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September 15, 2008

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Filing Center
Oregon Public Utility Commission
550 Capitol Street NE Ste 215
Salem, OR 97301-2551

Re: ARB 830 – Centurytel of Oregon, Inc.’s Comments on Arbitrator’s Decision

Dear Sir/Madam:

Enclosed are the original and five copies of the Centurytel of Oregon, Inc.’s Comments on Arbitrator’s Decision and Certificate of Service for the above-referenced matter.

Sincerely,



Thomas J. Moorman

TJM|jrd

Enclosures

cc: Service List (via e-mail or e-mail and Federal Express)
ALJ Wallace (via e-mail)
Paul Schudel (via e-mail)
Tom Moorman (via e-mail)
Richard A. Finnigan (via e-mail)
Clients (via e-mail)

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.

COMMENTS OF CENTURYTEL OF OREGON, INC. ON ARBITRATOR'S DECISION

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Date: September 15, 2008

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I. INTRODUCTION

Pursuant to the Arbitrator's Decision issued on September 2, 2008 in the above-captioned proceeding (the "AD") and the Administrative Law Judge's July 24, 2008 Order in this case, CenturyTel of Oregon, Inc. ("CenturyTel") hereby files these comments on the AD. As a result of the AD's disposition of the issues presented for decision, CenturyTel respectfully submits that there are three categories of issues that will require action by the Public Utility Commission of Oregon (the "Commission") as it considers its final order in this proceeding.

The first category of issues consists of those matters for which, in CenturyTel's view, Administrative Law Judge Wallace (the "ALJ") properly found that the relevant sections of CenturyTel's proposed Interconnection Agreement resolved the disputed issue with Sprint Communications Company L.P. ("Sprint").¹ Thus, the sections proposed by CenturyTel that were the subject of these issues should be included in the conforming Interconnection Agreement ("ICA") arising from this proceeding.² Regarding the *Category I Issues*, CenturyTel supports the ALJ's decisions and reasoning, and the AD should be affirmed.

The second category of issues consists of those matters that, in CenturyTel's view, are instances where the ALJ's reasoning is properly subject to modification.³ With regard to the *Category II Issues*, CenturyTel requests that the Commission review the AD and the post-hearing filings made by CenturyTel.⁴ Based on these CenturyTel filings and the entirety of the record that is cited in those filings, CenturyTel respectfully submits that the AD should be modified with

¹ Sprint and CenturyTel are referred to as the "Parties" or individually as a "Party" within these comments.

² In particular, CenturyTel agrees with the ALJ's reasoning and conclusions reached with respect to the AD on Issues 2, 8, 13, 14 (with respect to the right to assess the individual Non-Recurring Charges ("NRCs") at issue in this proceeding), and 16 (the "*Category I Issues*").

³ The second group of issues is comprised of Issues 1, 10, and 15 (the "*Category II Issues*").

⁴ See *Opening Brief of CenturyTel of Oregon, Inc.*, ARB 830, filed July 16, 2008 ("*CenturyTel Opening Brief*"); *Reply Brief of CenturyTel of Oregon, Inc.*, ARB 830, filed July 23, 2008 ("*CenturyTel Reply Brief*"). Rather than burdening this filing, the *CenturyTel Opening Brief* and *CenturyTel Reply Brief* are incorporated herein by reference.

regard to the *Category II Issues* in a manner consistent with the positions advocated by CenturyTel in the *CenturyTel Opening Brief* and in the *CenturyTel Reply Brief*.

The third and final category consists of Issues 4, 5, 6, 7 and portions of Issue 14 (the “*Category III Issues*”). These Comments will primarily focus on the *Category III Issues*. For the reasons stated herein below, CenturyTel respectfully submits that the objections set forth and clarifications requested in these Comments will ensure that the resolution of the *Category III Issues* will be made in a manner consistent with the record, applicable law and rational public policy. At the same time, action consistent with that being requested by CenturyTel will provide the necessary direction that will allow the Parties to prepare a conforming ICA that reflects the Commission’s ultimate conclusions and directives.

