BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
SUITE 350
121 SEVENTH PLACE EAST
ST. PAUL, MINNESOTA 55101-2147

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

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

INITIAL POST HEARING BRIEF OF THE MINNESOTA DEPARTMENT OF COMMERCE

The Minnesota Department of Commerce respectfully submits this post hearing brief to assist the ALJ and Commission in this arbitration of an interconnection agreement (ICA) between Hutchinson Telecommunications, Inc. (HTI) and Embarq Minnesota, d/b/a CenturyLink ("CenturyLink EQ")

INTRODUCTION

This contested case concerns the arbitration of certain interconnection issues that HTI and CenturyLink EQ have been unable to resolve through negotiation of a replacement ICA. The core disputed issues center around a particular interconnection arrangement requested by HTI and denied by CenturyLink EQ, the terms and conditions associated with that arrangement, and

the financial responsibilities to be borne by each Party in connection with the interconnection arrangement.[1]

ARGUMENT

I. DUTY TO INTERCONNECT.

Under the Telecommunication Act of 1996 (the Act), telecommunications carriers have the duty to interconnect with the facilities and equipment of other telecommunications carriers.[2] Local exchange carriers (LECs) have additional interconnection duties, including the duty to establish non-access reciprocal compensation arrangements[3] for the transport and termination of non-access telecommunications traffic[4] with any requesting telecommunications carrier, and may not assess charges on any other telecommunications carrier for non-access telecommunications traffic that originates on the LEC's network.[5] The rate of a carrier providing transmission facilities is permitted only to recover 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. 47 C.F.R. 51.709(b).

Incumbent LECs (ILECs) like CenturyLink EQ have additional interconnection obligations. ILECs have the duty to negotiate the terms and conditions of interconnection agreements in good faith.[6] Under 47 U.S.C. § 251 (c) (2) ILECs must provide interconnection

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[1] DOC Ex. 200 at 3 (Doherty Direct).
[2] 47 U.S.C. § 251 (a).
[3] Reciprocal compensation arrangements between two carriers may be a bill-and-keep arrangement, per 47 C.F.R. §51.713, or an arrangement in which each carrier receives intercarrier compensation for the transport and termination of non-access telecommunications traffic.
[4] Non-Access telecommunications traffic includes telecommunications traffic exchanged between a LEC and a telecommunications carrier that is not interstate or intrastate exchange access, information access, or exchange services for such access.
[5] 47 C.F.R 51.703 (a) and (b).
[6] 47 U.S.C. § 251(c)(1).

with their networks, for the transmission and routing of telephone exchange service and exchange access-

- at any technically feasible point within the carrier's network; 47 U.S.C. § 251 (c)(2)(B)

- that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; 47 U.S.C. § 251 (c)(2)(C) and

- on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. 47 U.S.C. § 251 (c)(2)(D)

A. A Lack of Technical Feasibility is the only permissible reason for CenturyLink EQ to deny a requesting carrier's interconnection request.

An ILEC must interconnect at any technically feasible point on the carrier's network.[7] The FCC's rules reiterate the Act's requirement that an ILEC must provide, for any requesting telecommunications carrier, interconnection with the ILEC's network, for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within the incumbent LEC's network.[8] An incumbent LEC that denies a request for a particular method of obtaining interconnection on the incumbent LEC's network "must prove to the state commission that the requested method of obtaining interconnection ... at that point is not technically feasible."[9]

"Technically feasible" is defined in 47 C.F.R. 51.5 to exclude consideration of any economic concerns: [10]

> Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection ... at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent

[7] 47 U.S.C. § 251 (c)(2)(B).
[8] 47 C.F.R. 51.305 (a)(1) and (2).
[9] 47 C.F.R. 51.321 (d).
[10] 47 C.F.R. 51.5.

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

Further, the FCC's *Local Competition Order* reiterated that cost is not a factor in determining the "technical feasibility" of an interconnection.[11]

In this case, CenturyLink should be required to provide the interconnection arrangement HTI requested at the Glencoe and St. Cloud locations. CenturyLink admits that the interconnection arrangements requested by HTI in both locations are technically feasible.[12]

B. Only a Single Point of Interconnection per LATA is Required.

FCC and court decisions have consistently stated that CLECs have the right to establish a single point of interconnection per LATA with an ILEC.[13] The FCC has observed that the

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[11] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, First Report and Order, 11 FCC Red 13042 (1996) ("*Local Competition Order*") ¶ 1373.

