BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101-2147

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David Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

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

EMBARQ MINNESOTA, INC. DBA CENTURYLINK EQ'S POST-HEARING REPLY BRIEF

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INTRODUCTION

In order to accept HTI's language proposals in this arbitration, the Commission will be required to accept this view of applicable law: A CLEC has the unilateral right to interconnect at any technically feasible point and force the incumbent provider to incur all dedicated transport costs caused by its decision.

While a CLEC's right to interconnect at any technically feasible point is not in dispute, the decisions of this Commission, the language of interconnection agreements it has approved and the decisions reached by the FCC interpreting the Telecommunications Act of 1996 require the CLEC to pay for the dedicated transport costs in dispute in this arbitration.

HTI takes its position further by making additional suggestions that go far beyond in its broad reading of an ILEC's obligation to bear the financial burden of a CLEC's interconnection request. HTI suggests that it has a right to a meet point form of interconnection at any point it chooses even when the choice of the point of interconnection imposes excessive transport costs on the incumbent. HTI suggests it has this right in locations outside of the incumbent's service territory and even that it has the right to force the incumbent to lease facilities from a third party outside of its service territory to accomplish interconnection.

In order to justify its positions, HTI blurs together and confuses precise legal obligations associated with its proposed interconnection agreement. Unfortunately, the Department of Commerce ("Department") does the same. HTI then seeks to use these blurred definitions to give itself the advantages of its preferred portions of those concepts without taking on the corresponding obligations associated with them. Specifically:

- **HTI blurs the distinction between the obligation to interconnect and the obligation to provide meet point interconnection.**

HTI blurs the distinction between the obligation to interconnect, which requires interconnection at any technically feasible point, with a specific type of interconnection called meet point interconnection, which requires that the companies ***mutually*** agree and designate a meet point.[1] HTI blurs this distinction in the hope of obtaining the advantages of CenturyLink EQ's obligation to interconnect, without also taking on the corresponding burden of negotiating a mutually agreeable meet point and bearing "a reasonable portion of the economic costs of the arrangement," requirements that are central to the FCC's concept of a meet point interconnection arrangement.[2]

- **HTI attempts to expand the scope of the CAF/ICC Order's bill and keep transition plan by blurring the distinction between common transport (which is included in the bill and keep transition plan) with dedicated transport (which is not).**

Dedicated transport, such as flat rated direct trunked transport required by HTI's interconnection request, is not included in the Connect America Fund Order bill and keep regime. In fact, the FCC has specifically excluded dedicated transport from the bill and keep regime it established in the Connect America Fund Order.[3] HTI attempts to evade this limitation and thereby obtain the advantages of interconnection with CenturyLink EQ's tandem without the associated costs of getting there.[4] CenturyLink EQ's request to be

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[1] *See* HTI Brief, p. 17.
[2] 47 C.F.R. § 51.5; 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.
[3] Ex. 2 (Easton Rebuttal), pp. 19-20, citing *In the Matter of Connect America Fund*, "Report and Order and Further Notice of Proposed Rulemaking," FCC 11-161 (released Nov. 18, 2011), ("CAF/ICC Order").
[4] *See* HTI Brief, pp. 23-29.

compensated for this direct trunked transport is entirely consistent with the CAF/ICC Order and the FCC's First Report and Order.[5]

- **HTI attempts to expand the obligation to interconnect to locations outside of the ILEC service territory, thereby blurring explicit language in the Act limiting the obligation on a geographic basis.**

HTI argues that the obligation to interconnect extends beyond the service territory of an incumbent provider.[6] It does so without acknowledging the specific territorial restrictions on the definition of an incumbent provider contained in 47 U.S.C. § 251(h) which has been incorporated into the obligations to interconnect under 47 U.S.C. § 251(c). HTI does so in an effort to obtain access to markets without paying for the facilities that must be acquired to reach those markets.

- **HTI expands the obligation to provide information "necessary" for interconnection by seeking to require the disclosure of information that has nothing to do with a particular interconnection request.**

HTI blurs the obligation to provide "information necessary to interconnect" into an attempt to require CenturyLink EQ to provide information about all points on which it interconnects in a LATA, including pre-Telecom Act of 1996 ILEC to ILEC connections.[7] In doing so, it ignores important restrictions associated with this obligation including that the requested information be "reasonable and necessary" and that the information be required on a "case-by-case basis."[8] HTI therefore seeks to impose an obligation far beyond the obligations contained in the Act.

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[5] Local Competition Order, ¶¶ 199, 553 discussed in Ex. 2 (Easton Rebuttal), 4:1-19; 14:18-22:13.
[6] *See* HTI Brief, p. 11.
[7] *See* HTI Brief, pp. 12-14.
[8] Local Competition Order, ¶ 155.