II. GRANT OF THESE OBJECTIONS WILL SERVE THE PUBLIC INTEREST

As with any arbitrated decision pursuant to Sections 251 and 252 of the Communications Act of 1934, as amended (the “Act”) (47 U.S.C. §§ 251, 252), CenturyTel anticipates that the Commission will endeavor to ensure that the *AD* and the final order will be conceptually clear and will avoid any potential internal inconsistencies that could be contrary to the record and applicable law. For the reasons stated herein, CenturyTel respectfully submits that these objectives are achieved with Commission action consistent with these Comments. Accordingly, a grant of CenturyTel’s requested confirmations, clarifications and modifications as requested herein will serve the public interest.⁵

A. Issue 4 – Establishment of the Point of Interconnection

Although CenturyTel does not believe its position on Issue 4 goes “beyond” the

⁵ To reiterate, although this filing addresses the bases upon which the resolution of certain issues addressed within the *AD* should be confirmed, clarified and/or modified, nothing in this filing should be construed as limiting the entire bases provided in the *CenturyTel Brief* and *CenturyTel Reply Brief* as to why CenturyTel’s resolution of the issues should be adopted.

requirements of “what is required or permitted by section 251(c)(2)” (*AD*, 9), CenturyTel generally supports the language that the ALJ has crafted to resolve this issue regarding the establishment of the location between Sprint and CenturyTel where the Parties will exchange local traffic, *i.e.*, the Point of Interconnection (“POI”). First, CenturyTel agrees with the ALJ that her language requires that any POI must be within the network of CenturyTel. (*AD*, 10 (“This language is intended to allow Sprint to propose a POI *at any point on CenturyTel’s network. . .*”)) (emphasis added)) This objective is consistent with the requirements of 47 U.S.C. 251(c)(2).⁶ Second, the ALJ is correct in noting that the proposed language does not “preclude multiple POIs if required by technical and operational constraints.” (*AD*, 10) As CenturyTel has indicated in this proceeding, there is no basis to believe that a “single POI per LATA” (which was Sprint’s primary argument on Issue 4) has any basis in fact or law as applied to CenturyTel.⁷ Finally, the ALJ is also correct that the language “is not intended to require CenturyTel to provide interconnection service to Sprint that is superior to the service it provides to itself or other carriers.” (*Id.*) This finding is consistent with applicable law.⁸ Accordingly, CenturyTel requests that the Commission, in its review of the *AD*, specifically affirm these three points.⁹

⁶ Section 251(c)(2)(B) states that the “duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network” is “at any technically feasible point *within* the carrier’s network.” 47 U.S.C. § 251(c)(2)(B)(emphasis added); *see also CenturyTel Opening Brief* at 13-15; *CenturyTel Reply Brief* at 13, 16-17.

⁷ *See CenturyTel Opening Brief*, 15-19; *CenturyTel Reply Brief*, 12-13, 14-15, 16 fn.20.

⁸ In fact, this reference to the inability to require “superior” forms of interconnection is derived from Section 251(c)(2)(C) of the Act. *See* 47 U.S.C. § 251(c)(2)(C)(The “duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network” must also be such that it “is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.”) Section 251(c)(2)(C) has properly been interpreted by the courts in a manner that rejects any notion by the FCC that a superior form of interconnection could be mandated of an Incumbent Local Exchange Carrier (“ILEC”) like CenturyTel. *See Iowa Utilities Bd. v. F.C.C.*, 120 F.3d 753, 813 (8th Cir. 1997) (“*IUB I*”); and *Iowa Utilities Board v. Federal Communications Commission*, 219 F.3d 744,758 (8th Cir. 2000) (“*IUB II*”); *see also CenturyTel Brief*, 14, 20-21; *CenturyTel Reply Brief*, 13, 15, 16-18.