[12] DOC Ex. 200 at 10 and KAD-1 at 15-16 (Doherty Direct)(CenturyLink Supplemental Response to HTI IR 24); CenturyLink EQ Ex. 2 at 2-3 (Easton Rebuttal) (technical feasibility is not at issue in this arbitration); CenturyLink EQ Initial Brief at 10 and note 29 ("It is undisputed that interconnection at Glencoe is technically feasible.")

[13] DOC Ex. 200 at 4 and n. 8 (Doherty Direct); *Petition of WorldCom, Inc., FCC Memorandum Opinion and Order ("Verizon Virginia Arbitration Order"),* DA 02-1731 at ¶ 52, 17 FCC Red 27039, *27064, 2002 FCC LEXIS 3544, *56 (released July 17, 2002). (stating that, "[u]nder the Commission's rules, competitive LECs may request interconnection at any technically feasible point. This includes a single point of interconnection in a LATA.") *See also*, *Southwestern Bell Tele. Co. v. Public Utilities Comm. of Texas*, 348 F.3d 482, 485 (5th Cir. 2003) (CLEC may choose to interconnect with ILEC at any technically feasible point, including a single POI per LATA); *In the Matter of the Application by SBC Communications Inc., et al. pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, "Memorandum Opinion and Order" at ¶ 78 (Rel. June 30, 2000) (holding

(Footnote Continued on Next Page)

"single point of interconnection" rule was designed to benefit the CLEC, by permitting it to interconnect for delivery of its traffic to the ILEC at a single point.[14]

Issues 11, 26 through 33, and 34 are directly related to the use of the term "POI," its relationship to the financial obligations of the parties, and the circumstances under which HTI would be required to establish a trunk group.[15] While the Parties initially appeared to have agreed to a portion of the definition of "Point of Interconnection," under which the POI is "***the physical point*** that establishes the technical interface, the test point and the operational hand-off between CLEC and CenturyLink for local interconnection of their networks,"[16] the proposed definitions also introduced a financial element. The Parties continue to disagree, as to the financial significance of the POI and the circumstances under which the location of the POI reflects a division of the parties' financial responsibilities.

In addition, as Ms. Doherty observed in her Surrebuttal Testimony, CenturyLink's use of the term "POI" in its various proposals was not consistent with the definition that CenturyLink proposed.[17] For example, in Section 39 of the interconnection agreement (entitled "Points of Interconnection (POI)," CenturyLink's proposed language requires the CLEC to establish a "POI" at each tandem switch in the LATA in which a CLEC wishes to exchange traffic, to establish "POIs" when certain volume thresholds have been met, to establish "POIs" at end

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(Footnote Continued from Previous Page)
that a CLEC has the option to interconnect at only one technically feasible point in each LATA); *In Re: In the Matter of Developing a Unified Intercarrier Compensation Regime*, "Notice of Proposed Rulemaking," CC Docket No. 01-92, ¶ 112 (Rel. April 27, 2001) (holding that an ILEC must allow a requesting carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA).

[14] *Verizon Virginia Arbitration Order,* DA 02-1731 at ¶ 71.

[15] DOC Ex. 200 at 14, 16 (Doherty Direct).

[16] DOC Ex. 200 at 14 (Doherty Direct) (*citing* CenturyLink Ex. 1 at WRE-1, Issue 11 (Easton Direct)) (emphasis added).

[17] DOC Ex. 201 at 1 (Doherty Surrebuttal).

offices under certain circumstances, and in other situations.[18] In other words, the point of physical interconnection and the point of financial responsibility are both being referred to in CenturyLink proposals as a "POI."[19] Ms. Doherty observed that:[20]

> Since CenturyLink has proposed to define "POI" as a physical point of interconnection that may or may not denote a financial demarcation point (depending upon whether or not the BFR process is used) the language in Section 39, on its face, requires the CLEC to establish physical POIs at multiple points throughout the LATA. Further, it is unclear whether the use of the term POI in this section means "financial demarcation" in addition to the physical point of interconnection, since CenturyLink's proposed definition states that the physical point of interconnection also denotes a financial demarcation only when the BFR process is not used.

Ms. Doherty testified that "defining the term POI to mean or infer different concepts in different sections in the agreement is at best confusing. The use of the term POI throughout the ICA should be, at minimum, consistent."[21] The Department recommends the following language for Issue 11 (Definition of Point of Interconnection):"[t]he Physical Point of Interconnection at which two networks are linked for the mutual exchange of traffic."

Alternatively, the Department recommends that the agreed-upon portion of the language proposed by the Parties be used for Issue 11: "***the physical point*** that establishes the technical interface, the test point and the operational hand-off between CLEC and CenturyLink for local interconnection of their networks."

