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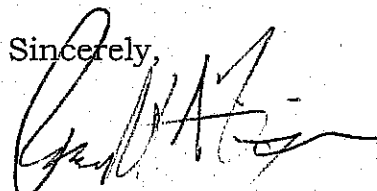
Re: ARB 830 – Response to Motion of Sprint Communications
Company L.P. and Statement of Objections

Dear Sir/Madam:

Enclosed is the Response to Motion of Sprint Communications Company
L.P. and Statement of Objections. Also enclosed is the Certificate of Service.

Thank you for your attention to this matter.

Sincerely,



RICHARD A. FINNIGAN

RAF/km
Enclosures

cc: Service List (via e-mail or e-mail and U.S. mail)
ALJ Wallace (via e-mail)
Paul Schudel (via e-mail)
Tom Moorman (via e-mail)
James Overcash (via e-mail)
Clients (via e-mail)

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

ARB 830

In the Matter of

SPRINT COMMUNICATIONS COMPANY
L.P.

Petition For Arbitration of an Interconnection
Agreement with CENTURYTEL OF
OREGON, INC.

RESPONSE TO MOTION OF SPRINT
COMMUNICATIONS COMPANY L.P. AND
STATEMENT OF OBJECTIONS

CenturyTel of Oregon, Inc. ("CenturyTel"), by and through its attorneys, Richard A. Finnigan, attorney at law, and Thomas J. Moorman of Woods & Aitken LLP, attorneys at law, hereby submits its Response to the Motion of Sprint Communications Company L.P. ("Sprint") for Approval of Conforming Interconnection Agreement. This Response is filed pursuant to OAR 860-013-0050(3)(d) and pursuant to the direction of Administrative Law Judge Sarah K. Wallace, as set out in the Conference Report of November 17, 2008. This filing shall also constitute, to the extent applicable, CenturyTel's objections pursuant to OAR 860-016-0030(12).

The essence of Sprint's Motion is to request that its version of Article IV, Section 3.3.1.2 be accepted in the final Interconnection Agreement. CenturyTel objects to Section 3.3.1.2 as proposed by Sprint and will reply to Sprint's Motion as set forth herein.

1 For the Commission's ease of reference, Sprint's proposal and CenturyTel's proposal are set
2 forth below.

3 Sprint's proposal:

4 3.3.1.2 Indirect Network Connection shall be accomplished by CenturyTel
5 and Sprint each being responsible for the delivery and switching of
6 its originated local traffic at the Tandem Switch serving the
7 terminating parties switch. Each Party is responsible for the
8 facilities to its side of the tandem. Each Party is responsible for the
9 appropriate sizing, operation, and maintenance of the transport
10 facility to the tandem. The Parties agree to enter into their own
11 agreement with third party tandem providers.

12 CenturyTel's proposal reads as follows:

13 3.3.1.2 Indirect Network Connection shall be accomplished by delivery
14 and switching of originated local traffic at the Tandem Switch
15 serving the terminating party's switch. CenturyTel is responsible
16 for the facilities for its originating traffic to its service area
17 boundary related to the serving area exchange for its originating
18 traffic and Sprint is responsible for all other transport obligations
19 to and from the Tandem Switch. Each Party is responsible for the
20 appropriate sizing, operation, and maintenance of its portion of the
21 transport facilities described in this Section 3.3.1.2. The Parties
22 agree to enter into their own agreement with third party tandem
23 providers, to the extent applicable.

24 To conform the Interconnection Agreement to the Commission's Order No. 08-486, CenturyTel
25 also proposed Section 3.3.1.5, which reads as follows:

26 3.3.1.5 Nothing in this Agreement shall be construed to require
CenturyTel to pay or share in the costs of transport outside of its
service area.

It is CenturyTel's position that the language it has proposed comports with the Commission's Order No.
08-486. Sprint's proposed language is contrary to the Commission's Order.

1. The Basis for Sprint's Motion that CenturyTel Unconditionally Agreed to the Language Sprint Proposes for Article IV, Section 3.3.1.2 is Incorrect.

CenturyTel respectfully submits that it is important to place the parties' dispute with respect to Article IV, Section 3.3.1.2 into proper context. The pertinent context is that Sprint has chosen to locate its point of presence or POP¹ outside of CenturyTel's territory at a location in the territory of an incumbent local exchange carrier ("ILEC") other than CenturyTel.² As a result, the practical effect of Sprint's proposal would mean that when CenturyTel originates traffic that is destined to a called party served by Sprint's wholesale partner in CenturyTel's territory, the only way that CenturyTel can get the traffic to Sprint's chosen POP is to deliver the traffic to a third party for transit to Sprint's POP. Effectively, CenturyTel has no choice in the matter because of Sprint's decision to locate Sprint's POP outside of CenturyTel's service area.

The argument advanced by Sprint is that CenturyTel agreed to pay transit charges under Section 3.3.1.2 as an unconditional element of the Interconnection Agreement. That assertion by Sprint is untrue.

In the Interconnection Agreement as originally advocated by CenturyTel, there is a clear connection between Sections 3.3.1.1 and 3.3.1.2. To this point, Section 3.3.1.1 read as follows:

Indirect Network Connection is intended only for de minimis traffic associated with Sprint "start-up" market entry into a CenturyTel local exchange. Therefore Indirect Network Interconnection will be allowed only on routes between CenturyTel end offices and a Sprint switch in instances where, and only so long as, none of the triggers set forth in Section 3.3.2.4 of this Article have been reached.

¹ The term POP and Point of Interconnection or POI are sometimes used interchangeably in testimony and the Commission's Order No. 08-486.

² Sprint testimony of Mr. Burt at p. 33, l. 795 – p. 34, l. 799.