HTI's efforts to cherry pick the portions of these obligations that provide it with advantages, while ignoring the limitations associated with such obligations, should be rejected. HTI downplays CenturyLink EQ's concerns about its proposals as merely efforts to impose transport costs on CLECs. Transport costs clearly lie at the heart of many of CenturyLink EQ's concerns about HTI's proposals. The importance of such costs should not be dismissed as trivial. HTI's proposals would incent CLECs to interconnect in a fashion that minimizes CLEC costs without any regard, or compensation, for the additional transport costs it imposes on the ILEC. Such an approach eliminates incentives for the CLEC to enter into efficient interconnection arrangements that are "reasonable" and would be contrary to this Commission's decision in the *Charter* arbitration. Such a decision would leave CenturyLink EQ uncompensated for dedicated facilities it would be forced to dedicate to HTI as a result of decisions the CLEC has made regarding where it wishes to interconnect and would stretch the FCC's decisions regarding reciprocal compensation far beyond the issues those decisions were designed to address. HTI's arguments should be rejected.

BACKGROUND

The interconnection concepts at issue in this arbitration have existed since passage of the 1996 Act and are well established. A CLEC has the right to interconnect at any technically feasible point on the incumbent's network. Based on the FCC's CAF/ICC Order, the parties are only required to agree to Bill and Keep reciprocal compensation for the usage based rate elements if the parties have in the past not charged each other for the switching and common transport of traffic. The bill and keep provisions required by the FCC specifically exclude charges for dedicated facilities that the incumbent makes available to the CLEC to accommodate interconnection.

These issues have been litigated repeatedly in Minnesota, before the FCC and across the nation. In agreement after agreement in Minnesota, a CLEC that enters into an interconnection arrangement, where the CLEC wants dedicated transport to the incumbent switches to allow for the exchange of traffic, pays the incumbent for those facilities the incumbent dedicates to accommodate such interconnection. Qwest agreements allowing CLECs to interconnect at a single point per LATA contain such obligations. Qwest's agreement with Charter contains such obligations. Countless interconnection agreements include such obligations and CenturyLink EQ merely seeks to impose the same obligations on HTI that this Commission and other decision-makers have routinely imposed in the past.

I. Disagreements regarding HTI's factual allegations.

A. Negotiation history.

HTI's current interconnection agreement is very limited in scope. It provides for the exchange of traffic at the St. Cloud tandem in order to allow the parties to exchange local calls throughout the extended area service (EAS) territory that includes the Litchfield and Grove City exchanges. In order to exchange such traffic, it must be routed through CenturyLink EQ's host switch in Alexandria.[9] HTI seeks a new agreement for the purposes of modifying terms and for the purpose of allowing it to offer service in Glencoe, Minnesota. Providing service in Glencoe requires that traffic be routed through a tandem in Osseo.[10] While HTI identifies the Glencoe market as its primary interest, this agreement is general in nature.[11] Thus, while the original agreement was quite limited in geographic scope, this new

[9] Ex. 100 (Burns Direct), 2:20-26.
[10] Ex. 2 (Easton Rebuttal), 2:17-3:20.
[11] Ex. 1 (Easton Direct), Exhibit WRE-2.

agreement will allow HTI to exchange traffic throughout CenturyLink EQ's service territory.[12]

B. CenturyLink EQ has not rejected HTI's interconnection requests. [HTI Brief, pp. 2, 14, 20, 21] [Department Brief, p. 9]

HTI and the Department mistakenly allege that CenturyLink EQ denied HTI's interconnection requests at Glencoe and St. Cloud.[13] In both cases, the dispute does not relate to the method of interconnection but rather the appropriate compensation arrangement. In St. Cloud, the interconnection sought by HTI already exists, and CenturyLink EQ is not proposing to remove the physical connections between the two companies, but rather seeks proper compensation for the dedicated transport it purchases from a third party.[14] With respect to Glencoe, CenturyLink EQ did not deny the interconnection request. To the contrary, it agreed to interconnect there.[15] The dispute between the parties relates to whether or not such an interconnection is properly considered a meet point interconnection and whether or not HTI is required to compensate CenturyLink EQ for both virtual collocation and dedicated transport from Glencoe to Osseo. CenturyLink EQ stands ready to interconnect once those issues are resolved.

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[12] Ex. 100 (Burns Direct), 14:11-18.
[13] *See, e.g.,* HTI Brief, p. 2 (CenturyLink EQ has denied HTI's requested point of interconnection for reasons that have nothing to do with technical feasibility); p. 14 ("CenturyLink's refusal to provide - meet point interconnection"); p. 24 (in both cases, CenturyLink EQ acknowledges that interconnection request is technically feasible but has rejected those requests); and p. 21 ("CenturyLink EQ essentially ignored HTI's request . . ."). *See, e.g.,* Department Brief, p. 1 ("a particular interconnection arrangement requested by HTI and denied by CenturyLink EQ . . .").
[14] Ex. 2 (Easton Rebuttal), 22:15-24:14.
[15] *Id.*

C. The current interconnection agreement distinguishes between reciprocal compensation and transport.

The Department's brief mistakenly describes the current interconnection agreement between HTI and CenturyLink EQ as treating direct trunk transport as within the definition of reciprocal compensation.[16] In fact, the current agreement treats the concepts as separate:

> 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.[17]

If transport truly were a part of the same concept, there would be no need for separate treatment of the concepts in the current agreement. Furthermore, the only existing interconnection agreement covered by the current agreement is the interconnection at St. Cloud. As a result, CenturyLink EQ's proposals are consistent with the CAF/ICC Order.