The terms "Physical Point of Interconnection" and "POI" should be used consistently throughout the agreement to reflect this definition when applicable; and further, that the parties' respective financial responsibilities for costs associated with facilities, and the transport and

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[18] DOC Ex. 201 at 1-2 (Doherty Surrebuttal); *see also* DOC Ex. 200 at 16 (Doherty Direct); HTI Initial Brief at18.
[19] DOC Ex. 200 at 15 (Doherty Direct).
[20] *Id*. at 2 (Doherty Surrebuttal).
[21] DOC Ex. 200 at 18 (Doherty Direct).

termination of traffic should be addressed separately in the agreement.[22] The Department recommends using the term "Local Interconnection Trunk Group" rather than "POI" for issues 26 through 30, and 34, as HTI proposes.[23]

Because a determination of ***technical feasibility does not include consideration of economic*** concerns,[24] the Department also recommends that the Commission reject CenturyLink EQ's proposals for these Issues, because, for economic reasons, they require multiple points of interconnection in a LATA,[25] and because they are inconsistent with the Telecommunications Act's requirements that (1) the sole basis for denial of an interconnection request is lack of technical feasibility, and (2) a CLEC needs to interconnect at only one point of interconnection in each LATA.

C. Parity and Non-discrimination.

An ILEC must interconnect at parity; that is, the interconnection must be at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection,[26] and on such terms and conditions that are no less favorable than the terms and conditions upon which the incumbent LEC provides such interconnection to itself.[27]

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[22] *Id.*
[23] *Id*. (citations omitted).
[24] 47 C.F.R. 51.5
[25] CenturyLink's newly-proposed (as of September 26, 2014) language, which presumptively requires HTI to order direct trunked transport to each CenturyLink EQ tandem where HTI wishes to exchange traffic in lieu of establishing a POI at each tandem, has the same effect financially as language requiring that HTI establish multiple POIs.
[26] 47 U.S.C. § 251 (c)(2)(C); 47 C.F.R. 51.305 (a)(3).
[27] 47 C.F.R. 51 (a)(4).

Further, the interconnection must otherwise be under rates, terms and conditions that are just, reasonable, and nondiscriminatory.[28] At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network. This obligation includes service quality as perceived by the requesting telecommunications carrier.[29] A previously successful method of obtaining interconnection at a particular point on ***any*** incumbent LEC's network is substantial evidence that such method is technically feasible in the case of ***substantially similar*** points, (47 C.F.R. 51.305 (c); 47 C.F.R. 51.321 (c)) at the same level of quality as the previous interconnection.[30]

As Department Witness Ms. Doherty noted, the FCC explained, in its *Local Competition Order* that Section 251(c) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points.[31]

Moreover, Ms. Doherty explained, the FCC explicitly allows carriers to employ previously used interconnection architectures: "If a particular method of interconnection is currently employed between two networks, or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures."[32]

In this docket, HTI proposed two meet point interconnection arrangements that are the same as network architectures that have been in place for decades between the parties and their

[28] 47 U.S.C. § 251 (c)(2)(D); 47 C.F.R. 51.321 (a).
[29] 47 C.F.R. 51.305 (a)(3).
[30] 47 C.F.R. 51.305 (d).
[31] DOC Ex. 200 at 4-5 and nn. 10-11 (Doherty Direct) (*citing Local Competition Order* at ¶ 209).
[32] *Id.* at n. 12 (Doherty Direct) (*citing Local Competition Order* at ¶ 554).

affiliates. One proposal is a continuance of the parties' current interconnection arrangement at the CenturyLink QC central office in St. Cloud, which has been in place since 1999; the other proposal is at CenturyLink EQ's remote switch at Glencoe, and it proposes the same interconnection as is currently in place between CenturyLink EQ and HTI's affiliate, Hutchinson Telephone Company ("Hutchinson"), and has been used by the parties since before 1996.[33] In both cases, CenturyLink EQ rejected the requests because they seek what CenturyLink EQ calls a "nonstandard" interconnection[34]; a "non-productized" interconnection,[35] or a request for type of interconnection that requires a "Bona Fide Request" (BFR).[36] CenturyLink's description of what constitutes standard and "non-standard" interconnections,[37] however, is not consistent with the standards that the Act sets for interconnection--requiring requested interconnections if they are technical feasible, and consistent with parity and nondiscrimination rules--as reasons to refuse an interconnection request. CenturyLink's statement that it has not "productized" substantially identical and admittedly technically feasible interconnection arrangements used since the 1990's is not a reasonable basis to impose on HTI costs of a BFR process to establish technical feasibility.