⁹ While the ALJ referenced the concept of LATA in her discussion (*AD*, 9, 10 (Section 2.2.2)), the fact that the POIs must be within the CenturyTel network, a point the ALJ emphatically made clear at least in the context of direct

At the same time, however, CenturyTel also requests that the Commission clarify references to “technical feasibility” and “technical and operational constraints” as those phrases are used within the *AD*. (*AD*, 10)¹⁰ Thus, while the POI must be at a technically feasible location within CenturyTel’s ILEC network, the phrases used by the ALJ cannot and should not suggest that the concept of “technical feasibility” can somehow trump the equally valid and companion concept of no more than “equal in quality” that the ALJ preserved when she acknowledged that there can be *no* obligation imposed upon CenturyTel that would require CenturyTel to provide to Sprint a superior form of interconnection. Any such obligation, in turn, would go beyond the requirements of law. Likewise, the phrases -- “technical feasibility” and “technical and operational constraints” -- cannot be construed to suggest that the POI can be located at any place

other than within the CenturyTel network. In fact, the ALJ made that point clear at least in the context of a direct interconnection. (*AD*, 10 fn. 50)¹¹ As used by the ALJ and based on the entirety of her reasoning, the only logical conclusion to be reached from these phrases is that they are intended to address certain of the multiple (but yet companion) Section 251(c)(2) factors that must be considered when addressing the types of POIs that Sprint may request. Absent this

connections (*Id.*, 10 fn. 50), can only be construed as a reference to a geographic area within which the CenturyTel network should be reviewed since it is clear that CenturyTel operates in multiple LATAs. See *CenturyTel/12, Watkins/12*. Absent this conclusion, the Commission will need to resolve the fact that Sprint’s reliance on its “single POI per LATA” theory has no basis in fact, law or public policy (see *CenturyTel Opening Brief*, 15-19; *CenturyTel Reply Brief*, 12-13, 14-15, 16 fn. 20), as well as the fact that a “LATA” is not applicable to CenturyTel at all since it is only “associated” with a LATA. See *CenturyTel Opening Brief*, 18 fn. 23.

¹⁰ Also on page 10 of the *AD*, at footnote 51 the ALJ states: “The parties indicate disagreement over section 3.3.2.2.1, but did not discuss this section in testimony or briefs.” The reason that this section of the Interconnection Agreement was not addressed by the Parties is because the specific CenturyTel service area for which Sprint seeks interconnection is not served by a CenturyTel tandem. However, in the event that a third party carrier seeks to adopt the Interconnection Agreement pursuant to 47 U.S.C. § 252(i) and to use its terms in a CenturyTel service area in Oregon in which CenturyTel does provide tandem switching, the provisions of section 3.3.2.2.1, as set forth on page 13 of the Updated DPL attached to the *AD*, would be relevant, and therefore, should be included in the conforming Interconnection Agreement.

¹¹ As discussed in Section II.D, *infra*, the establishment of a POI is also required in an indirect form of interconnection.

recognition, the ALJ's discussion of the entirety of the scope of Section 251(c)(2) of the Act on page 10 of the *AD* would be superfluous. However, it is the entirety of her discussion that properly addresses the full scope and proper application of *all* elements of Section 251(c)(2) of the Act.

To this end, CenturyTel's concern over the phrases "technical feasibility" and "technical and operational constraints" being improperly parsed by Sprint is not misplaced. Sprint has already argued that the only consideration regarding the POI that should be considered is "technical feasibility." (*CenturyTel Opening Brief*, 23-24; *CenturyTel Reply Brief*, 16-18) Although the ALJ effectively rejected that contention in her discussion of Issue 4 and specifically on page 10 of the *AD*, Sprint may be emboldened by the reference to "technical feasibility" and to "technical and operational constraints" to suggest that its arguments regarding Section 251(c)(2)(B) were agreed to by the ALJ in the *AD*.¹² Although anyone can argue that it is technically feasible to establish a missing network link within the ILEC network if the cost, economics or existing network of the ILEC are ignored (and thus a superior form of interconnection results), the ALJ rejected this notion. (*AD*, 10)

Accordingly, CenturyTel requests that any parsing of Section 251(c)(2)'s requirements be confirmed by the Commission and that the phrases "technical feasibility" and "technical and operational constraints" within the *AD* not be permitted to be misinterpreted or misused to suggest otherwise. Absent such Commission action, the Parties may find themselves in a dispute in connection with the preparation of the conforming ICA, requiring the Commission to address this issue at that time. In CenturyTel's view, however, the Commission's explicit confirmation

¹² As noted by CenturyTel, any efforts by Sprint to parse the language of Section 251(c)(2) to suggest that "technical feasibility" is the only consideration with respect to the POI has already been thoroughly rejected by two other state commission is companion arbitrations to this proceeding between Sprint and CenturyTel. *See CenturyTel Reply Brief*, 17-18.

of the *AD* in this regard will avoid the waste of Commission's and the Parties' resources to address this matter at a later time. Without question, these results are in the public interest.