II. The duty to interconnect is separate and distinct from the duty to offer meet point interconnection. [Issues 7, 8, 11, 24, 39, 42 and 44]

A. A CLEC's right to interconnect at any technically feasible point does not give the CLEC a right to unilaterally designate the location of a meet point.

HTI and the Department attempt to lump together the obligation to interconnect with the obligation to offer meet point interconnection. HTI starts with the non-controversial premise that a party has the obligation to interconnect at any technically feasible point on its network.[18] It then distorts that obligation to require that CenturyLink EQ must offer ***meet point*** interconnection at any point on its network unilaterally determined by the CLEC.[19] It furthers the effect of this position by arguing that it not only has the right to unilaterally

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[16] Department Brief, p. 16.
[17] Ex. 2 (Easton Rebuttal), 21:2-6.
[18] HTI Brief, p. 7.
[19] *Id.,* p. 17.

determine the location of a "meet point" but also require CenturyLink EQ to incur the additional costs associated with accommodating such a request without compensation.

These concepts are separate and distinct. A meet point interconnection is a specific type of interconnection, defined by the FCC 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."[20] 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 arrangement."[21]

HTI's proposed interconnection arrangement ignores both of these requirements. It seeks to unilaterally designate a meet point, and it seeks the ability to do so without regard for the proportion of costs incurred by both parties. It justifies its position by pointing to the non-controversial position that "[a]n ILEC may not use cost as a factor in determining whether a requested interconnection is feasible."[22] This argument ignores the distinction between the obligation to interconnect (which does not require a consideration of costs) and the obligation to offer meet point interconnection (which by definition requires that the parties *both* designate the meet point and bear a reasonable proportion of the costs). The FCC has determined that cost is an appropriate consideration for a meet point arrangement.

HTI's claim that CenturyLink EQ is acting in a discriminatory fashion by comparing CenturyLink EQ's interconnection arrangement with its affiliated ILEC, Hutchinson

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[20] 47 C.F.R. § 51.05 (definition of "Meet Point") (emphasis added).
[21] Local Competition Order, ¶ 553.
[22] HTI Brief, p. 8.

Telephone Company ("HTC") is similarly without merit.[23] HTI provides a diagram of this interconnection arrangement at page 41of Mr. Burns' direct testimony:

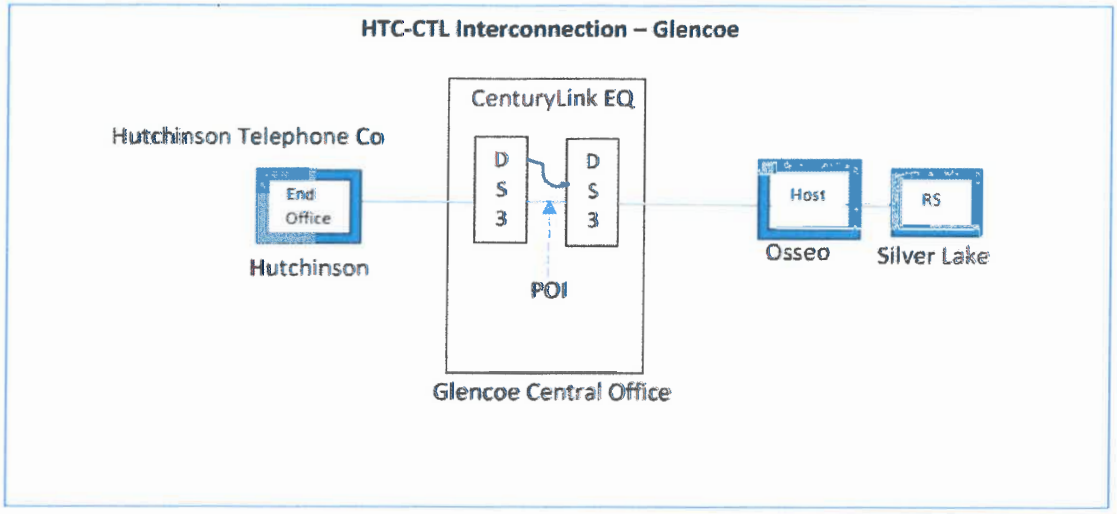

Figure 13 CTL-Hutchinson Telephone Company Meet Point – CenturyLink Central Office

What HTI ignores is that CenturyLink EQ has offered HTI essentially the same type of physical interconnection architecture it has in place with HTC. CenturyLink EQ has offered to interconnect at the Glencoe remote Switch location using a relay rack, appropriate cross connect equipment and the cables necessary to interface between the HTI equipment and CenturyLink EQ's equipment as a virtual collocation.[24] These network elements are necessary to provide an interface at the Glencoe remote Switch for HTI to order Direct Trunked Transport to the POI in Osseo on the CenturyLink EQ network. These charges are provided as a virtual collocation. CenturyLink EQ should not be required to offer these network components without charging for them.

