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January 26, 2015

Mr. Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

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

Dear Mr. Wolf:

Enclosed for filing are Embarq Minnesota, Inc. dba CenturyLink EQ's Exceptions to the Arbitrator's *Report* regarding the above-referenced matter.

Very truly yours,

/s/ Jason D. Topp

Jason D. Topp

JDT/bardm

Enclosures

cc: Service List

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Minneapolis, MN 55402
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STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

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

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Dianne Barthel hereby certifies that on the 26th day of January, 2015, she e-filed a true and correct copy of Embarq Minnesota, Inc. dba CenturyLink EQ's Exceptions to the Arbitrator's *Report* by posting it on www.edockets.state.mn.us. Said document was also served on the service list via U.S. mail and e-mail as designated with the Minnesota Public Utilities Commission.

/s/ Dianne Barthel
Dianne Barthel

Subscribed and sworn to before me
this 26th day of January, 2015.

/s/ LeAnn M. Cammarata
Notary Public

My Commission Expires Jan 31, 2020

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STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
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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

EMBARQ MINNESOTA, INC. DBA CENTURYLINK EQ'S EXCEPTIONS TO THE ARBITRATOR'S *REPORT*

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TABLE OF CONTENTS

INTRODUCTION

In its Arbitrator's Report issued January 16, 2015 ("*Report*"), the Administrative Law Judge recommends language that would fundamentally alter the relationship between incumbent and competitive local exchange carriers when they interconnect for the purpose of exchanging traffic. Changes that the *Report* suggests include:

- Eliminating the requirement that CLECs pay for dedicated transport provided by the incumbent.
- Requiring the incumbent to provide information about interconnection arrangements and LEC to LEC arrangements with all carriers that it does not keep for itself.
- Allowing a CLEC to determine the point of any meet point arrangement without any meaningful limitation, even if the point is outside the serving ILEC service area.
- Requiring the incumbent to offer non-standard forms of interconnection without a bona fide request process and without any terms or conditions governing such an interconnection.

The relationship between incumbents and CLECs has been extensively litigated in front of this Commission, the FCC and in courts since the passage of the Telecommunications Act of 1996. Yet, each of these changes recommended in the *Report* is a fundamental change in the manner that such issues have been resolved in the course of that 18 year history. Today, CLECs pay for dedicated transport from the CLEC's facility point of interconnection[1] to all tandem switches with which it wishes to exchange traffic and every end office that has met minimum traffic thresholds. Today, incumbents provide information about a particular

[1] The facility point of interconnection can be established through a mid-span meet, collocation, entrance facility or other interconnection options. Regardless of the interconnection method used under CenturyLink EQ and Qwest interconnection agreements, the CLEC is required to order dedicated transport to the tandem. For example, Qwest agreements require that "LIS ordered to a Tandem Switch will be provided as direct trunked transport between the Serving Wire Center of the CLEC's POI and the Tandem Switch." *See* interconnection agreement between Qwest Corporation dba CenturyLink QC and Voxbeam Telecommunications, Inc, Section 7.2.2.1.4, *approved* in Docket P-6918, 421/IC-14-319.

interconnection request and area the CLEC would like to serve rather than provide a menu of all existing interconnection arrangements. Today, the location of a meet point is negotiated between the parties to an interconnection arrangement, not unilaterally determined by the CLEC. Today, CLECs and the incumbents engage in a bona fide request process to determine the feasibility of and the terms and conditions associated with interconnection arrangements that are not commonly offered to CLECs.

The approach recommended in the *Report* reverses all of these established principles. In order to support such fundamental changes in the manner in which CLECs and incumbents interconnect, one would expect the *Report* to rely upon significant legal authority. The *Report* does not do so. Instead, it relies upon inferences that misconstrue requirements set forth in the FCC's First Report and Order[2] issued in 1996 interpreting obligations under the Telecom Act of 1996. While it is unclear how wide ranging the impacts of this arbitration order might be, this Commission should not make fundamental changes to the relationships between incumbents and CLECs without substantial legal and regulatory justification. The *Report* fails to justify such changes and should be modified.

I. CLECs Should Be Required To Pay For Dedicated Transport To Access A Switch Unless The Parties Negotiate A Meet Point Arrangement At That Switch.