Because the particular method of interconnection requested by HTI is currently employed between two networks, and has been used successfully in the past, a rebuttable presumption exists that HTI's proposed method is technically feasible for substantially similar network

[33] HTI Ex. 100 at 6 (Burns Direct).
[34] DOC Ex. 200 at 10 (Doherty Direct)(*citing* CenturyLink EQ Ex. 1 at 26:17-19) (Easton Direct)
[35] CenturyLink Initial Brief at 2
[36] *Id.* at 2, 6, 19-21.
[37] DOC Ex. 200 at 11 (Doherty Direct) (*citing* CenturyLink Ex. 1 at 26:6-22 (Easton Direct))

architectures,[38] and should be approved by the Commission. That presumption has not been overcome by CenturyLink EQ. The Department agrees with HTI's position that the use of a BFR should be unnecessary for the Glencoe or for the St. Cloud interconnection arrangements requested by HTI, because in both cases, a substantially similar method of interconnection has been employed (Issue 77). The Department also recommends the language proposed by HTI for Issues 68,[39] 70, and 76. Further, with respect to the future negotiation of additional methods of interconnection, the Department recommends that HTI's proposal be used for Issue 43 be adopted. HTI's proposed language specifically recognizes the FCC's clear direction that a previously successful method of obtaining interconnection evidences technical feasibility at substantially similar points. That HTI language for Issue 43 states:[40]

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

II. MEET POINT INTERCONNECTION ARRANGEMENTS

"Meet point" interconnection arrangements are one of the three standard types of interconnection recognized, discussed, and adopted as "technically feasible" by the FCC.[41] 47 C.F.R 51.321 (b) specifies that "technically feasible methods of obtaining interconnection" include physical collocation, and virtual collocation, and meet point interconnection arrangements. The FCC has stated that "methods of technically feasible interconnection ... such

[38] See *Local Competition Order,* ¶ 554.
[39] In the Unresolved Issues List, HTI's proposed language for Issue 68 is "The Bona Fide Request process shall be used when CLEC requests a form of Network Interconnection or other service which CenturyLink does not provide in this agreement, to itself, or to another carrier."
[40] Disputed Issues Matrix, Issue 43, HTI proposed language.
[41] 47 C.F.R 51.321 (b).

as meet point arrangements" in addition to virtual and physical collocation, "must be available" on request.[42]

A "meet point" is "a point of interconnection between two networks, designated by two telecommunications carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends"; and a "meet point interconnection arrangement"[43] is an arrangement by which each telecommunications carrier builds and maintains its network to a meet point.[44] In a meet point arrangement, each party pays its portion of the costs to build out to the meet point.[45] The FCC has determined that a meet point is within each carrier's network even if a limited build out to the meet point is needed as "accommodation of interconnection":[46]

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

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[42] *Local Competition Order* at ¶ 553.
[43] Meet point arrangements are also called "mid-span meets." *Local Competition Order* at ¶ 553.
[44] 47 C.F.R. 51.5.
[45] *Local Competition Order*, ¶ 553 (footnotes omitted).
[46] Further, the FCC determined that each party should pay its own cost of the build out, reasoning that CLECs, "will request interconnection pursuant to section 251(c)(2) for the purpose of exchanging traffic with incumbent LECs. In this situation, the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement. Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement. ... Regarding the distance from an incumbent LEC's premises that an incumbent should be required to build out facilities for meet point arrangements, we believe that the parties and state commissions are in a better position than the Commission to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection." *Local Competition Order* at ¶ 553.

CenturyLink admitted that the meet point interconnection arrangement requested by HTI is technically feasible.[47] Furthermore, CenturyLink EQ agreed to HTI's proposal, under which HTI and CenturyLink EQ interconnect at the HTI-proposed Glencoe central office; however, CenturyLink conditioned its agreement upon a financial term that would require HTI to also pay for what CenturyLink EQ calls a "virtual" collocation and corresponding direct trunked transport between the Glencoe remote central office and the Osseo tandem.[48] Mr. Burns provided, in his testimony, an illustration of CenturyLink's proposed network architecture.[49] CenturyLink EQ proposed language that would label that proposed additional "virtual" interconnection at Osseo as a "financial POI."[50]

The Department recommends that the Commission adopt the meet point interconnection arrangements proposed by HTI, because the proposed interconnection arrangements are admittedly technically feasible and are the same as other long-standing meet point interconnection arrangements in place between the parties and their affiliates.

Finally, as noted above, one specific disputed meet point interconnection arrangement proposal is a continuance of the parties' current interconnection arrangement at the CenturyLink

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[47] DOC Ex. 200 at 10 and KAD-1 at 15-16 (Doherty Direct)(CenturyLink Supplemental Response to HTI IR 24).