The physical and compensation arrangements that two ILECs agreed to prior to the Telecom Act of 1996 will not contain precisely the same physical arrangements (i.e.,

[23] The Department makes essentially the same argument (Department Brief, pp. 14-15).
[24] Ex. 2 (Easton Rebuttal), 28:5-30:15.

collocation) and compensation (i.e., virtual collocation) as interconnection arrangements pursuant to Section 251(c) of the Telecom Act of 1996, as Section 251(c) collocation did not even exist as a concept for LECs prior to 1996. Thus comparing the compensation arrangements in the two situations is misleading and irrelevant.

The difference between the parties relates to the manner in which one labels such an interconnection and the rate elements that accompany such an arrangement. HTI wishes to label its proposed form of interconnection as a "meet point" and have each side pay for its own costs. As has been discussed before, such an arrangement does not meet the FCC's definition of a "meet point" because the arrangement was not designated by two carriers and does not cause the carriers to reasonably share interconnection costs.

HTI's proposed interconnection agreement is properly characterized as a request for virtual collocation. FCC rules direct that:

> When providing virtual collocation, an incumbent LEC shall, at a minimum, install, maintain, and repair collocated equipment meeting the standards set forth in paragraph (b) of this section within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of the incumbent LEC itself.[25]

Subsection (b)(1) identifies the need to offer collocation if "Equipment is necessary for interconnection if an inability to deploy that equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining interconnection with the incumbent LEC at a level equal in quality to that which the incumbent obtains within its own network or the incumbent provides to any affiliate, subsidiary, or other party."[26]

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[25] 47 C.F.R. § 51.323(e).
[26] 47 C.F.R. § 323(b)(1).

Here, HTI's own diagram demonstrates it needs access to relay rack space for the terminating point of the HTI facility, cross connect equipment and the cables necessary to connect to CenturyLink EQ's network. HTI's interconnection request requires a virtual collocation under the straightforward definitions provided in federal rules. Labeling its request as a request for a meet point does not change its nature. And, pointing to a pre-Act ILEC to ILEC arrangement, agreed to prior to the rules requiring ILECs to allow collocation within their switches, does not eliminate the need for such collocation.

B. CenturyLink EQ is not seeking to veto HTI's selection of the point of interconnection.

HTI argues that "by requiring that the meet point be 'mutually agreed upon,' CenturyLink EQ seeks to give itself veto power over HTI's selection of the POI."[27] This argument once again blurs a number of precise distinctions in an effort to lead the Commission to allow HTI to avoid paying appropriate compensation. As an initial matter, the requirement that a meet point be mutually agreed upon places both parties on an equal footing rather than giving one or the other "veto power." Parties can normally work out any disputes and have an obligation to resolve them in good faith.[28] If those efforts fail, dispute resolution provisions provide for ultimate Commission oversight over any disputes.[29]

HTI's argument also lumps together the concept of a financial demarcation point and the point at which networks physically meet. Under CenturyLink EQ's language proposals these concepts are not identical. As Mr. Easton explained in his testimony, the point where the two networks physically meet need not necessarily be the point demarcating financial

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[27] HTI Brief, p. 17.
[28] Ex. 1 (Easton Direct), Exhibit WRE 2, Section 24.
[29] Ex. 1 (Easton Direct), Exhibit WRE 2, Section 24.5.

responsibility. A CLEC could interconnect at a particular point but be financially responsible for costs between the point of physical handoff and the POI. HTI's argument equates the physical point of interconnection with the handoff of financial responsibility. By doing so, it confuses the question of the physical right to interconnect and the obligation to compensate. CenturyLink EQ's language is entirely consistent with Qwest agreements that the Commission has approved whereby CLECs pay for transport on the Qwest side of the POI and is consistent with the decision this Commission reached in the Charter arbitration.

III. The CAF/ICC Order permits compensation for direct trunked transport.

HTI and the Department persist in arguing that the CAF/ICC Order prohibits CenturyLink EQ from charging HTI for direct trunked transport both with respect to the existing St. Cloud interconnection arrangement and with respect to all new interconnection arrangements.[30] Such a position is remarkable because it would essentially eliminate any need for a CLEC to purchase direct trunked transport for the purposes of interconnection. Instead it could unilaterally choose an interconnection point, call it a meet point, and impose all of the transport costs on the ILEC. The Department and HTI misinterpret the FCC's order.

A. The definition of reciprocal compensation does not include Direct Trunk Transport. [Issues 33, 37, 41, 42 and 47]

HTI continues to try and lump the concept of paying for Direct Trunk Transport, a form of dedicated transport, with the concept of reciprocal compensation. 47 C.F.R. § 51.709(a) provides that "a state commission shall establish initial rates for the transport and termination of Non-Access Telecommunications Traffic that are structured consistently with

[30] Department Brief, p, 19-21; HTI Brief, p. 27.

the manner that carriers incur those costs, ***and consistently with the principles in this section***." 47 C.F.R. § 51.709(b) sets forth the applicable principles for dedicated transport:

> (b) The rate of a carrier providing transmission facilities dedicated to the transmission of non-access traffic between two carriers' networks ***shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send non-access traffic that will terminate on the providing carrier's network.*** Such proportions may be measured during peak periods.

