreement.

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<sup>57</sup> Transcript (Burns), 31:3-7.

Instead, CenturyLink EQ has proposed more precise language related to its Mid-Span Fiber Meet interconnection option and does not believe that the FCC described another meet point interconnection arrangement that is a materially different option available to CLECs. CenturyLink EQ believes a definition is not needed.

**G. HTI's Proposals Eliminating the Term "POI" And Replacing it With "Trunk Group" Should Be Rejected. (Issues 25-26, 28-31, 34-35, 48).**

In multiple places throughout the agreement, HTI has deleted the term "POI" in CenturyLink EQ's proposed language and replaced it with the term "trunk group."<sup>58</sup> Under HTI's proposal, the parties would establish trunk groups connecting their respective switches and the financial responsibility for those trunk groups would terminate at the point to which each party builds facilities, if a meet point is involved, or at CenturyLink EQ's switch, if a meet point is not involved.<sup>59</sup>

HTI's proposal, combined with its proposal that CLECs can unilaterally decide on the location of a meet point interconnection, which could be outside the wire center boundary of CenturyLink EQ's switch or even in another LEC's territory or network, would eviscerate the need for any sort of interconnection arrangement other than a meet point. It would force CenturyLink EQ to absorb all of the transport costs beyond that physical (broadly defined) meet point. It would eliminate any incentive for the CLEC to enter into an interconnection agreement that makes efficient use of *both* parties' networks. It would potentially eliminate any requirement that the CLEC select the meet point location within the boundaries of CenturyLink EQ's serving wire center and arguably would require the incumbent to build its network out to meet the CLEC at a point the CLEC designates. HTI's proposal does not

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<sup>58</sup> See HTI's proposals in the Issues Matrix, Issues 25-26, 28-31, 34-35, and 48.

<sup>59</sup> Transcript (Burns), 34:10-35:7.

explicitly identify specific methods to define a Point of Interconnection, giving rise to potential future disputes. For many reasons, HTI's proposal should be rejected.

**H. CenturyLink EQ's Proposal That Requires HTI To Interconnect At Each CenturyLink EQ Tandem Should Be Adopted. (Issues 26, 29)**

One dispute at the hearing relates to CenturyLink EQ's proposed language that requires HTI to have a Point of Interconnection at each tandem. However, CenturyLink EQ has recently offered compromise language on this issue that allows HTI to purchase direct trunk transport 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 28, CenturyLink has revised its proposal to read as follows:

When a CenturyLink End Office Switch subtends a non-CenturyLink Tandem, CLEC must establish a POI *or order DTT pursuant to Section 43.2.5 from their POI at a CenturyLink Tandem Switch in the LATA* to each CenturyLink End Office Switch that subtends a non-CenturyLink Tandem at such time as the thresholds as set forth in Section XXXXXX have been met.<sup>60</sup>

CenturyLink has added similar language in Issues 31, 34, 37 and 48. This approach is consistent with Qwest interconnection agreement language that has been adopted by this Commission which provides:

1.1 By utilizing SPOP in the LATA, CLEC can deliver both Exchange Access/IntraLATA LEC Toll and Jointly Provided Switched Access traffic and Exchange Service EAS/Local traffic at CenturyLink's Access Tandem Switches. CLEC can also utilize CenturyLink's behind the tandem infrastructure to terminate traffic to specific end offices. The SPOP is defined as the CLEC's physical point of presence. This allows for a trunk group from CLEC's POI in one Local Calling Area (LCA) to be ordered to any CenturyLink local tandem or end office in another LCA which is otherwise not available, absent this amendment.

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<sup>60</sup> Issues Matrix, CenturyLink Proposal, Issue 28.

1.2 SPOP in the LATA includes an Entrance Facility (EF), Expanded Interconnect Channel Termination (EICT), or Mid Span Meet POI and Direct Trunked Transport (DTT) options available at both a DS1 and DS3 capacity.<sup>61</sup>

It is also consistent with standard LERG routing, as it does not require CenturyLink EQ to switch a call at multiple tandems.

## **II. CenturyLink EQ Negotiated In Good Faith.**

HTI has argued that CenturyLink EQ negotiated in bad faith. The specifics of those allegations were addressed in Mr. Easton's rebuttal testimony. In that testimony, he 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. (See Exhibit WRE-4). HTI's non-standard application of the document redlining process also added additional delays. (See last 3 paragraphs in Exhibit WRE-5). At one point, CenturyLink EQ had to wait several weeks to receive HTI's response to proposed language. (See Exhibit WRE-6). Any HTI complaints about CenturyLink EQ's behavior during the negotiations are without merit.