Under Commission decisions in Minnesota, a CLEC has the obligation to pay for dedicated transport to reach a switch in nearly every type of interconnection. The CLEC has that obligation when it interconnects at a single point per LATA,[3] it has that obligation when

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[2] First Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996) ("Local Competition Order").

[3] *See In the Matter of a Joint Application for Approval of the July 22, 2008 Amendment . . . between Jaguar Communications, Inc. and Qwest Corporation Incorporating Certain Terms and Conditions for Single Point of Presence (SPOP) in the LATA,* Order approving agreement, Docket No. P-5891, 421/IC-08-858 (Aug. 28, 2008); *In the Matter of a Joint*

it uses an entrance facility to connect with a local tandem or end office switch,[4] and it has the obligation to pay for such transport when it interconnects via a collocation.[5]

The only exception to this general rule is when the parties agree on a mid-span meet. Even in that case, a CLEC is required to purchase dedicated transport to other switches in the network when appropriate, since the mid-span meet only establishes one POI.[6] However, limitations exist with meet point arrangements and the mid-span meet point arrangements incumbents offer to CLECs. First, as the *Report* recognizes, both parties must agree to the location of the meet point.[7] Second, as this Commission ruled in the Charter Arbitration, if the interconnection arrangement results in the incumbent bearing a disproportionate share of

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Application for Approval of the Sept. 5, 2007 Amendment . . . between OrbitCom, Inc. and Qwest Corporation Setting Forth the Terms and Conditions for a Single Point of Presence (SPOP) which Establishes One Physical Point in the LATA, Order approving amendment, Docket No. P-6144, 421/IC-07-1174 (Sep. 21, 2007); *In the Matter of a Joint Application for Approval of the October 9, 2008 Amendment . . . between Verizon Wireless and Qwest Corporation Incorporating Certain Terms and Conditions for Single Point of Presence (SPOP) in the LATA,* Order approving amendment, Docket No. PT-6163, 421/IC-08-2294 (Nov. 4, 2008).

[4] *See* interconnection agreement between Qwest Corporation dba CenturyLink QC and Voxbeam Telecommunications, Inc., Section 7.1.2.1 (entrance facility), 7.2.2.1.3 and 7.2.2.1.4 (requiring purchase of DTT), *approved* in Docket P-6918, 421/IC-14-319.

[5] *Id.*, Section 7.1.2.2 (collocation), 7.2.2.1.3 and 7.2.2.1.4 (requiring purchase of DTT), *approved* in Docket P-6918, 421/IC-14-319.

[6] In addition to this exception, there are limited situations in which the parties have agreed that the transport provided by both parties for interconnection is similar to the Qwest network and have therefore agreed not to charge for transport as long as the facilities situation remains static. *See In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b),* Docket No. P-5340, 421/IC-06-768, Eschelon Qwest Interconnection Agreement, Sections 7.3.1.2.1 (setting forth no charges) and 7.3.1.2.2 (making the arrangement subject to audit and renegotiation) (Feb. 6, 2008). In another circumstance, this Commission did approve not exchanging compensation for transport because the CLEC had built out its network to be comparable to the Qwest network.

[7] *Report,* ¶ 72 (recognizing that 47 C.F.R. § 51.5 requires that the parties must "mutually designate" a meet point and that these words cannot be ignored).

transport costs, the CLEC is obligated to pay those costs.[8] Third, in the case of a single point of interconnection per LATA, the CLEC is required to pay for dedicated transport to reach each of the switches within that LATA necessary to reach customers with which the CLEC wishes to exchange traffic.[9]

These limitations have the cumulative effect of requiring the parties to a meet point interconnection to agree on an economically-efficient interconnection arrangement. The *Report*, however, fundamentally changes each element of this structure.

A. The *Report* Eliminates Existing Requirements That A Meet Point Arrangement Be Mutually Agreed Upon, By Imposing Restrictions On The Incumbent's Ability To Take Economic Considerations Into Account That Are So Stringent As To Effectively Eliminate Those Rights. (Issue 7, 8, 39)

It is undisputed that federal rules define a Meet Point as follows:

> "**Meet Point**" is [a] point of interconnection between two networks, designated by two telecommunications carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends. (47 C.F.R. § 51.5).