1 Without question, CenturyTel was agreeing as a matter of compromise between the parties to pay for
2 third party transit charges only up through the de minimis level of a DS1 worth of traffic as set forth in
3 its proposed Section 3.3.2.4. CenturyTel never agreed to an unconditioned, open-ended, unlimited
4 financial obligation beyond its service boundaries.

5 The relationship of Sections 3.3.1.1 and 3.3.1.2 is explained in Mr. Watkins' testimony. In that
6 testimony, he stated:

7
8 Issue #7 addresses the fact that CenturyTel has offered a reasonable compromise
9 that utilizes a "transit arrangement" under specifically limited circumstances.
10 These limitations are entirely reasonable and should be adopted by the
11 Commission in that there are no requirements that allow Sprint to establish a POI
12 at another ILEC's tandem to exchange traffic with CenturyTel and demand that
13 CenturyTel be forced to obtain services from, and rely on, a third party carrier.
14 Thus, CenturyTel has offered very CLEC-friendly language which allows the
15 exchange of traffic via a third party transit arrangement for traffic volumes up to a
16 DS1 level.³

17 Mr. Watkins further explained:

18 Theoretically, Sprint could establish a POI with another neighboring ILEC for an
19 indirect interconnection. This proposal would result in both parties having to
20 obtain transit service from the third party tandem provider. CenturyTel should
21 not, however, be required to incur additional costs of transit in situations where
22 the CLEC fails to establish a proper POI with dedicated trunks on the incumbent
23 network of CenturyTel for the exchange of Section 251(b)(5) traffic.
24 Nevertheless, CenturyTel has been willing to exchange traffic with a CLEC via a
25 third-party, tandem-switched trunking arrangement where such arrangement
26 would be technically feasible, regardless of the interconnection point issue,
provided that the additional costs to CenturyTel are limited to inconsequential
amounts. CenturyTel is willing to define that limitation based on an amount of
traffic that is no more than one DS1 level of traffic.⁴ (Emphasis added.)

Mr. Watkins' testimony explained in detail the limited use of third party transit arrangements. Mr.

³ Opening Testimony of Steven E. Watkins, CenturyTel/12, Watkins/43, l. 15 - 44, l. 1 (May 5, 2008).

⁴ Opening Testimony of Steven E. Watkins, CenturyTel/12, Watkins/45, l. 5-15 (May 5, 2008).

1 Watkins pointed out that “CenturyTel’s position is an extremely accommodating offer given it would
2 involve CenturyTel transporting traffic to locations well beyond its incumbent network, although only
3 for a small level of traffic.”⁵ CenturyTel respectfully submits that this testimony demonstrates the
4 unassailable link between Sections 3.3.1.1 and 3.3.1.2.

5 Mr. Watkins further explained that the same principles applicable to direct connection under
6 Issues 4 and 5 apply to indirect interconnection and that to require CenturyTel to bear the cost of
7 transport to Sprint’s POP would be imposing upon CenturyTel a superior form of interconnection. As
8 Mr. Watkins stated “There is no difference or distinction in the rules regarding the establishment of
9 proper POI(s) that depend on whether the carriers interconnect to that point directly or indirectly.”⁶

10 Mr. Watkins also clearly stated that CenturyTel was not agreeing to an unlimited obligation to
11 transport traffic to the third party tandem:
12

13 Despite this compromise and limited offer to exchange local traffic via transit
14 arrangement, this arrangement does not change CenturyTel’s position regarding
15 where the POI must be established for local interconnection traffic arrangements
16 and should not be construed to suggest obligations for CenturyTel beyond those
17 that actually apply.

18 As already explained in response to Issue #5, the obligation of CenturyTel is only
19 to deliver its local interconnection traffic to points within its ILEC network. Any
20 delivery of traffic, or transport of it, to more distant points (i.e., into a neighboring
21 ILEC’s territory where Sprint connects with that ILEC) is Sprint’s responsibility.
22 That responsibility includes any transit services provided by a third party,
23 regardless of what de minimis arrangements CenturyTel may be willing to accept
24 here.⁷ (Emphasis added.)

25 This testimony, therefore, also demonstrates the clear link of Section 3.3.1.1 to Section 3.3.1.2.

26 ⁵ Opening Testimony of Steven E. Watkins, CenturyTel/12, Watkins/44, l. 1-3 (May 5, 2008).

⁶ Opening Testimony of Steven E. Watkins, CenturyTel/12, Watkins/45, l. 2-4 (May 5, 2008)

⁷ Opening Testimony of Steven E. Watkins, CenturyTel/12, Watkins/46, l. 1-10 (May 5, 2008).

1 In addition to the foregoing, Mr. Watkins provides over sixteen pages of detailed analysis of
2 CenturyTel's obligations under Section 251 related to the transport of traffic in an indirect
3 interconnection setting. Rather than repeat Mr. Watkins' testimony, for ease of the Commission's
4 reference, that portion of his testimony is attached as Exhibit 1. CenturyTel's position is summarized by
5 Mr. Watkins as follows:

6
7 Q. Can you explain your statement earlier that CenturyTel is willing to utilize
8 a third-party transit arrangement with Sprint under conditions where there will be
9 limited amounts of traffic between the parties?

10 A. Yes. In Sections 3.3.1 and 3.3.2 of the proposed Agreement, CenturyTel
11 has proposed that the parties may utilize a transit traffic arrangement via third
12 party tandem with commingled traffic, and tandem-switched trunking. However,
13 recognizing that there is no requirement for transit arrangements, and that such
14 commingled traffic arrangements create concerns about network management and
15 the proper identification of traffic types in intercarrier compensation,
16 CenturyTel's willingness to implement these transit arrangements with Sprint is
17 limited to small volumes of exchange traffic.⁸ (Emphasis added.)