HTI appears to confuse CenturyLink EQ's refusal to agree with each of HTI's proposals with the concept of bad faith negotiations.<sup>62</sup> The Minnesota Commission recently addressed this issue and rejected identical advocacy from DTI. It reasoned:

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<sup>61</sup> See, e.g., *In the Matter of a Joint Application for Approval of the September 9, 2011 Amendment . . . between Broadvox-CLEC, LLC and Qwest Corporation*, Order approving amendment (Sept. 28, 2011), Docket No. P-6719, 421/IC-11-923, Attachment 1 to ICA Amendment, p. 3 (using quoted language).

<sup>62</sup> *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.

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.<sup>63</sup>

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

### **III. CenturyLink EQ's Proposals On Additional Issues Should Be Adopted.**

Many additional issues arose during the course of this proceeding. This brief will not rehash all of CenturyLink EQ's positions on those issues. For further discussion, see Mr. Easton's testimony and the issues matrix. This section will, however, address certain additional issues that arose during the course of the proceeding.

#### **A. The Cost Limitations Proposed For Issue 46 Remain A Part Of CenturyLink EQ's Proposals.**

One issue that arose in the course of the hearing related to Section 42.4 of the agreement.<sup>64</sup> CenturyLink EQ's proposed language for this section is as follows:

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.<sup>65</sup>

The language in CenturyLink EQ's proposal for this section was updated prior to the hearing and the reference to Section 42.4 was updated to Section 39.3.b, which is disputed Issue 32.<sup>66</sup>

Thus, CenturyLink EQ's position on this issue remains valid and its proposed language should be adopted.

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<sup>63</sup> *Id.*

<sup>64</sup> Transcript (Easton), 104:18-105:6.

<sup>65</sup> Ex. 1 (Easton Direct), Ex. WRE-2.

<sup>66</sup> Compare closed Issue 49 on the revised Issues Matrix with open Issue 32.

**B. Trunk Forecasting. (Issues 59-61)**

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.

HTI has now said it is willing to accept the CenturyLink EQ language for Issues 59 and 61 if CenturyLink EQ is willing to accept the following language 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%.

This language should not be adopted for Issue 60. The purpose of trunk forecasting is to provision sufficient trunk capacity to handle actual traffic volumes. HTI's proposed calculation language does not describe how actual traffic volumes are used to determine the over-forecast condition. By contrast, the CenturyLink EQ calculation is very straight forward and is based on the number of DS1 equivalents for the total actual traffic volume.<sup>67</sup>

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<sup>67</sup> Ex. 1 (Easton Direct), pp. 75-77; Ex. 2 (Easton Rebuttal) p. 55.

### **C. Transit Traffic. (Issues 64-67)**

Issues 64-67 relate to disputes regarding obligations associated with Transit Traffic. HTI seeks to force CenturyLink EQ to take responsibility for resolving issues associated with blocking for traffic originating from HTI without a corresponding obligation imposed on HTI.<sup>68</sup> It refuses to take responsibility for compensating carriers that terminate traffic that it originates.<sup>69</sup> It seeks to defer the issue of the rate it pays for transit records to another proceeding.<sup>70</sup> Finally, it seeks to avoid liability in the event it improperly routes traffic.<sup>71</sup>

By contrast, CenturyLink EQ's language makes it clear that the originator is responsible, both to pay CenturyLink EQ for the Transit Service and for any charges rendered by the terminating company, as well as to establish direct connections above 3 DS1s of traffic. CenturyLink advocates that HTI should be responsible to pay for the costs of records it wants for the purposes of billing and should pay the same charges other CLECs pay.<sup>72</sup>

### **D. Billing Records. (Issue 67.1)**

In August of 2014, HTI added a new issue in Section 57.2.4 that seeks to require CenturyLink EQ to provide records to HTI so that HTI can bill CenturyLink EQ. These toll records should be made instead by HTI, or HTI may use the transit records already discussed. 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.

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<sup>68</sup> Issue 64.

<sup>69</sup> Issue 65.

<sup>70</sup> Issue 66.

<sup>71</sup> Issue 67.

<sup>72</sup> See Ex. 1 (Easton Direct), 83:1-10.