The order specifically reserves the question of other rate elements for future proceedings.[31] CenturyLink EQ's proposals in this proceeding fit precisely with these requirements. CenturyLink EQ proposes charging HTI for dedicated transport in a manner that recovers the costs of the proportion of dedicated trunk capacity used by HTI to send non-access traffic that will terminate on CenturyLink EQ's network through Direct Trunk Transport.

HTI's proposals, by contrast, seek access to these portions of CenturyLink EQ facilities in the Glencoe remote end office without actually paying for them. HTI seeks to do so by labeling its proposed interconnection agreement as a meet point. Because its proposed interconnection does not meet that definition, its position should be rejected.

Similarly, HTI's arguments that CenturyLink EQ is foreclosed from charging HTI for the costs it incurs in connection with the interconnection agreement in St. Cloud is without merit. CenturyLink EQ is not proposing to charge HTI for usage based elements. Instead, it is proposing to charge HTI for the use of a leased dedicated facility.[32] Such charges are not a part of the bill and keep regime ordered by the FCC in the CAF/ICC Order.

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[31] CAF/ICC Order, ¶¶ 739, 821 and 1297.
[32] Ex. 2 (Easton Rebuttal), 22:1-13.

B. The Department's attempts to distinguish the Charter decision are without merit.

In order to justify its position, the Department attempts to distinguish the present arbitration proceeding from the Charter case.[33] In support of its position, it identifies differences in network configuration. It claims that the Charter proceeding involved a service that Qwest did not provide to itself and it claims somehow that the location of interconnection currently proposed by HTI, Glencoe, necessitates different analysis because of the way in which CenturyLink EQ has configured its network.

The Department's position is flawed. The interconnection agreement language proposed by both parties is general in nature and does not limit the exchange of traffic to Glencoe.[34] The interconnection proposed at Glencoe would provide HTI with the capability to offer local services throughout the exchanges that subtend the Osseo exchange.[35] The Department labels the relative transport associated with the proposed interconnection arrangement as "de minimis"[36] but the question, based on the *Charter* decision, is really whether splitting transport costs at a rate of 24% vs. 76% constitutes "reasonable" for sharing of costs. "Reasonable" infers a more equitable sharing than that and the impact of such a decision could cause a vast shift in the manner in which incumbents and CLECs share costs today. If the difference is truly "de minimis," which it is not, then it is unclear why HTI would contest the issue.

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[33] Department Brief, pp. 18-20.
[34] Ex. 1 (Easton Direct), Exhibit WRE-2.
[35] Ex. 2 (Easton Rebuttal), Exhibit WRE-3.
[36] Department Brief, p. 14.

The Department also attempts to distinguish the *Charter* decision on the grounds that the Charter interconnection involved "inter-tandem direct trunked transport."[37] The Department cites no language in the Charter decision supporting such a distinction and neither the Commission decision nor the ALJ recommendation in the case suggest that the existence of such transport was a relevant factor in the decision reached in that case.

Finally, evaluating one interconnection arrangement to determine language for a general agreement that could apply in multiple locations is an unreasonable approach. Without language requiring that the parties bear a reasonable proportion of interconnection costs, the agreement language could allow a CLEC to obtain the exact same type of arrangement that was rejected in the Charter arbitration.

C. The Department's attempts to compare calls between CenturyLink EQ customers in Glencoe with calls to HTI Glencoe customers are technically false and do not demonstrate a service CenturyLink EQ also provides to itself.

The Department incorrectly claims that CenturyLink EQ uses the same transport facility between Glencoe and Osseo to transport calls between its own Glencoe customers as would be necessary for similar HTI calls.[38] The Department cites no record support for this

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[37] Department Brief, p. 20.

[38] Department Brief, p. 21: "That is, when CenturyLink Customer A in Glencoe places a local call to CenturyLink customer B in Glencoe, the call must be transported over CenturyLink's existing facilities . . . to the Osseo tandem switch, and then back over the existing facilities to Customer B in Glencoe." The Department then claims the same routing would be used for HTI calls.

assertion.[39] This assertion is incorrect.[40] Calls between CenturyLink EQ customers in Glencoe are connected in the Glencoe remote switch and are not transported to and from Osseo. HTI interconnection requires trunk-side connections, which are only available in the Osseo host switch. Thus, the Department is incorrect in its attempt to distinguish the Charter dispute with HTI's dispute. The Department's argument that any need for transport is a result of network decisions CenturyLink EQ has made is unpersuasive. CenturyLink EQ's network is a pre-existing network to which HTI is requesting a new, not previously established interconnection to provide service in Glencoe.