18 Thus, there can be no question that CenturyTel did not agree to unconditionally and for all purposes use
19 the language proposed by Sprint for Section 3.3.1.2.

20 Sprint argues that CenturyTel did not identify Section 3.3.1.2 as a disputed issue on the Disputed
21 Positions List and, hence, is attempting to introduce a new issue. Sprint tries to draw too fine a line in
22 its argument. As the foregoing excerpts from Mr. Watkins' testimony clearly demonstrate, the only
23 offer that CenturyTel put on the table regarding transiting traffic was to accept a minimal, de minimis,
24 responsibility for transiting charges for traffic that travels outside of CenturyTel's service area. As Mr.
25 Watkins describes, CenturyTel has no legal obligation to pay any level of compensation for such
26 transiting traffic to third party providers due to Sprint's location of Sprint's POP for Sprint's sole

⁸ Opening Testimony of Steven E. Watkins, CenturyTel/12, Watkins/55, l. 5-14 (May 5, 2008).

1 convenience. There is an absolute tie throughout the testimony between Section 3.3.1.1 and 3.3.1.2.
2 Sprint is attempting to circumvent the Commission's clear language and CenturyTel's clear position.

3 2. CenturyTel's Proposed Language for Section 3.3.1.2, Not Sprint's Proposal, Conforms to
4 Commission Order No. 08-486.

5 When the Arbitrator ruled against CenturyTel on the inclusion of Section 3.3.1.1, CenturyTel
6 indicated that it would be willing to accept the Arbitrator's ruling so long as the Commission applied the
7 principles growing out of Issues 4 and 5 to CenturyTel's obligation for indirect interconnection as it
8 related to all of Section 3.3.1. As accurately summarized by the Commission, CenturyTel's position is:
9 "Thus, if CenturyTel connects indirectly, its financial obligations, at the furthest point, extend only to
10 the CenturyTel exchange boundary for reciprocal compensation traffic exchanged by the parties through
11 a third party."⁹ (Emphasis added.)

12
13 In the Commission's Order No. 08-486, the Commission confirmed CenturyTel's position and
14 ruled that CenturyTel has no financial obligation beyond its service area boundaries when Sprint
15 chooses to place its point of presence (POP) outside of CenturyTel's service area:

16 The same factors apply in the case of an ILEC's financial responsibility where the
17 ILEC and CLEC are indirectly connected as in the case of direct connection.
18 When Sprint chooses to put a POP outside of CenturyTel's service area but within
19 the service area of another ILEC in the same LATA, it is not reasonable for Sprint
20 to be able to dictate the obligation of CenturyTel to pay for transport outside of its
21 service area. The Arbitrator's Decision is affirmed and clarified herein to the
22 extent necessary.¹⁰

23
24 Not only did the Commission decide the issue correctly, but the language is unequivocal in its
25 directive. That directive is contained in CenturyTel's proposed Section 3.3.1.2 as follows: "CenturyTel
26

⁹ This position is summarized by the Commission at p. 7 of Order No. 08-486 citing to CenturyTel Comments at 11-12.

¹⁰ Order No. 08-486 at p. 7.

1 is responsible for the facilities for its originating traffic to its service area boundary reflected to the
2 serving area exchange for its originating traffic and Sprint is responsible for all other transport
3 obligations to and from the Tandem Switch.” The Commission’s directive is also clear in CenturyTel’s
4 Section 3.3.1.5 that: “Nothing in this Agreement shall be construed to require CenturyTel to pay a share
5 in the costs of transport outside of its service area.”

6
7 As Mr. Watkins pointed out, Sprint “wants to dictate an interconnection arrangement to
8 CenturyTel under which (1) CenturyTel must provision an extraordinary interconnection arrangement
9 for local traffic exchange and (2) Sprint is allowed to avoid its requirement to establish a POI within the
10 incumbent service area of CenturyTel as the Act and the FCC rules require.”¹¹ That is exactly what
11 Sprint is attempting to again accomplish by its arguments concerning Section 3.3.1.2.

12 Mr. Watkins went on to explain Sprint’s failure to justify Sprint’s position:

13 Sprint does not even address the extraordinary costs that would be incurred to
14 transport local Depoe Bay exchange traffic to Portland. CenturyTel does not have
15 any trunking facilities to Portland for the transport of local Depoe Bay traffic.
16 Mr. Burt cannot reconcile his position (apparently to require CenturyTel to
17 transmit its local traffic to Portland) with the fact that incumbents are not required
18 to provision superior arrangements at the request of CLECs. Contrary to Mr.
19 Burt, Section 251(a) cannot override the “no more than equal” condition
20 requirement contained in Section 251(c).¹² (Testimony references omitted.)

21 Further, Mr. Watkins pointed out that “Sprint provides no testimony to justify why CenturyTel, in a
22 competitive world, should be required to rely upon, and to obtain services from, Qwest just because
23 Sprint demands such anti-competitive arrangement.”¹³

24 ¹¹ Rebuttal Testimony of Steven E. Watkins, CenturyTel/15, Watkins/20, l. 21 – 21, l. 4 (June 4, 2008).

25 ¹² Rebuttal Testimony of Steven E. Watkins, CenturyTel/15, Watkins/21, l. 17 – 22, l. 4 (June 4, 2008).

26 ¹³ Rebuttal Testimony of Steven E. Watkins, CenturyTel/15, Watkins/22, l. 5-7 (June 4, 2008).