The *Report* suggests that the Commission create a definition of "Meet Point Interconnection Arrangement" that includes the following language:

> CenturyLink may deny a meet point at a particular point requested by CLEC on the grounds that its build-out of facilities from that point would exceed the limited build-out that would constitute a "reasonable accommodation of interconnection" under *Local Competition Order* ¶ 553. CenturyLink must prove that fact to the state commission.[10]

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

[9] In each of these situations, the transport costs are shared in proportion to the traffic originated by each party. Ex. 1 (Easton Direct), 51:6-21.

[10] *Report*, ¶¶ 72.

The *Report* then orders HTI's proposed language for the definition of "Mid-Span Fiber Meet" (Issue 8) and accepts contradicting language requiring that a mid-span fiber meet point be mutually agreeable (Issue 8).

The *Report* relies upon ¶ 553 of the Local Competition Order as support for its proposed language. Paragraph 553 describes a meet point interconnection as a specific type of interconnection, defined as "a point of interconnection between two networks, ***designated by two telecommunications carriers***, at which one carrier's responsibility for service begins and the other carrier's responsibility ends."[11] 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."[12]

The *Report* agrees that the incumbent may consider economic costs in connection with a mid-span fiber meet but prohibits the incumbent from considering any costs other than construction costs for the project:

> 76. *Local Competition Order* ¶ 553 discusses only the economic costs of "the arrangement." It does not address transport costs or other economic costs of the parties beyond building and maintaining their networks to the meet point.[13]

This analysis does not square with the language of Paragraph 553 of the Local Competition Order. When referring to the costs associated with building additional facilities, the Order refers to those costs specifically stating that "limited build-out of facilities . . . may . . . constitute an accommodation of interconnection."[14] By contrast, when discussing costs, the Local Competition Order states, "it is reasonable to require each party to bear a reasonable

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[11] 47 C.F.R. § 51.05 (definition of "Meet Point") (emphasis added).
[12] Local Competition Order, ¶ 553.
[13] *Report*, ¶ 76.
[14] Local Competition Order, ¶ 553.

portion of the economic costs of the arrangement."[15] If the "economic costs of 'the arrangement'" were limited to the costs of building facilities as the *Report* finds, the FCC would have said so explicitly. It did not. The FCC's use of broader language strongly indicates that it intended for all economic costs to be considered, including the costs of arranging and providing dedicated transport on the ILEC's side of the meet point. This interpretation gains support elsewhere in the Local Competition Order. Paragraph 199 provides:

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

CenturyLink EQ's interpretation is consistent with interconnection agreements that have been negotiated, arbitrated and approved by this Commission. CenturyLink EQ witness Mr. William R. Easton testified that the Company's proposed language is consistent with the standardized product CenturyLink EQ has created and historically offered to CLECs.[16] Qwest interconnection agreements routinely require the parties to mutually agree on meet

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[15] *Id.*

[16] Ex. 1 (Easton Direct), 14:22-25.

points, provide restrictions for such fiber meet points,[17] and those terms generally do not vary between agreements that are bill and keep in nature or provide for reciprocal compensation.[18]

Reversing ample Commission precedent in the manner suggested by the *Report* is not only flawed legally, but also undermines the deployment of economically-efficient infrastructure. Under the *Report*, the CLEC has essentially a unilateral right to designate a point of interconnection but CenturyLink EQ bears the financial responsibility associated with the CLEC's choice. The CLEC will naturally be incented to interconnect at a point that minimizes its costs with no regard for CenturyLink EQ's costs when there might be a much more efficient use of both parties' networks to interconnect elsewhere. By using CenturyLink EQ's proposed language or similar language consistent with the manner in which this Commission has addressed the issue in prior interconnection agreements, this

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[17] For example, the Qwest-Eschelon arbitrated interconnection agreement provides: 7.1.2.5 Mid-Span Meet POI. A Mid-Span Meet POI is a negotiated Point of Interface, limited to the Interconnection of facilities between one Party's Switch and the other Party's Switch. The actual physical Point of Interface and facilities used will be subject to negotiations between the Parties. Each Party will be responsible for its portion of the build to the Mid-Span Meet POI. … 7.2.1.5.1 CLECs may designate Mid Span Fiber Meet as the target architecture, except in scenarios where it is not technically feasible or where the Parties disagree on midpoint location. *See In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b),* Docket No. P-5340, 421/IC-06-768, Eschelon Qwest Interconnection Agreement, Section 7.1.2.5.4 (Feb. 6, 2008).