IV. HTI is not entitled to demand interconnection outside of CenturyLink EQ's service territory. [Issue 24]

HTI repeats its arguments made at hearing that its right to interconnect at any technically feasible point on CenturyLink EQ's network includes a right to interconnect outside of CenturyLink EQ's service territory.[41] CenturyLink EQ anticipated and addressed this argument in its opening brief. HTI's position is contrary to the definition of an incumbent local exchange carrier which applies "with respect to an area" and requires that the company "provide[] telephone exchange service in such area."[42] It runs contrary to standard language in existing Qwest interconnection agreements that indicate the obligations of the agreement apply "within the geographical areas in which both Parties are providing

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[39] It does appear that Ms. Doherty made this claim in written testimony filed at the last minute during the hearing. Ex. 203, p. 5 CenturyLink EQ did not realize in the short time frame available that this testimony was inaccurate.

[40] For the reasons discussed in footnote 34, CenturyLink EQ did not present rebuttal testimony addressing this issue and therefore the assertions contained in this paragraph are not contained in the record. CenturyLink EQ would be happy to submit a supplemental affidavit supporting these assertions.

[41] HTI Brief, p. 11.

[42] 47 U.S.C. § 251(h)(1) and § 251(h)(1)(A).

local Exchange Service at that time, and for which Qwest is the incumbent Local Exchange Carrier within the state of Minnesota."[43] It also runs contrary to FCC pronouncements stating that an incumbent's obligations under Section 251(c) are limited by the definition of an incumbent carrier set forth in 47 U.S.C. §251(h).[44] In addition, the proposal runs contrary to the agreed upon definition of "incumbent local exchange carrier" in the agreement which explicitly states that the definition of the term "is as defined in the Act."[45] Instead, CenturyLink EQ seeks to maintain and classify the existing arrangement in St. Cloud as it does with other CLECs – Third Party ILEC Meet Point using Leased Facilities.

V. HTI's demand for information related to all interconnection arrangements in a LATA is inconsistent with the obligations set forth in the Act. [Issue 24]

HTI argues for language requiring CenturyLink EQ to disclose all locations in a LATA where it has interconnected with another carrier. The Department supports the position.[46] CenturyLink EQ addressed this issue in its initial brief. Paragraph 155 of the Local Competition Order discusses the obligation of an incumbent carrier to provide network information to a CLEC, stating that "Review of such requests, however, must be made on a ***case-by-case basis*** to determine whether the information requested is reasonable and necessary to resolving the issues at stake."[47] It further suggests that it would be reasonable "for a requesting carrier to seek and obtain . . . information about the incumbent's network

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[43] Section 1.3 of Qwest AT&T Interconnection Agreement approved in Docket No. P-442, 421/IC-03-759 (Feb. 9, 2004).
[44] *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).
[45] Ex. 1 (Easton Direct), Exhibit WRE-2, p. 4.
[46] Department Brief, p. 22.
[47] Local Competition Order, ¶ 155 (quoted in Burns Direct at p. 7) (emphasis added).

that is ***necessary*** to make a determination about which network elements to request to serve ***a particular customer***."[48]

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 further 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.[49] Finally, it would require CenturyLink EQ to provide information even though it might not be needed for a particular interconnection request.

Particularly troubling is HTI's suggestion that interconnection arrangements with ILECs should be disclosed. Typically, ILECs exchange traffic with neighboring ILECs through bilateral meet point arrangements with traffic typically handed off at the sparsely populated rural border of neighboring exchanges and do not extend into the other ILEC's switch. Such arrangements pre-date the Telecommunications Act and are for the purpose of exchanging traffic between exchanges, rather than for the purpose of competing with the incumbent.[50] Further, such ILEC to ILEC arrangements do not require compliance with all the requirement of Section 251(c), including collocation and UNEs, and thus do not require

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[48] *Id.* (emphasis added).
[49] Ex. 1 (Easton Direct), 30:10-31:2.
[50] *See* 47 U.S.C. § 251(g) (preserving interconnection arrangements in place before the Act until such arrangements are superseded by the FCC).

the same type of public record keeping (i.e. assignment of ACTL, inclusion in CLONES) as CLEC 251(c) or CMRS POIs.[51] ILEC meet points in EAS areas involve unique compensation mechanisms ordered by the Commission.[52] By contrast, here, HTI seeks to obtain interconnection for the purpose of competing in the Glencoe exchange and is seeking interconnection pursuant to 47 U.S.C. §251(c)(2). Its position and the position of an ILEC serving a neighboring territory are not comparable.[53]

CenturyLink EQ has presented testimony indicating that providing HTI with the additional information would be burdensome and also unnecessary for HTI to make decisions about where and how to interconnect.[54] CenturyLink EQ testimony has established that the relevant Interconnection POIs of other CLECs and CMRS carriers are outlined in the public sources available to HTI for review.[55] HTI's language proposal should be rejected.

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[51] *Id.*

[52] *See, e.g., In the Matter of a Petition for Extended Area Service from Atwater to the Wilmar*, Docket No. P-407,421/CP 96-799, Order Establishing Rates for Polling (Nov. 12, 1997) (establishing proposed rate additives for customers to consider in voting on whether to adopt an EAS route).