1 In order to comply with the Commission's order, Section 3.3.1.2 must be written as CenturyTel
2 has proposed. Anything else allows Sprint to impose on CenturyTel a virtually unlimited financial
3 obligation due to Sprint's location of its POP in another ILEC's territory within the LATA. The
4 language proposed by Sprint is directly contrary to the Commission's language, which as noted above
5 states as follows:

6 The same factors apply in the case of an ILEC's financial responsibility where the
7 ILEC and CLEC are indirectly connected as in the case of direct connection.
8 When Sprint chooses to put a POP outside of CenturyTel's service area but within
9 the service area of another ILEC in the same LATA, it is not reasonable for Sprint
10 to be able to dictate the obligation of CenturyTel to pay for transport outside of its
service area. The Arbitrator's Decision is affirmed and clarified herein to the
extent necessary.¹⁴

11 CenturyTel has drafted Section 3.3.1.2 (with Section 3.3.1.5) to conform to the Commission's ruling as
12 set forth above.

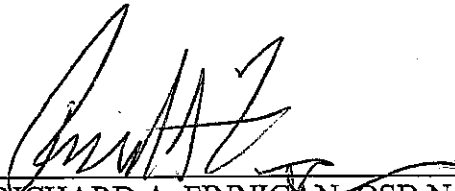
13 CONCLUSION

14 The Commission has ruled correctly that CenturyTel has no obligation to incur third party
15 transiting obligations beyond its service area where Sprint chooses to locate its POP. CenturyTel's draft
16 of Section 3.3.1.2 conforms to this Commission ruling. Sprint's draft does not. Further, CenturyTel has
17 never made an unconditional agreement to incur the types of obligations from third party transit
18 providers that Sprint would impose under its version of Section 3.3.1.2. Sprint's repeated assertions to
19 the contrary are untrue.
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25 ¹⁴ Order No. 08-486 at p. 7.
26

1 CenturyTel respectfully requests that the Commission direct Sprint to sign the form of
2 Interconnection Agreement that CenturyTel submitted to the Commission on November 6, 2008.

3 Respectfully submitted this 21st day of November, 2008.
4

5
6 
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9 THOMAS J. MOORMAN DC Bar No. 384790
10 Woods & Aitken LLP

11 Attorneys for CenturyTel of Oregon, Inc.
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EXHIBIT 1

1 **Issue # 7 -- Should the Interconnection Agreement contain provisions limiting indirect**
2 **interconnection?**

3 **and**

4 **Issue # 16 -- Do terms need to be included when Sprint utilizes indirect interconnection,**
5 **and CenturyTel is not provided detailed records, nor is CenturyTel able to**
6 **identify and bill calls based upon proper jurisdiction?**

7

8 **Q. Are you addressing both of these issues together?**

9 **A. Yes.**

10 **Q. Do you have a basis for discussing these issues together?**

11 **A. Yes.** Both issues relate to the terms and conditions under which the parties may
12 exchange local competitive traffic via a third party tandem switch over common trunks
13 carrying traffic of different carriers and/or of different traffic types (e.g., local, toll and
14 access). These third-party tandem-switched arrangements have been referred to as
15 "transit arrangements." Issue #7 addresses the fact that CenturyTel has offered a
16 reasonable compromise that utilizes a "transit arrangement" under specifically limited
17 circumstances. These limitations are entirely reasonable and should be adopted by the
18 Commission in that there are no requirements that allow Sprint to establish a POI at
19 another ILEC's tandem to exchange traffic with CenturyTel and demand that CenturyTel
20 be forced to obtain services from, and rely on, a third party carrier. Thus, CenturyTel has
21 offered very CLEC-friendly language which allows the exchange of traffic via a third

1 party transit arrangement for traffic volumes up to a DS1 level. CenturyTel's position is
2 an extremely accommodating offer given it would involve CenturyTel transporting traffic
3 to locations well beyond its incumbent network, although only for a small level of traffic.
4 Likewise, CenturyTel's proposal also includes threshold criteria that, once reached,
5 would require the parties to establish dedicated trunking between their networks for each
6 traffic type. However, the language also allows the parties, upon mutual agreement, to
7 utilize other interconnection methods that may be mutually beneficial, including
8 continuation of the transit arrangement in instances where that arrangement makes sense.

9 Issue #16 is necessary to address the terms that would apply if the parties are
10 utilizing such a transit arrangement under the compromise and limited traffic approach
11 suggested by CenturyTel. Issue #16 addresses the situation where the terminating party
12 does not have accurate and complete billing records available. These records are
13 necessary to establish the nature of traffic exchanged over such arrangements as well as
14 the potential compensation for such traffic.

15 **Q. Can you summarize CenturyTel's position?**

16 **A.** Yes. As I explained above in response to Issue #4 and Issue #5 (and which I also
17 incorporate herein by reference), the Part 51 -- Subpart H of the FCC's rules addresses
18 the terms and conditions under which competing LECs exchange traffic that is subject to
19 Section 251(b)(5) of the Act. The Act and those rules require no more than for the ILEC
20 to establish a POI(s) with a requesting competing carrier at a technically feasible point
21 within the ILEC's existing network subject to the condition that the interconnection

1 arrangement be "no more than equal" to what the ILEC does for itself or with other
2 carriers. There is no difference or distinction in the rules regarding the establishment of
3 proper POI(s) that depend on whether the carriers interconnect to that point directly or
4 indirectly.

5 Theoretically, Sprint could establish a POI with another neighboring ILEC for an
6 indirect interconnection. This proposal would result in both parties having to obtain
7 transit service from the third party tandem provider. CenturyTel should not, however, be
8 required to incur additional costs of transit in situations where the CLEC fails to establish
9 a proper POI with dedicated trunks on the incumbent network of CenturyTel for the
10 exchange of Section 251(b)(5) traffic. Nevertheless, CenturyTel has been willing to
11 exchange traffic with a CLEC via a third-party, tandem-switched trunking arrangement
12 where such arrangement would be technically feasible, regardless of the interconnection
13 point issue, provided that the additional costs to CenturyTel are limited to
14 inconsequential amounts. CenturyTel is willing to define that limitation based on an
15 amount of traffic that is no more than one DS1 level of traffic.