[48] DOC Ex. 200 at 10 (Doherty Direct).

[49] DOC Ex. 200 at 10 (Doherty Direct) (*citing* HTI Ex. 100 at 53 (Fig. 14)(Burns Direct).

[50] Ms. Doherty stated that "the language proposed by CenturyLink uses the term 'POI' to have different meanings.... The point of physical interconnection and the point of financial responsibility are both being referred to by CenturyLink as a "POI." She recommended that "the usage of the defined term Point of Interconnection (which includes in its definition the term "POI") to mean or infer different concepts in different sections in the agreement is at best confusing. I recommend that the Parties use the terms "POI" and Point of Interconnection to denote the physical point of interconnection at which two networks are linked for the mutual exchange of traffic. This is consistent with FCC rules and orders, and common usage." DOC Ex. 200 at 16 (Doherty Direct) (citations omitted). Further, Ms. Doherty recommended "using the term "Local Interconnection Trunk Group" for issues 26 through 30, and 34." *Id*. at 18.

QC central office in St. Cloud, and the other disputed meet point interconnection arrangement proposal is the same interconnection as is currently in place between CenturyLink EQ and HTI's affiliate, Hutchinson, at CenturyLink EQ's remote switch at Glencoe.[51]

CenturyLink EQ raises two claims to justify its refusal to interconnect via the meet point arrangement requested by HTI. First, CenturyLink EQ claims that it may permissibly refuse an interconnection request via a meet point arrangement that is technically feasible and thereby not "designate" a "mutually" agreeable meet point. CenturyLink characterized HTI's requested interconnection arrangement as a "non-standard arrangement," which requires that "each party build a portion of the transport, meeting somewhere in the middle at a *mutually* agreed upon point.[52] CenturyLink EQ advanced this theory not only in negotiation with HTI, but continues to do so in this arbitration.[53] CenturyLink appears to argue that, because the definition of "meet point" refers to a point "designated" by carriers, State commissions may not in arbitration require meet point interconnection at an otherwise technically feasible point used by other carriers. CenturyLink EQ cites no authority for this theory, and the Department has found none. CenturyLink EQ's argument appears plainly inconsistent with the Act, which makes technical feasibility the cornerstone of the obligation to interconnect, and which requires parity and prohibits unreasonable discrimination. The Commission should not adopt this novel interpretation.

[51] HTI Ex. 100 at 6 (Burns Direct).
[52] DOC Ex. 200 at 10 and note 28 (Doherty Direct) (*citing* CenturyLink EQ Ex.1 at 26:17-19. (Easton Direct).
[53] CenturyLink EQ Initial Brief at 5-7, 10, 12, 23.

Second, CenturyLink EQ incorrectly argues that HTI should not be able to designate a point of interconnection without "regard for CenturyLink EQ's costs."[54] CenturyLink points to the case of the Glencoe meet point, where CenturyLink EQ would pay for 44 miles of transport while HTI would pay for 14 miles.[55] As an initial matter, there is nothing in the record to support a finding that the thirty mile difference is anything other than *de minimis.* If CenturyLink believed the cost differential to be of economic significance, it could have provided such evidence in the record, but did not. Moreover, the FCC has determined that, for interconnection, not only should each party bear the costs on its own side of the meet point[56] it is even reasonable for each party to pay costs for a build out to a meet point. As noted above, the FCC determined in the *Local Competition Order* that, "the creation of meet point arrangements may require some build out of facilities by the incumbent LEC, [and] we believe such arrangements are within the scope of the obligations imposed by sections 251(c)(2) and 251(c)(3)." The FCC reasoned that CLECs

> "will request interconnection pursuant to section 251(c) (2) for the purpose of exchanging traffic with incumbent LECs. In this situation, the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement. **Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement.** ... Regarding the distance from an incumbent LEC's premises that an incumbent should be required to build out facilities for meet point arrangements, we believe that the parties and state commissions are in a better position than the Commission to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection."[57]

The Department recommends that the Commission find it reasonable for CenturyLink EQ to build and maintain its network to the meet point interconnection as requested by HTI, and to

[54] CenturyLink EQ Initial Brief at 12.
[55] CenturyLink EQ Initial Brief at 6.
[56] 47 C.F.R. 51.5
[57] *Local Competition Order*, ¶ 553.

be responsible for transport costs on its side of the point of interconnection, just as the parties and their affiliates have done since the 1990's. It is reasonable for CenturyLink to be responsible for the transport between Osseo and Glencoe on its side of the meet point where those 44 miles are entirely within CenturyLink's network. This is the result of how ***CenturyLink*** has configured its network (the Department discusses this in greater detail below), with a host switch at the Osseo tandem and a distant remote office in Glencoe, driving the transport distance that is at issue.[58]

The Department recommends that the language proposed by HTI be adopted for Issues 7, 8, 37, and 39. The Department also recommends that the language proposed by CenturyLink EQ for Issue 44 be omitted.