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

Commission can place economic incentives on both parties to determine an efficient interconnection arrangement.

B. The *Report* Requires An ILEC To Provide Dedicated Transport For Free To A CLEC Requesting A Single Point Of Interconnection Per LATA Contrary To Standard Minnesota Interconnection Agreements That Provide Such Interconnection. (Issues 25, 26, 27, 28, 29, 30, 31, 32, 34, 38, 48)

The *Report* makes a remarkable transformation in the manner in which a CLEC can interconnect through a single point of interconnection in a LATA. The *Report* suggests adopting language that allows a CLEC to interconnect at a single physical point per LATA and then have the ILEC transport that traffic throughout the LATA without compensation.[19] This approach runs contrary to a long line of Qwest (and CenturyLink EQ) interconnection agreements that provide for a single physical point of presence but require the CLEC to order and pay for dedicated transport to all switches from that point through which it desires to provide service:

> 1.1 By utilizing SPOP in the LATA, CLEC can deliver both Exchange Access/IntraLATA LEC Toll and Jointly Provided Switched Access traffic and Exchange Service EAS/Local traffic at CenturyLink's Access Tandem Switches. CLEC can also utilize CenturyLink's behind the tandem infrastructure to terminate traffic to specific end offices. The SPOP is defined as the CLEC's physical point of presence. **This allows for a trunk group from CLEC's POI in one Local Calling Area (LCA) to be ordered to any CenturyLink local tandem or end office in another LCA which is otherwise not available, absent this amendment.**[20]

The *Report*, by contrast, contains no requirement that the CLEC order and pay for direct trunk transport from the point of interconnection to other switches in the network such as

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[19] *Report*, ¶¶ 98-99.

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

local tandems or end offices that are beyond that single POI location. Apparently, the *Report* contemplates that the CLEC will receive all such transport for free.

This finding amounts to a drastic change in the relationship between an incumbent and a CLEC. Instead of a CLEC bearing the responsibility for carrying traffic to the local calling area it seeks to serve, the *Report* would place that obligation on the incumbent. With numerous CLECs and hundreds of wire centers in the state, incumbents face an enormous potential cost of providing all of the facilities required by CLECs to carry local traffic to its destination within each of the five LATAs in Minnesota.

This view is also inconsistent with the Commission's decision in the *Charter* Arbitration where the Commission ruled in favor of Qwest on this same type of dispute even though, as in this case, the parties had agreed to a bill and keep methodology of reciprocal compensation for exchanging traffic.[21] Specifically, the Commission agreed with the following finding in the Arbitrator's Report:

> Because of the manner in which Charter has configured its network, it will face additional switching costs to terminate Qwest-originated traffic, but it will not face much in the way of additional transport costs (other than the distance from the POI to its switch). Qwest, on the other hand, will face additional costs for both transport and termination of traffic originated on Charter's network. Use of a bill-and-keep method for transport, as advocated by Charter, would require Qwest to forego compensation for its more substantial transport costs. In this situation, reciprocal billing for transport of the other party's traffic is a more fair and reasonable method of recovering these costs.[22]

The language recommended by the Arbitrator is fundamentally inconsistent with *Charter*. In *Charter*, the Commission specifically took costs of transport into account in

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

[22] *In the Matter of the Petition of Charter Fiberlink for Arbitration of an Interconnection Agreement with Qwest Pursuant to 47 U.S.C. §252(b),* Docket P-5535, 421/M-08-952, Arbitrator's *Report* at ¶ 89.

deciding the financial consequences of an interconnection arrangement. The *Report* would eliminate such considerations. The *Report* ostensibly relies upon the Local Competition Order as support for its position but that Order was also fully in effect at the time of *Charter* and produced an entirely opposite result.