16 Moreover, since the transit arrangement is an inferior approach, its use should be
17 properly limited. Contrary to Sprint's suggestion at p. 18 of the Sprint Petition,
18 CenturyTel is not "dictating" interconnection methods to Sprint; CenturyTel is, in fact,
19 willing to compromise on the issue and agree to the use of a transit arrangement, even
20 though there is no requirement to do so, until traffic volumes reach more than
21 insignificant levels.

1 Despite this compromise and limited offer to exchange local traffic via a transit
2 arrangement, this arrangement does not change CenturyTel's position regarding where
3 the POI must be established for local interconnection traffic arrangements and should not
4 be construed to suggest obligations for CenturyTel beyond those that actually apply.

5 As already explained in response to Issue #5, the obligation of CenturyTel is only
6 to deliver its local interconnection traffic to points within its ILEC network. Any
7 delivery of traffic, or transport of it, to more distant points (*i.e.*, into a neighboring ILEC's
8 territory where Sprint connects with that ILEC) is Sprint's responsibility. That
9 responsibility includes any transit services provided by a third party, regardless of what
10 de minimus arrangements CenturyTel may be willing to accept here.

11 **Q. Do any Section 251 requirements alter your conclusions?**

12 **A.** No. As I have stated above (and which I incorporate herein by reference), Section
13 251(c)(2) establishes that the POI location must be within the ILEC's network and the
14 FCC's reciprocal compensation rules adopted to implement Section 251(b)(5) establish
15 the compensation arrangements on each carrier's side of the POI. The FCC further
16 described this framework at para. 1039 of its *First Report and Order*.

17 We define "transport," for purposes of section 251(b)(5), as the
18 transmission of terminating traffic that is subject to section 251(b)(5) from
19 the interconnection point between the two carriers to the terminating
20 carrier's end office switch that directly serves the called party (or
21 equivalent facility provided by a non-incumbent carrier).

22 The exchange of interconnection traffic should be as required by Section
23

24 251(c)(2) of the Act:

1 New entrants will request interconnection pursuant to section 251(c)(2) for
2 the purpose of exchanging traffic with incumbent LECs. In this situation,
3 the incumbent and the new entrant are co-carriers and each gains value
4 from the interconnection arrangement.
5

6 *First Report and Order* at para. 553.

7 Likewise, this analysis is consistent with the FCC's rules at Section 51.305 and
8 the FCC's discussion at para. 173 of its *First Report and Order*.

9 **Q. What conclusion must one draw from the explicit words in the Act and the FCC's**
10 **rules and rulemaking discussions?**

11 **A.** The inescapable conclusion is that, even under the strictest application of the rules and
12 the Act, the interconnection obligations of an ILEC apply only with respect to
13 interconnection at points *within its own incumbent network*, not with respect to POIs
14 located in the incumbent network of some other carrier or in areas where the LEC is not
15 an incumbent. Section 251(a) cannot change or modify these requirements. Regardless
16 of what facilities options that may be available to a requesting competitive carrier, the
17 incumbent's obligation is limited to an interconnection point *within* the ILEC's network.

18 Moreover, as the quoted Section 251(c)(2) states, the requirements, at most, do
19 not require the ILEC to provision interconnection or service arrangements with the
20 requesting competing carrier that are more than a level equal to what the ILEC provides
21 to itself or in interconnection arrangements with any other party. In this proceeding,
22 Sprint is asking for terms that would require CenturyTel to provision a new form of local
23 service and to be responsible for transport to distant locations beyond the points of
24 transport of any other local traffic.

1 Q. **Is there any reason to believe that CenturyTel should be subject to obligations that**
2 **are greater than, or more burdensome than, those set forth in Section 251(c)(2)?**

3 A. No.

4 Q. **Have interconnection requirements been applied to the BOCs that are either greater**
5 **than, or more burdensome than, those set forth in Section 251(c)(2)?**

6 A. Yes. In the context of examination of the removal of their line of business restrictions
7 under Section 271 of the Act, the BOCs have either agreed to terms or have been required
8 by regulators to commit to terms outside and beyond those ILEC interconnection
9 requirements in the Act. The misapplication arises when carriers, such as Sprint, attempt
10 incorrectly to apply these special BOC terms to non-BOC LECs.

11 Q. **Do the FCC's rules for the exchange of competitive interconnection traffic differ**
12 **depending on whether the parties are directly or indirectly interconnected?**

13 A. No. There is no distinction in the Subpart H rules with respect to whether the parties are
14 directly or indirectly interconnected. The FCC does not discuss so-called transit
15 arrangements as an interconnection option.

16 Q. **Does Section 251(a) of the Act create a right for Sprint to demand its form of**
17 **indirect interconnection with CenturyTel?**

18 A. No. First, Section 251(a) *does not* afford any carrier a "choice" with respect to another
19 carrier's fulfillment of the general obligations of Section 251(a) as suggested by Sprint's
20 position on this issue. Second, Section 251(a) of the Act *does not* create rights or
21 standards for interconnection. Rather, as reflected in the specific language that Congress

1 used, Section 251(a) only creates a general duty on telecommunications carriers to be
2 connected directly or indirectly with all other telecommunications carriers. Contrary to
3 any suggestion by Sprint, Section 251(a) also *does not* afford rights to one class of carrier
4 to demand of another class of carrier the manner in which a carrier fulfills this general
5 duty, and this section of the Act further *does not* set forth any particular standards under
6 which carriers must negotiate or arbitrate terms of either direct or indirect forms of
7 interconnection. Sprint is attempting to expand the scope and meaning of Section 251(a)
8 to afford Sprint with rights that simply do not exist. In fact, Section 251(a) is separate
9 and distinct from interconnection requirements related to the exchange of traffic.