III. RECIPROCAL COMPENSATION.

The parties have agreed to a bill-and-keep arrangement for the termination[59] of one another's traffic. The parties disagree, however, as to whether a bill-and-keep arrangement should also apply for transport.[60]

The specific transport at issue extends between the existing meet point in St. Cloud and the end offices (or switches) that serve customers in the Grove City and Litchfield exchanges,

[58] DOC Ex. 201 at 5 (Doherty Surrebuttal).

[59] Termination is the switching of Non-Access Telecommunications Traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises 47 C.F.R. §51.701(d).

[60] Transport is the transmission and any necessary tandem switching of Non-Access Telecommunications Traffic… from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC. 47 C.F.R. §51.701(c).

and between the proposed meet point in Glencoe exchange to the Osseo tandem switch and back to the end office that serves customers in Glencoe.[61]

As Ms. Doherty testified, under the parties' current agreement, neither party charges the other reciprocal compensation for either transport or termination, and all reciprocal compensation under the parties' current agreement – including both transport and termination – is bill-and-keep.[62] CenturyLink EQ has proposed language, however, that would require HTI to pay CenturyLink EQ for transport in the future at the existing St. Cloud location and at the proposed Glencoe location.

The intercarrier compensation scheme was recently overhauled by the FCC. In 2011, as part of its *Connect America Fund* order ("*CAF-ICC Order*") the FCC took significant steps to comprehensively reform intercarrier compensation, and it adopted "bill-and-keep" as the default methodology for all intercarrier compensation.[63] Among other things, the FCC capped rates for all transport and termination elements at their existing levels as of December 29, 2011, and established a path for the transition of reciprocal compensation rates from a "calling-party's-network pays" system to a default bill-and-keep methodology. Following the transition, the exchange of telecommunications traffic between and among service providers, by default, will be governed by bill-and-keep arrangements.[64]

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[61] While Glencoe customers are served from the Glencoe remote switch, any local telephone call that is placed by a Glencoe customer (whether it be a CenturyLink EQ or an HTI customer) to another Glencoe customer must be transported to the Osseo host tandem for switching, and then back to the Glencoe end office for termination to the called party.

[62] DOC Ex. 200 at KAD-1 at 4 (Doherty Direct) (CenturyLink's Supplemental Responses to HTI's First Set of IRs) ("CenturyLink EQ admits that the current traffic exchange agreement does not contain any provisions for compensation between the companies and therefore would be properly characterized as 'bill and keep' as that term has been defined by HTI.")

[63] *CAF-ICC Order* at ¶ 741.

[64] 47 C.F.R. 51.700.

Further, the FCC amended its rules to reflect that any bill-and-keep arrangements in place as of the date of its order, December 29, 2011, should remain "frozen" in place, and could not be increased unless the affected parties agreed upon an alternative arrangement.[65] The "frozen" rates included transport. The rule states: [66]

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

When the *CAF-ICC Order* took effect on December 29, 2011, a bill-and-keep arrangement was in effect for both termination and transport, as it had been since the 1990's, between CenturyLink EQ and HTI[67] and between CenturyLink EQ and HTI's affiliate, Hutchinson.[68]

CenturyLink EQ argues that the *CAF-ICC Order* should be interpreted such that its directives regarding the transition to a bill-and-keep methodology, rate caps for transport and termination at the level in effect as of December 29, 2011, and the treatment of existing bill and keep arrangements do not extend to dedicated transport.[69] The Department disagrees. The paragraphs of the *CAF-ICC Order* to which CenturyLink EQ point, clearly discuss FCC's intent to further develop the "glide path" toward bill-and-keep for elements *not specifically identified in the initial transition*, and there is nothing to indicate that the FCC intended to exclude dedicated transport rates from either the caps imposed by its rule or from the requirement that all bill-and-

[65] Also, if no bill and keep was in place on December 29, 2011 for reciprocal compensation elements, the FCC articulated a transition plan for many elements, to gradually reduce the rates for those elements to zero (bill-and keep).
[66] 47 C.F.R. 51.705 (c) (1)(emphasis added).
[67] Tr. at 83:25 to 85:5 (Easton)
[68] Tr. at 101:20 – 102:25 (Easton).
[69] CenturyLink EQ Initial Brief at 15-16, n. 38 (*citing CAF-ICC Order* at ¶¶ 739, 821, and 1297.