The *Report* does not provide legal support for such a change. Indeed, such support does not exist. The ICC/USF Order specifically excluded dedicated transport (i.e., flat-rated direct trunked transport) from its reciprocal compensation reforms for usage based elements:

> ¶ 739: We recognize, however, that we need to further evaluate the timing, transition, and possible need for a recovery mechanism for those rate elements – including originating access, common transport elements not reduced, and ***dedicated transport*** - that are not immediately transitioned; we address those elements in the FNPRM. (Emphasis added).
>
> ¶ 821: *Other Rate Elements.* Finally, we note that the transition set forth above caps rates but does not provide the transition path for all rate elements or other charges, such as ***dedicated transport charges***. In our FNPRM, we seek comment on what transition should be set for these other rate elements and charges as part of comprehensive reform, and how we should address those elements. (Emphasis added).
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> ¶ 1297: Although we specify the implementation of the transition for certain terminating access rates in the Order, we did not do the same for other rate elements, including originating switched access, ***dedicated transport***, tandem switching and tandem transport in some circumstances, and other charges including dedicated transport signaling, and signaling for tandem switching. (Emphasis added).[23]

The *Report* discussed these provisions but did so in the context of specific interconnection disputes between the parties.[24]

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

[24] *Report*, ¶ 114.

The *Report* declined to order compensation for those interconnection requests because it argued that such charges amount to an increase in reciprocal compensation rates.[25] This analysis ignores the fact that the existing agreement did not contemplate interconnection beyond the specific connection in St. Cloud. Furthermore, the *Report* did not analyze the issue in the broader context of the general interconnection agreement language in dispute in this case.[26] The language at issue in these sections would reverse the normal transport charges and make them the responsibility of the incumbent rather than that of the CLEC.

At Paragraph 127, the *Report* mistakenly assumes that dedicated transport is included in reciprocal compensation. The *Report* says that the FCC did not make the distinction in the meaning of transport that CenturyLink EQ urges and expands the definition of transport under reciprocal compensation to include dedicated transport. This is inconsistent from the way dedicated transport is treated in the ICC/USF Order as clearly defined in the above quotes. Such an approach carries significant policy implications. For that reason, the FCC excluded such charges from its Transformation Order.

Had the FCC wanted to include transition plans for dedicated transport, it would have done so, but it explicitly excluded dedicated transport from any plans and clearly pushed off any plans for a later time. This Commission should not order such a fundamental change to the compensation of dedicated transport. To order in the way recommended by the ALJ would result in HTI receiving more favorable treatment than every other CLEC in the state. The provision would therefore be discriminatory and in violation of the Act. CenturyLink EQ's proposed language should be adopted on these issues.

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[25] *Id.*, ¶ 126.
[26] *Id.*, ¶¶ 98-99.

The *Report* erroneously interprets CenturyLink's proposed language as requiring the CLEC to establish multiple POIs per LATA.[27] CenturyLink's revised proposals do no such thing. CenturyLink eliminated the requirement of establishing a POI in each of these issues.[28] In addition, the *Report* fails to correctly interpret the existing interconnection agreement as not making a distinction between reciprocal compensation and dedicated transport. In fact, the current agreement treats those items 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.[29]

Given that the *Report* misinterprets the ICC/USF Order, misinterprets CenturyLink EQ's language proposals and misinterprets the existing agreement between CenturyLink EQ and HTI, the *Report*'s effort to fundamentally change compensation obligations associated with interconnection should be rejected.

C. The *Report*'s Analysis of Reciprocal Compensation Would Amount to a Fundamental Shift in the Manner in Which Minnesota Divides Responsibility for Direct Trunked Transport Between CLEC and Incumbent. (Issues 33, 37, 41, 42 and 47)

The *Report* rejects language equating the physical point of interconnection with the hand off of financial responsibility. Its findings, however, negate any distinction. It suggests that the Commission adopt HTI's proposals requiring CenturyLink EQ, and not the CLEC, to be responsible for direct trunked transport from the point of physical interconnection to the switch used to exchange traffic between the parties.[30] The *Report* even requires

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[27] *Id.*, ¶ 99.
[28] *See, e.g.,* CenturyLink Proposed Language, Issue 28 (giving the CLEC the option to establish a POI or purchase direct trunk transport to reach the destination switch).
[29] *Report,* ¶ 115, *citing* Ex. 100 (Burns Direct), Attachment TBG-1 at 29.
[30] *Id.*, ¶¶ 106-129.