10 **Q. Do you have any support for your conclusion that the general requirements of**
11 **Section 251(a) of the Act do not address the exchange of traffic?**

12 **A.** Yes. Section 251(a) of the Act establishes no standards or requirements for the exchange
13 of the traffic that is the subject of Section 251(b)(5) of the Act; it is the FCC's Subpart H
14 rules which solely establish those standards for the exchange of local interconnection
15 traffic. But one need not rely on the FCC's Part 51 rules alone. While the FCC has
16 stated these conclusions more than once, I will point to a few paragraphs in a
17 *Memorandum Opinion and Order* released by the FCC on March 13, 2001, in File No. E-
18 97-003 ("*Atlas Decision*") beginning at paragraph 23:

19 23. Complainants base their argument on an erroneous interpretation of
20 the term "interconnect" in section 251(a)(1). *We have previously held that*
21 *the term "interconnection" refers solely to the physical linking of two*
22 *networks, and not to the exchange of traffic between networks.* In the
23 *Local Competition Order*, we specifically drew a distinction between
24 "interconnection" and "transport and termination," and concluded that the

1 term "interconnection," as used in section 251(c)(2), does not include the
2 duty to transport and terminate traffic. Accordingly, section 51.5 of our
3 rules specifically defines "interconnection" as "the linking of two
4 networks for the mutual exchange of traffic," and states that this term
5 "does not include the transport and termination of traffic."
6

7 24. Complainants argue that the term "interconnection" has a different
8 meaning in section 251(a) than in section 251(c). According to
9 Complainants, section 251(a) blends the concepts of "interconnection" and
10 "transport and termination," and "the only way for AT&T and [Total] to
11 interconnect under Section 251(a)(1) is for AT&T to purchase [Total]'s
12 services at its tariffed rate."
13

14 25. *We find nothing in the statutory scheme to suggest that the term*
15 *"interconnection" has one meaning in section 251(a) and a different*
16 *meaning in section 251(c)(2).* The structure of section 251 supports this
17 conclusion. Section 251(a) imposes relatively limited obligations on all
18 telecommunications carriers; section 251(b) imposes moderate duties on
19 local exchange carriers; and section 251(c) imposes more stringent
20 obligations on incumbent LECs. Thus, *section 251 of the Act "create[s] a*
21 *three-tiered hierarchy of escalating obligations based on the type of*
22 *carrier involved."* As explained above, section 251(c) does not require
23 incumbent LECs to transport and terminate traffic as part of their
24 obligation to interconnect. *Accordingly, it would not be logical to confer a*
25 *broader meaning to this term as it appears in the less-burdensome section*
26 *251(a).*
27

28 26. Furthermore, among the subparts of this provision, *section 251(b)(5)*
29 *establishes a duty for all local exchange carriers to "establish reciprocal*
30 *compensation arrangements for the transport and termination of*
31 *telecommunications."* Local exchange carriers, then, are subject to section
32 251(a)'s duty to interconnect *and* section 251(b)(5)'s duty to establish
33 arrangements for the transport and termination of traffic. *Thus, the term*
34 *interconnection, as used in section 251(a), cannot reasonably be*
35 *interpreted to encompass a general requirement to transport and*
36 *terminate traffic.* Otherwise, section 251(b)(5) would cease to have
37 independent meaning, violating a well-established principle of statutory
38 construction requiring that effect be given to every portion of a statute so
39 that no portion becomes inoperative or meaningless
40

41 *Id.* (footnotes omitted, emphasis added).

1 These excerpts are examples of decisions that support my conclusion that the
2 general requirements of Section 251(a) create no obligation for either an ILEC or a CLEC
3 (i) to originate or deliver traffic; (ii) to provision a particular local service for its end
4 users, or (iii) to provision some extraordinary form of service or interconnection
5 arrangement at the request of some other carrier. To the extent that Sprint suggests
6 requirements in this proceeding that go beyond the general and limited duty of being
7 “directly and indirectly” interconnected under Section 251(a) of the Act, its proposals
8 should be rejected. An arbitration cannot result in the imposition of interconnection
9 requirements that go beyond what the Act requires or go beyond the regulations
10 prescribed by the FCC as reflected in Section 252(c) of the Act.

11 **Q. Does Section 251(a) create rights for Sprint to demand that CenturyTel negotiate**
12 **and/or arbitrate specific standards for so-called "indirect" interconnection as**
13 **Sprint claims?**

14 **A.** No. Sprint suggests incorrectly that it has a right to arbitrate terms of interconnection
15 under some presumed standards set forth under Section 251(a). The compliance with the
16 general interconnection obligation of Section 251(a) is not achieved through the
17 implementation of negotiation or arbitration scheme of Section 252.

18 Section 251(c)(1) of the Act sets forth the obligation for ILECs “to negotiate in
19 good faith in accordance with section 252 the particular terms and conditions of
20 agreements to fulfill the duties described in paragraphs (1) through (5) of subsection
21 [251](b)] and this subsection [251(c)].” Accordingly, the only sections of the Act which

1 include "standards" for application under negotiation or arbitration are those contained in
2 Sections 251(b) and (c). The explicit terms of Section 252 do not require such
3 negotiation or arbitration with respect to Section 251(a). If Congress had intended that
4 there also be Section 251(a) standards which are implicated for negotiation or arbitration
5 purposes, then it would have also listed that section. Similarly, Section 252(a)(1) permits
6 ILECs to negotiate agreements "without regard to the standards set forth in subsections
7 (b) and (c) of section 251," but does not mention any standards in subsection 251(a)
8 because there are none. The reason is that the general duty of Section 251(a) is just that
9 -- without any specific standard for fulfillment. Although aspects of an FCC proceeding
10 were vacated by the courts on grounds that do not affect the FCC's fundamental analysis
11 and observations, the FCC came to similar conclusions about this interplay between
12 Sections 251(a), (b), and (c), and the standards under which negotiations and arbitrations
13 under Section 252 are applicable. *See In the Matter of CoreComm Communications, Inc.,*
14 *and Z-Tel Communications, Inc. v. SBC Communications, Inc. et al., Order on*
15 *Reconsideration*, File No. EB-01-MD-017, FCC 04-106, released by the FCC on May 4,
16 2004 at para. 18.