Finally, and while also addressed by CenturyTel in its comments on Issue 7 below, CenturyTel requests that the Commission clarify the statement made by the ALJ in footnote 49 on page 10 of the *AD*.¹³ In that footnote, the ALJ states that, in reference to Sections 2.2.2 through 2.3.2.1 and 3.3.2.1 through 3.3.2.2.1 as drafted by the ALJ: "I also find that, given my resolution of Issue 7, these provisions should apply to direct interconnection only and not both direct and indirect interconnection as CenturyTel proposes." (*Id.*, 10, fn. 49) CenturyTel is concerned that this statement may be misinterpreted to suggest that the existence of the POI does not also apply separately to an indirect interconnection. Any such misinterpretation cannot stand and the Commission can take action now to avoid it.

CenturyTel has demonstrated that the concept of POI applies regardless of whether the interconnection is a form of indirect (*i.e.*, third party tandem-based, multi-jurisdictional and carrier trunks) or direct (*i.e.*, trunks dedicated to the connecting carrier's traffic) interconnection.¹⁴ Footnote 49 does not suggest anything contrary to that fact.

Thus, CenturyTel respectfully requests that the Commission confirm that footnote 49 is intended only to state the fact that any conforming ICA provisions regarding direct interconnection are separate from the other provisions that will be required for application to indirect forms of interconnection. Subject to the Commission also adopting the clarification of Issue 7 being requested by CenturyTel (*see* Section II.D, *infra*), CenturyTel can accept this

¹³ The ALJ's reference to only direct interconnection in footnote 50 (*AD*, 10 fn. 50) would also need to be altered for the same reasons discussed herein and in Section II.D of these Comments.

¹⁴ *See CenturyTel Opening Brief* at 14-15; *CenturyTel Reply Brief* at 14; *see also In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Radio Service Providers, First Report and Order*, CC Docket Nos. 96-98 and 95-185, FCC 96-325, released August 8, 1996) at ¶ 553; *CenturyTel/12, Watkins/8-9, 25-26; CenturyTel/15, Watkins/8*).

interpretation of footnote 49. Absent that conclusion, there would be no basis for suggesting that some form of indirect interconnection under Section 251(a) can write out of the law the fact that the interconnection must occur within the ILEC network pursuant to Section 251(c)(2) (*CenturyTel Reply Brief*, 13-14) or the fact that Section 51.701(c) of the rules of the Federal Communications Commission (“FCC”) establishes the framework for transport of traffic subject to reciprocal compensation and the obligations of both Sprint and CenturyTel based on the “interconnection point” which is the POI.

(c) *Transport*. For purposes of this subpart, transport is the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act *from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.*

47 C.F.R. § 51.701 (c) (emphasis added)¹⁵

In the alternative, and assuming the ALJ intended footnote 49 to suggest that the POI concept is not applicable to indirect interconnection, then CenturyTel requests that footnote 49 be eliminated by the Commission in its final order, and that the Commission confirm that the framework for reciprocal compensation traffic including the concept of a POI applies regardless of whether the Parties are connected indirectly or directly. Absent that result, the Commission would be endorsing an improper statutory interpretation that, in the context of an indirect form of interconnection, would suggest that Section 251(a) and Section 251(b) can be read to suggest that requirements of Section 251(c)(2) of the Act regarding the establishment of a POI may be

¹⁵ Cited by the ALJ in Issue 7, the *Atlas Telephone Company v. Oklahoma Corporation Commission*, 400 F.3d 1256 (10th Cir. 2005) (“*Atlas/Oklahoma Corporation Commission*”) supports this conclusion. The court stated that the “obligation to establish reciprocal compensation arrangements with the CMRS provider in the instant case is not impacted by the presence or absence of a direct connection.” 400 F.3d at 1268. Thus, since the reciprocal compensation framework applies to local competitive traffic exchange regardless of whether the Parties are connected directly or indirectly, the FCC’s rules applicable to the exchange of reciprocal compensation traffic must also apply. Accordingly, the POI requirements established in Section 51.701(c) of the FCC’s rules is not altered based on whether the arrangement is a form of direct or indirect interconnection, and neither is the obligation to establish a proper POI within that framework.

ignored or that CenturyTel may be required to provision a form of interconnection beyond any notion of no more than equal.¹⁶ Such result cannot stand.