keep arrangements in effect on December 29, 2011 shall remain in place. The Department recommends the language proposed by HTI for Issues 33 and 42.[70]

IV. THE CHARTER CENTURYLINK ARBITRATION IS NOT ANALOGOUS.

CenturyLink EQ argues that the Commission decision in the Charter Fiberlink and Qwest Arbitration, *the 08-952 Docket*,[71] is analogous to the instant docket and "requires HTI to assume a reasonable share of the transport costs caused by its choice of a unique, non-standard interconnection arrangement."[72]

The Department disagrees. There are a number of legal and factual differences that distinguish *the 08-952 Docket* from the HTI-Century link case. As a legal and policy matter, as discussed above, the intercarrier compensation scheme was overhauled after *the 08-952 docket* was decided, in the 2011 *CAF-ICC Order*, where the FCC adopted "bill-and-keep" as the default methodology for all intercarrier compensation traffic.[73] To reiterate the above, the FCC capped reciprocal compensation rates as of December 29, 2011 and established the transition path for the reciprocal compensation rates associated with transport and termination, with bill and keep as the end point.[74] Further, the FCC amended its rules to reflect that any bill and keep arrangements in

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[70] *See* HTI Initial Brief at 27 and notes 105- 106.

[71] *In the Matter of the Petition of Charter Fiberlink for Arbitration of an Interconnection Agreement with Qwest Pursuant to 47 USC §252 (b),* Docket P-5535, 421/M-08-952, Order Resolving Interconnection Issues and Requiring Filed Interconnection Agreement, pp. 9-11 (July 10, 2009) (*the 08-952 Docket*).

[72] CenturyLink EQ Initial Brief at 10-11; DOC Ex. 201 at 3-4 (Doherty Surrebuttal) (*citing* CenturyLink EQ Ex. 1 at 6:13-18 (Easton Direct); CenturyLink EQ Ex. 2 at 13:14 to 14:1 (Easton Rebuttal)).

[73] *CAF-ICC Order* at ¶ 741.

[74] *CAF-ICC Order at* ¶ 756. The FCC also "reject[ed] claims that, as a policy matter, bill-and-keep is only appropriate in the case of roughly balanced traffic," and amended its rules accordingly.

place as of the date of its order, December 29, 2011, should remain in place and not be increased unless the parties otherwise agreed.[75]

These policy and rule changes articulated in the *CAF-ICC Order* are applicable in this 14-189 docket; however, these changes were not applicable to *the 08-952 Docket*, which pre-dated the *CAF-ICC Order*. Unlike *the 08-952 Docket*, the Commission here may not order a price for interconnection that is greater than the bill-and-keep (zero) rates that HTI and CenturyLink and their affiliates have employed in their ICAs for transport since the 1990's (unless agreed by both parties).[76]

There are also numerous significant factual differences between *the 08-952 Docket* and the instant docket, and *the 08-952 Docket* turned on the specific "situation" and facts before the ALJ.[77] First, the network configurations in the Charter-Qwest and HTI-CenturyLink cases are different, as Ms. Doherty testified.[78] As depicted in Attachment 1 to the Doherty Surrebuttal, Charter chose to establish a single point of interconnection to exchange local and EAS traffic with Qwest throughout an entire LATA, including multiple local calling areas (or exchanges), served by three Qwest tandem switches, with several end offices subtending each tandem. Charter served customers in multiple local calling areas from a single Charter switch, using its existing long loop cable facilities extending from the Charter switch to its customers' premises.

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[75] 47 C.F.R. 51.705(c).

[76] The FCC made no changes to its SPOI policy in the *CAF-ICC Order,* but it did question whether its SPOI per LATA policy would be workable in a bill and keep environment, and sought comment on whether it will need to implement new or revised POI rules at some later stage of the transition to bill-and-keep. *CAF-ICC Order* at 1321. The Department is unaware of any new or revised rules regarding POIs that the FCC has implemented.

[77] DOC Ex. 201 at 3 and note 7 (Doherty Surrebuttal). ("In ***this situation,*** reciprocal billing for transport of the other party's traffic is a more fair and reasonable method of recovering these costs.") (emphasis added).

[78] DOC Ex. 201 at 4-5 (Doherty Surrebuttal).