17 In summary, Section 251(a) creates no standards for negotiation or arbitration.
18 This section creates only general duties; there are no rights afforded other carriers to
19 demand (or choose) how another carrier fulfills its general duty to be directly or
20 indirectly connected to the public switched network.

1 Q. Is CenturyTel in compliance with the general duty created by Section 251(a) of the
2 Act?

3 A. Yes. CenturyTel has not refused to connect with any carrier, and in particular, Sprint.
4 However, CenturyTel is not required to provision: (1) Sprint's form of interconnection;
5 (2) arrangements beyond those actually required under the actual applicable standards set
6 forth in the other subsections of Section 251; and (3) arrangements with Sprint that are
7 superior or extraordinary to the form and level of arrangements it provisions for itself or
8 for interconnection with other carriers.

9 Q. Are commingled traffic and third-party-tandem transit arrangements required
10 under the Act or under the FCC's interconnection rules?

11 A. No. In over 700 pages of the FCC's *First Report and Order* and its implementing rules,
12 there is no discussion of commingled tandem-switched transit arrangements under which
13 a third party carrier would commingle interconnecting parties' traffic. In fact, the words
14 and/or concepts of "transit," "transit service," and "transit traffic" do not appear in that
15 document.

16 Moreover, in the *Verizon Arbitration Order* (at para. 117) that I discussed earlier
17 in this testimony, the FCC concluded that it had not had "occasion to determine whether
18 incumbent LECs have a duty to provide transit service under this [Section 251(c)(2)]
19 provision of the statute, *nor do we find clear Commission precedent or rules declaring*
20 *such a duty.*" (emphasis added) Consequently, there can be no presumption of a
21 requirement for CenturyTel to acquiesce to the unbridled use of a multi-carrier facility

1 traffic arrangement if there has been no finding that such arrangements are even a duty
2 under the interconnection obligations set forth in the Act.

3 Further, as a public policy matter, the rights of carriers like CenturyTel in a
4 competitive world to design its own network architecture without interference from other
5 carriers (for switching hierarchy and traffic management, identification, measurement,
6 and billing) would need to be fully addressed in any examination of some mandatory
7 trunking design under which CenturyTel would be forced involuntarily to use the transit
8 arrangements of its competitors. There is a long list of competitive issues regarding
9 carriers' rights to design and deploy their own network hierarchy which would also need
10 to be examined. Likewise, there would also need to be public policy review of the anti-
11 competitive implications associated with large carriers forcing smaller carriers to be
12 dependent on the large carrier's tandem switch. All of these unaddressed matters are
13 raised in this proceeding to the extent that Sprint wants to keep open the possibility of
14 connecting with a third party tandem provider and then demand that CenturyTel accept
15 that third party's and Sprint's network design that favors those carriers to the detriment of
16 CenturyTel.

17 Finally, as I have discussed above, the terms of a transit arrangement as proposed
18 by Sprint could not only require CenturyTel to pay for transport of local traffic to points
19 outside of CenturyTel's ILEC network but would also involve the provisioning of a
20 superior form of local traffic exchange interconnection that goes beyond that which
21 CenturyTel does for itself or with any other interconnecting carrier. Only where the

1 impact of such transit arrangement is limited to small levels of traffic is CenturyTel
2 willing to utilize the transit arrangement. The fact that such transit arrangements are
3 otherwise not required as an interconnection obligation demonstrates that CenturyTel's
4 position is entirely reasonable to accommodate initial traffic levels with Sprint.

5 **Q. Can you explain your statement earlier that CenturyTel is willing to utilize a third-**
6 **party transit arrangement with Sprint under conditions where there will be limited**
7 **amounts of traffic between the parties?**

8 **A.** Yes. In Sections 3.3.1 and 3.3.2 of the proposed agreement, CenturyTel has proposed
9 that the parties may utilize a transit traffic arrangement via a third party tandem with
10 commingled traffic, and tandem-switched trunking. However, recognizing that there is
11 no requirement for such transit arrangements, and that such commingled traffic
12 arrangements create concerns about network management and the proper identification of
13 traffic types and intercarrier compensation, CenturyTel's willingness to implement these
14 transit arrangements with Sprint is limited to small volumes of exchanged traffic.

15 In general, the common trunking arrangements that CenturyTel has with third
16 party tandem providers are often engineered as common trunks for purposes that do not
17 include the switching of local traffic that originates and terminates in some other
18 exchange area. These arrangements are not used or provisioned for transport of local
19 traffic to and from a third party tandem. Therefore, use of common trunking facilities for
20 this new purpose could overload facilities designed and used for other purposes, such as
21 those facilities and arrangements designed and used for completion of toll calls to and

1 from CenturyTel's end users. As such, the sizing and engineering of the trunks and the
2 third party's tandem switches could be thrown into disarray and overloaded if either a
3 large number of carriers were to use transit arrangement in this way or there is a large
4 amount of local traffic that begins to be switched and transported in this manner over
5 facilities that were not intended for this purpose.