B. Issue 5 – Separate Facility Charges

With respect to Issue 5, the ALJ stated that 47 C.F.R. § 51.709(b) allows the institution of a separate facility charge in addition to the reciprocal compensation arrangement – the agreed-to use of “bill and keep” – between the Parties. (*AD*, 11-12) However, in making this ruling, the ALJ also made clear that CenturyTel “should *only* be responsible for the proportional share for interconnection facilities *between CenturyTel’s network and its exchange boundary. Sprint must pay 100 percent of the cost of interconnection facilities from CenturyTel’s exchange boundary to Sprint’s point of presence or switch.*” (*Id.*, 12 (emphasis added))

Based on this limitation of the additional facility charge, and while CenturyTel believes that the ALJ’s conclusion is based upon an incorrect interpretation of Section 51.709(b) and the agreed-to bill and keep arrangement,¹⁷ CenturyTel will agree to accept this resolution provided it is not changed by the Commission in its review of the *AD*. As a result of the ALJ’s resolution, all of the facilities to be “shared” would be within the CenturyTel’s incumbent network area. Thus, there would be no basis for suggesting that Issue 5 results in the potential for a “superior” form of interconnection that would require CenturyTel to expand its network payment responsibility beyond the ILEC network area it operates today, a suggestion amply demonstrated

¹⁶ Basic principles of statutory construction require the statutory enactments be read and interpreted *in pari materia*. See *Department of Water and Power of City of Los Angeles v. Bonneville Power Admin.*, 759 F.2d 684, 693 n.13 & 695 (9th Cir. 1985) (stating that “statutes dealing with the same subject must be read together and harmonized where possible” and reading four enabling statutes *in pari materia* to determine scope of agency’s statutory authority (citing 2A *Sutherland on Statutory Construction* § 52.02)); *Loui v. Merit Systems Protection Bd.*, 25 F.3d 1011, 1013 (Fed. Cir. 1994) (stating that since two statutes “relate to the same subject matter, they must be construed to be consistent with each other if at all possible”).

¹⁷ The ALJ erred in suggesting that CenturyTel arguments “confuse” Section 251(b)(5) transport with the interconnection facilities. See *AD*, 11. CenturyTel has amply demonstrated otherwise, including why its position is consistent with the specific wording of the applicable FCC rules. See *CenturyTel Opening Brief*, 29-32; *CenturyTel Reply Brief*, 21-22.

by CenturyTel to be unlawful. (*CenturyTel Opening Brief*, 27-29; *CenturyTel Reply Brief*, 21)

C. Issue 6: Rates for Direct Interconnection Facilities

CenturyTel respectfully requests that the Commission modify the *AD* with respect to Issue 6.¹⁸ Although the ALJ relied upon the decision in the Eighth Circuit in *Southwestern Bell Telephone, L.P., doing business as SBC Missouri v. Missouri Public Service Commission, et al.*, No. 06-3701 (*slip opinion*) (8th Cir., June 20, 2008) (“*SBC Missouri*”) (*AD*, 13), her conclusion that TELRIC pricing principles should apply is misplaced and goes beyond the scope of the conclusions in that decision.

CenturyTel submits that the proper construction of the discussion of pricing of entrance facilities in *SBC Missouri* is that the Court was referencing the factual finding made by the Missouri Commission that TELRIC pricing was appropriate in that case. (*SBC Missouri*, 12) This conclusion is confirmed by the Court’s citation, with approval, of *Illinois Bell Telephone Co. v. Box*, Nos. 07-3557, 07-3683, 2008 WL 2151573 (7th Cir., May 23, 2007) (“*Illinois Bell*”). (*SBC Missouri*, 12 citing *Illinois Bell*)