CenturyLink EQ to incur the expense of leasing facilities from third parties if such a lease is necessary to accommodate an interconnection arrangement:

> Third Party Carrier Meet Point using Leased Facilities. If CLEC chooses to interconnect with CenturyLink using a third party's Meet Point Arrangement, e.g. a third party's facilities which are interconnected to the CenturyLink network, the POI shall be at the third party Meet Point with CenturyLink, and each Party is responsible for its costs on its side of the POI.[31]

This proposed language contrasts sharply with that proposed by CenturyLink:

> Third Party Carrier Meet Point using Leased Facilities. If CLEC chooses to interconnect with CenturyLink using a third party's Meet Point Arrangement, (i.e., leased switched access facilities jointly provisioned by CenturyLink and a third party ILEC), then any portion of such facilities provided by CenturyLink will be ordered from CenturyLink's access tariff.[32]

As was discussed in the prior section, the language recommended in these sections represents a seismic shift in Minnesota law. In standard interconnection agreements, a CLEC has the obligation to pay for dedicated transport to reach the serving tandem or end office switch unless the parties mutually negotiate a mid span meet point arrangement at that tandem or end office.[33] This particularly makes sense when the incumbent is forced to lease facilities from a third party to complete the interconnection.[34]

The Commission should not adopt such a change absent compelling justification. The recommendation on these issues should be rejected.

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[31] *Id.*, ¶ 111 *citing* Ex. 1 (Easton Direct) at 60, lines13-21; Issues Matrix Issue 42.
[32] *Id.*
[33] *See* interconnection agreement between Qwest Corporation dba CenturyLink QC and Voxbeam Telecommunications, Inc, Section 7.1.2.3, *approved* in Docket P-6918, 421/IC-14-319.
[34] If the Commission wanted to order maintenance of the non-standard compensation arrangement for Alexandria, which requires CenturyLink EQ to lease the third party transport, as the *Report* recommends, then it should do so explicitly and specifically, and not generalize it to other future such connections, thus dramatically changing how ILECs and CLECs interconnect.

II. The Recommendation Regarding Disclosure Of Connections With Other Carriers Should Be Clarified. (Issue 24, Part 2)

The second portion of Issue 24 relates to an HTI request that CenturyLink EQ be required to disclose all locations where it has interconnected within a LATA.[35] CenturyLink EQ objected to this proposal. Mr. Easton testified and argued that the information required by the HTI language (1) would include carrier proprietary information; (2) is not stored by CenturyLink EQ in a single easily accessible place; (3) that retrieving the information would be time-consuming and costly;[36] (4) that much of the information would be useless because the CLEC will know where its own facilities are located and can identify potential points of interconnection;[37] and (5) that non-proprietary information requested about non-ILEC interconnection is *already publicly available.*[38] He also noted it would require CenturyLink EQ to provide information even though it might not be needed for a particular interconnection request and that HTI had not proposed language requiring it to compensate CenturyLink EQ for creating and maintaining such a database.[39]

In addition to these practical concerns, legal issues exist with HTI's request. 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."[40] It further suggests that it would be reasonable "for a requesting carrier to seek and obtain . . . information about

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[35] *Report*, ¶¶ 44-56.
[36] Transcript (Easton), 98:19-23.
[37] Transcript (Easton), 66:16-69:2.
[38] Transcript (Easton), 67:18-23.
[39] Transcript (Easton), 68:15-69:2.
[40] Local Competition Order, ¶ 155 (quoted in Burns Direct at p. 7) (emphasis added); Report, ¶ 49 *citing* Ex. 100 (Burns Direct) at 7, following line 24.

the incumbent's network that is ***necessary*** to make a determination about which network elements to request to serve ***a particular customer***."[41]

CenturyLink EQ requests that the Commission adopt its language on Issue 24, Part 2. The *Report* acknowledges that the Local Competition Order requires "a specific request"[42] but ignores that limitation by suggesting language that seems to allow a CLEC to obtain information about all interconnections in a LATA and broadens that to include connections with any "third party carrier", such as another ILEC:

> CenturyLink shall disclose to CLEC all locations within a LATA where CenturyLink has established facilities interconnection with a third party carrier. This existing interconnection information shall be provided within 15 business days of a written request from CLEC that specifies the geographic area of the customers it plans to serve.[43]

At a minimum, the Commission should clarify this language. It is unclear whether or not the term "geographic area of the customers it plans to serve" constitutes a limitation on the information the incumbent is required to provide under this provision. CenturyLink EQ proposes the following language to more clearly set forth the *Report*'s apparent intent to limit the scope of disclosure to those locations relevant to a CLEC's interconnection request:

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

This language would provide more clarity to the parties than the language proposed by the *Report*.