6 Moreover, CenturyTel and third party tandem providers cannot be expected to add
7 network capacity for a new network design in an unplanned manner at the mercy of
8 unilateral elections by other carriers. If CenturyTel (and/or any tandem provider) were to
9 be forced to add capacity according to the arbitrary elections by other carriers, it may
10 have to install network facilities at extraordinary cost. Without constraints, CenturyTel
11 could find itself strapped with unused facilities as other carriers make alternate plans or
12 exit the market.

13 When switching and trunking facilities are provisioned by a third party transit
14 provider, neither Sprint nor CenturyTel have significant management control. With a
15 direct, dedicated set of trunks between them, Sprint and CenturyTel would no longer be
16 dependent on a third party access/toll connecting network and could directly ensure
17 quality of call completion by controlling their own trunking capacity.

18 The possibility exists, where CenturyTel operates its own tandem switch, that
19 Sprint could seek to connect with another carrier's tandem. This arrangement would
20 result in double tandem routing which is not a technically feasible, available arrangement.

1 Accordingly, CenturyTel has set forth various threshold criteria in the proposed
2 agreement to address all of these concerns and conditions directly. If any of the threshold
3 conditions are reached and presuming all other technical feasibility, the parties would be
4 required to establish a dedicated trunking arrangement for the exchange of traffic that
5 would remove this traffic from the common/tandem switched facilities. (Even under the
6 dedicated trunking arrangement, Sprint may establish the dedicated trunking to a POI on
7 the incumbent network of CenturyTel either by Sprint deploying its own facilities or by
8 Sprint leasing dedicated facilities from a third party carrier for Sprint's indirect
9 interconnection on its side of the POI.)

10 CenturyTel's proposed language is designed to set the threshold criteria at a DS1
11 level of traffic and to include specific terms in the agreement defining that threshold so as
12 to avoid unnecessary disputes between the parties. In this way, the potential burdens and
13 network concerns are mitigated to sufficiently insignificant levels.

14 **Q. Are carriers like CenturyTel concerned about being forced into commingled traffic**
15 **arrangements involving third party tandem providers such as BOCs?**

16 **A.** CenturyTel and other smaller LECs are rightfully concerned that they be able to
17 accurately and completely identify and measure other carriers' traffic without reliance on
18 an often non-cooperative intermediary such as a BOC.

1 **Q. Does CenturyTel want to be forced to rely on some other carrier for traffic**
2 **identification and measurement?**

3 **A.** No. In a competitive world and as a matter of rational public policy, a carrier should not
4 be forced to rely upon its competitor or potential competitor for performance of traffic
5 identification and measurement required to determine proper intercarrier compensation.
6 In order to avoid reliance on the tandem provider, many smaller LECs, including
7 CenturyTel, have made capital expenditures and investments in order to put in place a
8 network design that ensures the ability to identify, measure and record terminating traffic
9 of other carriers. However, in many instances, the insertion of a third party tandem
10 arrangement limits the use of the smaller carriers' network enhancements by undermining
11 the equipment's ability to perform identification and measurement as intended.
12 Therefore, in addition to the network management drawbacks, the third party transit
13 arrangements also increase the probability of unidentified traffic, missing traffic, and the
14 lack of proper traffic type measurement.

15 These further drawbacks, in turn, create billing uncertainties and increase the
16 likelihood for CenturyTel (and Sprint) of uncollected revenues. These considerations
17 give further weight to the need to limit traffic exchanged through the transit arrangement
18 to a DS1 threshold. By limiting the amount of traffic via a transit arrangement to a DS1
19 level, network integrity is assured between the parties; problems associated with
20 unidentified and unbilled traffic are minimized to manageable levels; the parties reduce
21 their exposure to unlawful arbitrage whereby traffic types may be misrepresented; the

1 parties are not forced into unreasonable reliance on a third party tandem operator, and
2 neither party is forced to pay transit charges to the intermediary.

3 Moreover, the recovery of network costs by carriers such as CenturyTel depends
4 critically on proper intercarrier compensation. Where intercarrier compensation is
5 avoided by other carriers because traffic identification and measurement is compromised
6 by less than optimal network arrangements, carriers such as CenturyTel must recover
7 these lost revenues from other sources. This result, in turn, upsets the underlying
8 regulatory policies that spread cost recovery over the available sources in the proper
9 proportion.

10 Accordingly, efforts by carriers like CenturyTel to properly identify, measure, and
11 bill for all traffic should not be circumvented, and they should not be forced to rely on
12 another carrier (a potential competitor), just because Sprint and a third party tandem
13 provider demand such a result. Absent such a result, one of the overarching objectives of
14 the 1996 revisions to the Act – the encouragement of facilities-based competition –
15 would be undermined.

16 **Q. Have carriers such as CenturyTel generally invested in their network in order to**
17 **avoid reliance on companies such as the BOCs for traffic measurement for**
18 **intercarrier compensation purposes?**

19 **A.** Yes. I have 32 years experience of working with LECs such as CenturyTel. Over the
20 last several decades, many smaller LECs have configured their networks and deployed
21 related measurement and recording facilities for the express purpose of removing

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**CERTIFICATE OF SERVICE
ARB 830**

I certify that I have this day sent the attached Response to Motion of Sprint Communications Company L.P. and Statement of Objections by electronic mail and U.S. mail to the following:

FILING CENTER
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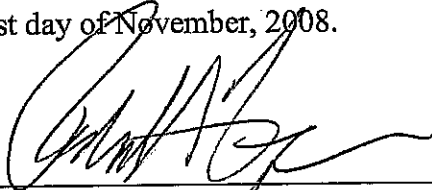
I further certify that I have this day sent the attached Response to Motion of Sprint Communications Company L.P. and Statement of Objections by the method specified below and electronic mail pursuant to OAR 860-013-0070, to the following parties or attorneys of parties:

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Dated at Olympia, Washington, this 21st day of November, 2008.


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