In contrast, HTI seeks in the current case to establish a point of interconnection to exchange local and EAS traffic with CenturyLink in a single local/EAS calling area. HTI seeks to interconnect in Glencoe because it intends to serve customers in Glencoe.[79] HTI does not have a ubiquitous cable network to serve customers in multiple local calling areas through long loops, as did Charter.[80]

Second, in order for Charter in *the 08-952 Docket* to exchange local traffic with Qwest throughout the LATA, ***inter-tandem direct trunked transport*** (a service that Qwest did not provide to itself) that connected each of the three Qwest tandems in the LATA was required. In the HTI case, in contrast, the transport at issue merely extends between the HTI POI at or near the CenturyLink EQ Glencoe central office to the CenturyLink EQ Osseo tandem switch.[81]

Third, **i**n *the 08-952 Docket*, (as is pointed out in Mr. Easton's testimony),[82] it was the way in which Charter chose to configure its network and Charter's decision to locate its point of interconnection far from the Qwest end offices that served Charter's customers, which dictated additional transport costs. Ms. Doherty explained, for example, that when a Qwest customer in Marshall called another Qwest customer in Marshall there was no transport cost. If a Charter customer in Marshall called a Qwest customer in Marshall, however, (or in the reverse scenario, when a Qwest customer in Marshall calls a Charter customer in Marshall,) Qwest incurred additional transport costs. HTI, unlike Charter, has chosen to locate its point of interconnection *in the Glencoe exchange* where it wishes to serve customers, for the purpose of exchanging local and EAS traffic with CenturyLink. This is the way in which ***CenturyLink*** has configured its

[79] HTI Ex.100 at 14 (Burns Direct) (stating that HTI is entering a new market in Glencoe).
[80] *See* DOC Ex. 201 at 4 and Attach. 2 (Doherty Surrebuttal).
[81] DOC Ex. 201 at 4 (Doherty Surrebuttal).
[82] CenturyLink EQ Ex. 1 at 53 (Easton Direct).

network, with a host switch at the Osseo tandem and a distant remote office in Glencoe, that causes the additional transport in the HTI-CenturyLink case. 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 from the Glencoe central office to the Osseo tandem switch, and then back over the existing facilities to Customer B in Glencoe. When CenturyLink customer A in Glencoe places a local call to HTI customer C, the call is transported in the same way – from customer A to the Glencoe central office, to the Osseo tandem switch, and then back to the HTI POI at or near the Glencoe central office. Regardless of whether an HTI customer in Glencoe calls a CenturyLink customer in Glencoe, a CenturyLink customer in Glencoe calls an HTI customer in Glencoe, ***or whether a Glencoe CenturyLink customer calls another Glencoe CenturyLink customer,*** the traffic must be transported from Glencoe to the Osseo tandem and back to Glencoe. That is how CenturyLink chose to configure its network on its side of the proposed point of interconnection.

Thus, in conclusion, in addition to the significant (and controlling) changes in law and policy that have occurred since the 08-952 Order was decided, the facts in this HTI-CenturyLink docket differ significantly from the facts the Commission considered in making its decision in the Charter-Qwest case. *The 08-952 Order* does not compel a similar decision in the case before us today.

V. CENTURYLINK EQ'S NON-DISCLOSURE OF INFORMATION.

During negotiations, and in this arbitration, HTI has proposed language to be included in this section of the interconnection agreement that would require CenturyLink EQ to disclose the locations within a LATA where it has established interconnection with another carrier.[83]

[83] HTI Initial Brief at10-12 (regarding Issue 24).

FCC rules require that ILECs provide to requesting telecommunications carriers technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve interconnection.[84] Further, ILECs "have a duty to make available to requesting carriers general information indicating the location and technical characteristics of incumbent network facilities." Without access to such information, "competing carriers would be unable to make rational network deployment decisions and could be forced to make inefficient use of their own and incumbent LEC facilities with anticompetitive effects." *Local Competition Order*, ¶205.

HTI Witness Mr. Burns observed that good faith negotiations includes providing cost data and network information necessary for CLECs to make informed decisions about access to a customer, or interconnection.[85] The Department recommends that the Commission require the inclusion of HTI's proposed language regarding locations of points of interconnection, at Issue 24.

[84] 47 C.F.R. 51.305 (g).
[85] HTI Ex. 100 at 7-8 (Burns Direct).

CONCLUSION

The Department respectfully requests that the Commission address the issues as and adopt language for the ICA as recommended herein.

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Respectfully Submitted,

s/ Linda S. Jensen

Linda S. Jensen
Assistant Attorney General
Attorney Reg. No. 0189030

445 Minnesota Street, Suite 1800
St. Paul, MN 55101-2131

Attorney for the Minnesota
Department of Commerce