[53] Even if ILEC arrangements were appropriate, it is unclear why it is necessary for CenturyLink EQ to dig up and provide information about all of them. Mr. Burns testified that "Whenever an ILEC end office subtends another ILEC's access tandem, it's a safe bet there is meet point route between the two companies." Ex. 100 (Burns Direct), 6:13-14. As with the current Glencoe situation, it is the affiliate CLEC that is most likely to be able to gain agreement from both ILECs to use such an ILEC to ILEC arrangement – and clearly CenturyLink EQ doesn't need to provide information from one affiliate ILEC to its affiliated CLEC.

[54] Ex. 2 (Easton Rebuttal), 5:1-7:3.

[55] Transcript, 66:16-69:2.

VI. CenturyLink EQ's compromise language proposal does allow for one point of interconnection per LATA. [Issue 25-31, 34, 38, 48]

HTI's brief argues that CenturyLink EQ's proposed language violates an obligation to allow CLECs to interconnect at one point per LATA.[56] Recognizing HTI's position on this issue, CenturyLink EQ proposed compromise language that appears in the issues matrix that resolves this particular concern. In each of these disputed language sections, CenturyLink EQ has proposed that HTI have the option of establishing an additional POI at the necessary location or "order DTT pursuant to Section 43.2.5 from their POI [to the appropriate location]."[57] Thus, the dispute between the parties on these issues is once again not related to the necessity of additional points of interconnection, but rather as to whether HTI will be required to pay for the dedicated facilities required to accommodate their interconnection request.

HTI blurs the distinction between the point of interconnection for compensation purposes and the physical point at which the companies' networks meet. For the purposes of determining compensation (as CenturyLink EQ proposes), it is appropriate that the initial POI be established at the tandem where HTI's codes home.

VII. CenturyLink EQ's pricing for virtual collocation is appropriate. [Issue 11]

HTI misleadingly argues that CenturyLink EQ's proposed virtual collocation requirement would foist upon HTI significant expenses that "HTI does not need and does not

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[56] HTI Brief, pp. 18-19.

[57] *See, e.g.,* Issues Matrix, CenturyLink EQ's proposed language for Issues 25-32, 34, 38, 48.

want."[58] HTI argues that it would merely use the equipment of its affiliated LEC. It then misleadingly suggests that the price for virtual collocation could be as much as $15,000.[59]

HTI's claim of cost is wildly misstated and finds no support in the record. HTI cites Exhibit C to CenturyLink EQ's response to the arbitration petition as support for the $15,000 figure. It appears HTI reached its total by adding all of the possible nonrecurring costs together which amounts to $15,481. In order to reach such a number, one would need to assume that HTI is not only establishing a new collocation but also adding a minor and a major augment to the collocation at the same time as installation. Such an unlikely (if not impossible) scenario would be caused by HTI and not CenturyLink EQ.

HTI's assertion that it does not need equipment is similarly unavailing. It is without dispute that HTI would be using rack space, cross connects and cables to connect to CenturyLink EQ. CenturyLink EQ would have the obligation to maintain those facilities. The fact that some facilities already exist in the central office does not eliminate their need nor HTI's obligation to pay for them.

VIII. HTI's language definition of technically feasible points of interconnection is potentially misleading and should be rejected. [Issue 24]

HTI proposes language identifying points of interconnection and defines them as technically feasible. It justifies its position by stating that "each of these locations are points on the CenturyLink EQ network where CenturyLink EQ performs cross-connections, both for itself and for other carriers."[60] This language is extremely broad. In contrast, interconnection agreement language in existing Qwest agreements is more precise and

[58] HTI Brief, p. 38.
[59] *Id.*
[60] HTI Brief, p. 10.

descriptive of the available options. For example, the agreement filed as a result of the Charter arbitration states:

> The Parties will negotiate the specific arrangements used to interconnect their respective networks. CLEC shall establish at least one (1) physical Point of Interconnection in Qwest territory in each LATA CLEC has local End User Customers. CLEC represents and warrants that it is serving End User Customers physically located within the areas associated with the NPA-NXX codes assigned to those End User Customers. The Parties shall establish, at least one (1) of the following Interconnection arrangements, at any Technically Feasible point: (1) a Qwest-provided Entrance Facility; (2) Collocation; (3) Mid-Span Meet POI facilities; or (4) other Technically Feasible methods of Interconnection via the Bona Fide Request (BFR) process unless a particular arrangement has been previously provided to a third party, or is offered by Qwest as a product. Qwest may not require the CLEC to have more than one POI in a LATA.[61]

This language is quite similar to the language CenturyLink EQ proposes here and has proven workable over the many years since passage of the Act in Minnesota.

CenturyLink EQ's language fits precisely with the standard products it offers and provides for a BFR process to the extent a CLEC requests a different form of interconnection. In no way does CenturyLink EQ's language limit or restrict its obligation to provide technically feasible forms of interconnection. CenturyLink EQ's proposed language should be adopted.

IX. CenturyLink EQ's use of the term Point of Interconnection (POI) is consistently applied in its language proposals. [Issue 11, 26-34]

The Department criticizes CenturyLink EQ's use of the term POI and claims it is applied inconsistently. Mr. Easton clarified this issue in his rebuttal testimony by stating that "the physical point of interconnection and the financial demarcation point are one in the same *except* for non-standard interconnection arrangements established through its Bona

[61] Charter Interconnection Agreement, Section 7.1.2, approved in Docket. No. P-5535, 421/M-08-952 (Sept. 15, 2009).