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[41] *Id.* (emphasis added).
[42] *Report*, ¶ 54.
[43] *Id.*, ¶ 53.

III. The Recommendations Related to the BFR Process Create Confusion, Uncertainty and the Potential for Numerous Disputes. (Issues 53 and 68)

CenturyLink EQ's proposed language related to a CLEC Bona Fide Request for a new type of interconnection is straightforward:

> The parties may establish, through negotiations, other Technically Feasible methods of interconnection via the Bona Fide Request (BFR) process unless a particular arrangement has been previously provided to a third party, or is offered by CenturyLink as a product.[44]

Under this proposed language, a CLEC request for interconnection not covered by the terms of the agreement will go through the BFR process unless CenturyLink EQ offers the arrangement as a product, with standardized terms, ordering processes and rates, or unless CenturyLink EQ has previously offered that arrangement and therefore created terms, ordering processes and rates. Thus, under CenturyLink EQ's proposal, the contract sets forth the manner in which all terms and conditions associated with an interconnection request will be determined.

HTI's proposed language, adopted in the *Report,* seeks to evade the BFR process in situations where CenturyLink EQ has agreed to a "substantially similar" interconnection arrangement:

> Issue 43: The parties may establish, through negotiations, other Technically Feasible methods of Interconnection via the Bona Fide Request (BFR) process. If a substantially similar arrangement has been previously provided to a third party, or is offered by CenturyLink as a product, such arrangement will be made available to CLEC through normal ordering and provisioning processes and not subject to the BFR process.[45]

> Issue 68: The Bona Fide Request process shall be used when CLEC requests a form of Network Interconnection or other service which CenturyLink does not provide in this agreement, to itself, or to another carrier.[46]

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[44] *Id.,* ¶ 132 *citing* Ex. 1 (Easton Direct), at 62, lines 1-5.
[45] *Id.,* ¶ 132 *citing* Ex. 1 (Easton Direct) at 62, lines 7-15.
[46] *Id.*, ¶ 132 *citing* Ex. 1 (Easton Direct) at 85, lines 9-15.

This proposal has the effect of bypassing the BFR for purposes of not only the question of whether an interconnection request is technically feasible, but also for the purpose of determining how the interconnection will be accomplished and the terms under which it will be provided. There are a myriad of potential disputes under this approach, including whether the request is "substantially similar", whether it is in use within CenturyLink EQ's local network or LEC to LEC connections, the rates for the proposed interconnection, the timing under which it will be made available and the obligations of each company associated with the request.

The *Report* proposes adopting HTI's language based on 47 C.F.R. § 51.321(c):

> a previously successful method of obtaining interconnection or access to unbundled network elements at a particular premises or point of any incumbent LEC's network is substantial evidence that such method is technically feasible in the case of substantially similar network premises or points.[47]

This analysis might be appropriate for the purpose of a BFR solely to determine the technical feasibility of a particular interconnection request, but the BFR process establishes not only the technical feasibility of such a request but also the availability date, the rates, installation intervals and the terms and conditions of the request. The parties have agreed upon language in Section 59.7 that sets forth how these considerations are developed as a part of a BFR:

> 59.7 Upon receiving CLEC's written acceptance and authorization of the Preliminary Analysis, CenturyLink will proceed to develop a Final Quote. The Final Quote shall contain a description of each access arrangement or service to be provided, a tentative availability date, the applicable rates, the installation intervals, BFR development and processing costs and the terms and conditions under which access to the requested Interconnection Method, arrangement or service will be offered. CenturyLink shall provide the Final Quote within ninety (90) Days of receiving CLEC's written acceptance and authorization to the Preliminary Analysis.[48]

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[47] *Id.*, ¶ 134.
[48] Ex. 1 (Easton Direct), Ex. WRE-2, p. 71.

The *Report* does not address any of these considerations. Its language suggests that such an order be handled through "normal ordering and provisioning processes" but for such requests no "normal" ordering and provisioning processes exist. The potential for dispute in such a situation is clear.