**E. Definition of End User. (Issue 1)**

In the course of the hearing, disputes arose regarding some definitions to be included in the interconnection agreement. The first dispute relates to the definition of “end user” (Issue 1). There do not appear to be significant conceptual differences between the parties on this issue – both appear to agree that wholesale providers and the parties themselves are not appropriately considered end users.<sup>73</sup> A simple comparison of the language demonstrates that CenturyLink EQ’s proposal is more clear than HTI’s and more likely to avoid future disputes. CenturyLink EQ proposes:

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.<sup>74</sup>

HTI, by contrast, deletes much of the detail contained in CenturyLink EQ’s definition:

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.<sup>75</sup>

Its justification indicates no substantive disagreement with CenturyLink EQ’s proposal but states, “CTL’s proposed definition is unreasonably and unnecessarily complicated.”<sup>76</sup>

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<sup>73</sup> Transcript (Easton), 51:7-53:24.

<sup>74</sup> Matrix, Issue 1.

<sup>75</sup> Revised Matrix, Issue 1, HTI proposed language.

<sup>76</sup> *Id.*

CenturyLink believes that the clarifications contained in its definition will help address potential disputes that could be raised by HTI or other CLECs that opt-in to this agreement. CenturyLink EQ's language should be adopted.

**F. Definition of Transit Traffic. (Issue 14)**

The parties disagree about the definition of Transit Traffic. CenturyLink EQ's 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.<sup>77</sup> CenturyLink EQ's proposed language should be adopted.

**G. Treatment of Toll VoIP-PSTN Traffic. (Issues 14, 18, 36)**

HTI proposes language that would require any Toll VoIP-PSTN traffic be delivered via Feature Group D. These proposals directly violate the FCC's ICC/USF Order which makes "clear providers' ability to use existing section 251(c)(2) interconnection arrangements to exchange VoIP-PSTN traffic pursuant to compensation addressed in the providers' interconnection agreement..."<sup>78</sup> HTI's language excluding such traffic should be rejected.

**H. Separate Trunk Groups for Toll/Local. (Issue 54)**

A dispute exists regarding whether or not language should be included in the interconnection agreement requiring separate trunk groups a jointly provided switched access and Local Traffic. CenturyLink EQ has explained that combining such traffic on one trunk

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<sup>77</sup> See Ex. 1 (Easton Direct), 18:15-20:4, for additional detail on CenturyLink EQ's position with respect to this issue.

<sup>78</sup> ICC/USF Order, at ¶ 933.

group creates significant operational hurdles which result in inaccurate billing of access traffic, as CenturyLink EQ's billing system is incapable of distinguishing the traffic for local billing to CLEC and access billing to IXC.<sup>79</sup>

HTI asserts that CenturyLink EQ's language would not affect HTI because its toll traffic is routed to Onvoy. If that is the case, then HTI will not be harmed 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.

#### **I. Bi-directional Trunking Conversion. (Issue 57)**

The same issues that exist with Issue 54 compel the Commission to adopt CenturyLink EQ's proposed language on Issue 57. It is standard practice for CLECs to convert from bi-directional trunks to one way trunks. HTI is not affected by this language. There is no harm to HTI in adopting CenturyLink EQ's proposed language, and it makes sense to adopt it so that other parties can opt into this agreement without negotiating or arbitrating these issues.<sup>80</sup>

### **CONCLUSION**

The fundamental disagreement between the parties in this arbitration is not one of technical feasibility, but instead concerns whether each party should bear its fair share of the costs of the interconnection HTI seeks, and whether any BFR terms and conditions should be placed on potential future methods of interconnection for which CenturyLink EQ has not developed standard product offerings. HTI's proposals seek to unfairly place the financial responsibility for the majority of the transport required to exchange traffic between the two

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<sup>79</sup> Ex. 2 (Easton Rebuttal), 53:1-15.

<sup>80</sup> See Ex. 1 (Easton Direct), 74:1-75:10.

networks on CenturyLink EQ and to include broad language about what constitutes a POI rather than accept CenturyLink EQ's BFR language and standard offerings. CenturyLink EQ respectfully requests that this Commission reject HTI's cost shifting proposals and adopt the CenturyLink EQ language which seeks to ensure that each party pays its fair share of the interconnection costs and to use the BFR process for non-standard interconnection requests.

Dated this 3rd day of October, 2014.

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