Fide Request process ("BFR")."[62] Since that time, CenturyLink EQ has modified its language to add language that states "and when DTT is ordered from a POI to a CenturyLink EQ tandem or end office switch." CenturyLink EQ's language proposal is crystal clear and the concept underlying its use of the term is appropriate.

The Department's position is particularly problematic because it urges the Commission to eliminate the use of the term "POI" and instead use HTI's proposed term of "Local Interconnection Trunk Group" for Issues 26 through 30 and for Issue 34.[63] As Mr. Easton explained in his testimony, the impact of such an approach is that the CLEC would obtain use of the interconnection trunk group without compensation. By HTI inserting language "Local Interconnection Trunk Group" that has no compensation associated with it, HTI again is trying to blur that they are not required to pay for direct trunked transport. Instead of agreeing to HTI's inserted language the Commission should order the new CenturyLink EQ proposed language in Issues 26, 27, 28 and 34 that allows for direct trunk transport from a single POI that has been established at the CenturyLink EQ tandem in the LATA and provides for CenturyLink EQ to get compensated for the dedicated facilities required after one POI in the LATA has been established. As far as Issues 29 and 30, CenturyLink EQ has proposed that it omit both CenturyLink EQ's proposal and HTI's proposals in those sections. Thus, the impact of the language HTI is proposing is precisely opposite of that contained in CenturyLink QC agreements. Mr. Easton explained this difference: "On the CenturyLink QC side of the POI, the CLEC incurs the cost of the dedicated facilities used to terminate traffic. For this reason, it is not at all surprising that the

[62] Ex. 2 (Easton Rebuttal), 8:1-7.
[63] Department Brief, p. 7.

CenturyLink QC interconnection language Mr. Burns cites on page 25 of his testimony does not make reference to establishing a POI, but instead refers to ordering a trunk group."[64]

Thus, HTI proposes a compensation arrangement at odds with those that exist in most Minnesota interconnection agreements and the Department's support of this approach would represent a sea change from established Minnesota precedent. CenturyLink EQ's proposed language should be adopted for Issues 26, 27, 28 and 34.

X. CenturyLink EQ's proposed language related to use of the Bona Fide Request (BFR) process is consistent with existing interconnection agreement language.

The Department and HTI criticize CenturyLink EQ's language as requiring use of a BFR process when a CLEC orders an interconnection arrangement that is not standard. The Department seems to essentially do away with the BFR process by requiring that normal ordering and provisioning process be used if a substantially similar arrangement has been offered in the past, without defining what constitutes "normal provisioning and billing processes."[65]

This position ignores whether normal ordering and provisioning processes are in place. CenturyLink EQ has a number of standard interconnection offerings, which it has productized, to meet the needs of CLECs and its products are as robust as those approved in Qwest agreements. A CLEC can lease a Local Interconnection Entrance Facility to provide transport from its switch or CLEC premises in the CenturyLink EQ serving wire center area to the CenturyLink EQ network. Another option, which is not included in this agreement, as HTI did not want a collocation option, is for the CLEC to provide its own facility to transport traffic from its switch to a collocation point established on the CenturyLink EQ network. A

[64] Ex. 2 (Easton Rebuttal), 10:16-23.
[65] Department Brief, pp. 9-10.

third option is for each of the parties to provide a portion of the transport between their respective networks. In this Mid Span Fiber Meet option, each party builds a portion of the transport within CenturyLink EQ's territory, meeting somewhere in the middle at a mutually agreed upon point. A fourth option, available to CLECs that only have a physical presence within another ILEC's territory, is a Third Party ILEC Meet Point using Leased Facilities. These are the standard CenturyLink EQ interconnection options for which CenturyLink EQ has developed ordering, provisioning and billing processes. Finally, for interconnection arrangements that do not fit within the standard offerings just described, CenturyLink EQ offers a BFR process to assess the technical feasibility of providing some alternate, non-standard form of interconnection and to determine the best manner in which to order and provision such products.[66]

The record does not justify language that normal ordering and provisioning processes are appropriate for all interconnection arrangements that might be considered "substantially similar" to a future CLEC interconnection request. If those processes do not exist, a BFR process is needed.

CONCLUSION

CenturyLink EQ's proposals in this arbitration appropriately apply controlling legal principles and strike the right balance between a CLEC's right to interconnect and the Incumbent's right to be compensated for the costs associated with that interconnection. HTI's proposals, by contrast, seek to take advantage of and expand beyond the required favorable rights under the telecommunications act (e.g., the right to interconnect at any technically feasible point *on the Incumbent's network*) without also taking the burdens

[66] *See* Ex. 2 (Easton Rebuttal), 25:1-26:8.

associated with that right (such as the obligation to compensate for costs its interconnection arrangement imposes on the incumbent and to select a point within the Incumbent's serving territory). CenturyLink EQ's proposed language should be adopted.

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