In order to resolve such concerns, CenturyLink EQ recommends that the Commission either order its language or add the following language to clarify HTI's proposal:

> Issue 43: The parties may establish, through negotiations, other Technically Feasible methods of Interconnection via the Bona Fide Request (BFR) process. If a substantially similar arrangement has been previously provided to a third party, or is offered by CenturyLink as a product, such arrangement will be made available to CLEC ~~through normal ordering and provisioning processes~~ and not subject to the BFR process for the purpose of determining whether or not the request is technically feasible. If not already developed, the parties may establish through negotiations or the BFR process: a description of each interconnection arrangement or service to be provided, a tentative availability date, the applicable rates, the installation intervals, BFR development and processing costs and the terms and conditions under which access to the requested Interconnection Method, arrangement or service will be offered
>
> ~~Issue 68: The Bona Fide Request process shall be used when CLEC requests a form of Network Interconnection or other service which CenturyLink does not provide in this agreement, to itself, or to another carrier.~~

Such an approach will ensure that appropriate terms and conditions cover interconnection requests not already addressed in the interconnection agreement.

IV. The *Report's* Requirement That CenturyLink EQ Provide Information On Prior BFR Requests Should Be Rejected. (Issue 76)

At Paragraph 241, the *Report* orders language requiring disclosure of past BFR arrangements. CenturyLink EQ has not maintained the information required by the language in the past. CenturyLink EQ does not have the information of which HTI's language would require it to provide notice. CenturyLink EQ also has not had the quantity of BFRs that CenturyLink Qwest, from which this language is taken, has had, and thus has not established the same processes and tracking systems.

This process is not needed and will require significant work to recapture all the BFRs that have been requested, analyzed, denied or approved since 1996. If this language must be accepted, it should be used to create such a database going forward only, allowing CenturyLink EQ to develop the process vs. combing through files to recreate irrelevant history. In addition, the Commission should recognize, either in contract language or its order, that providing the information on a wholesale website complies with the requirements of this language.

V. Gratuitous Comments In The *Report* Regarding Issues Not In Dispute In This Arbitration Should Be Rejected By The Commission.

The *Report* makes a few comments that have no basis in the record, have no relevance to the issues in this case and make no difference in its outcome. In two cases, the *Report* makes statements that question whether or not CenturyLink QC (pre-merger Qwest) should be treated as a separate entity from CenturyLink EQ (pre-merger Embarq).

In Paragraph 129, the *Report* contains the following sentence related to the CenturyLink QC Tandem switch in St. Cloud:

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

In footnote 169 to this paragraph, the *Report* comments: "The question of whether CenturyLink QC should be considered a third party appears more clearly in this situation."

No party presented evidence about ownership of the St. Cloud tandem, no party suggested that the Commission should ignore the distinction between CenturyLink corporate entities, and no party argued that the St. Cloud tandem should be considered part of

CenturyLink EQ's network. These statements are gratuitous, irrelevant, without foundation and should be stricken.

Similarly, Paragraph 239 of the *Report* claims that CenturyLink EQ's BFR process is years behind CenturyLink QC's processes and that this difference somehow has an effect on consumers:

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

The *Report* cites no evidence in support of this finding, and the issue was not in dispute in the proceeding. CenturyLink EQ strongly denies the statements in this part of the *Report.* If the statement is going to remain in an ultimate Commission Order, CenturyLink EQ should at least be afforded the opportunity to present evidence on the issue.[49] Instead, CenturyLink EQ asks that the Commission strike Paragraph 239.

CONCLUSION

The recommendations contained in the *Report* would amount to a fundamental change in the approach to interconnection that has developed in Minnesota and throughout the country since passage of the Telecommunications Act of 1996. The impact of such changes could be very significant depending on the extent to which these decisions are applied in other contexts. This Commission should not cast aside the collective wisdom that

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[49] CenturyLink was required to keep its Qwest and Embarq wholesale systems separate due to merger requirements ordered in Minnesota and elsewhere. *See e.g.,* Stipulation and Agreement and Joint Motion for Approval of Stipulation and Agreement, *In the Matter of the Joint Petition for Approval of Indirect Transfer if Control of Qwest Operating Companies to CenturyLink,* Docket No. P-421, et al./PA-10-456 (Oct. 4, 2010) Section 1, p. 3 (available at https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={15C3AF00-0268-43A0-ABB9-4CE3077E9B4C}&documentTitle=201010-55131-01).

has developed over the last 20 years. It should issue an order adopting CenturyLink EQ's proposed language in this arbitration.

Dated this 26th day of January, 2015.

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CENTURYLINK EQ

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