In *Illinois Bell*, the Seventh Circuit Court of Appeals stated the following: “What the FCC said in ¶140 is that ILECs must allow use of entrance facilities for interconnection at ‘cost-based rates.’ TELRIC is a cost-based rate, *though not the only one.*” (*Illinois Bell* at 2-3 (emphasis added)) Thus, CenturyTel respectfully submits that the proper interpretation of *SBC Missouri*, in conjunction with its reliance on *Illinois Bell*, is that the Commission has the authority to determine the pricing standard that is required with respect to “cost-based rates” as used in ¶140 of the *TRRO*. In other words, *SBC Missouri* and *Illinois Bell*, at most, confirm that

¹⁸ As indicated in the *AD* (*AD*, 12-13, and fn. 66), the resolution of Issue 6 revolves around the proper interpretation of the entirety of the FCC decision in *In the Matter of Unbundled Access to Network Elements, Order on Remand*, WC Docket No. 04-313, FCC 04-290, 20 FCC Rcd 2533 (2005) (the “*TRRO*”) and whether, in light of the *TRRO*, the FCC’s Total Element Long Incremental Cost” (“*TELRIC*”) pricing principles should apply to direct interconnection facilities (*i.e.*, entrance facilities).

a state commission may utilize any reasonable cost-based rate approach, and a state commission is not bound only to use TELRIC.

With the foregoing as background, absent reversal on Issue 6, the *AD* presents an unanswered and unexplained quandary – how to reconcile the statements contained in ¶140 of the *TRRO* with the conclusions reached by the FCC in the context of ¶138 that entrance facilities are not impaired – an issue specifically raised by CenturyTel but left unaddressed by the *AD*. (*CenturyTel Opening Brief*, 35; *CenturyTel Reply Brief*, 23) Reliance on an application of TELRIC for entrance facilities presumably used for Section 251(c)(2) purposes would illogically imply that the FCC’s *removal* of entrance facilities from impairment pricing treatment (*i.e.*, TELRIC) in one sentence within the *TRRO* was subsequently reinstated in another statement merely two paragraphs later. Such a result would render the FCC’s conclusions in the *TRRO* meaningless. CenturyTel respectfully suggests that this tension arising from the conclusion reached on Issue 6 in the *AD* is telling -- the contradiction imposed upon the FCC’s *TRRO* cannot rationally be explained.

This tension and contradiction, however, can be avoided by adopting CenturyTel’s position regarding Issue 6, *i.e.*, direct interconnection facilities (which are entrance facilities) should be priced at the established, prevailing rates in Oregon which, in this instance, *are* the CenturyTel intrastate access rates. Accordingly, CenturyTel respectfully requests that the Commission, in its review of the *AD*, modify the *AD* on Issue 6 and adopt CenturyTel’s position with regard thereto.

D. Issue 7 – Indirect Forms of Interconnection

In the *AD*, and contrary to CenturyTel’s position, the ALJ decided not to require the Parties to migrate from an indirect form of interconnection (which, as indicated above, consists

of interconnection through a third party tandem provider over common trunks carrying multiple jurisdictional traffic) to a direct form of interconnection (interconnection that uses dedicated trunks to the POI for the requesting carrier's traffic regardless of whether those trunks are deployed by the carrier or a third party or even the ILEC). (*AD*, 14-15) Although the ALJ's reasoning is flawed,¹⁹ CenturyTel is willing to abide by the ultimate conclusion reached by the ALJ provided that the outcome of the discussion provided in the *AD* is consistent with the conclusions reached on Issue 4 and Issue 5.

As noted in Section II.A, *supra*, the ALJ properly concluded that CenturyTel could not be required to provide a superior form of interconnection to Sprint. (*AD*, 10) Similarly, consistent with the no more than equal criterion in Section 251(c)(2)(C), the ALJ ruled in Issue 5 that any financial obligation with respect to the additional facility charge would end at the CenturyTel's exchange boundary. (*Id.*, 12) In both of these instances, CenturyTel has no financial responsibility for facilities or the delivery of traffic beyond its ILEC network. Therefore, Issue 7 must be resolved in a congruent manner. With respect to indirect interconnection arrangements (which would involve transit using a third party's network beyond the CenturyTel ILEC network), CenturyTel's financial obligations, at the farthest point, extend only to the CenturyTel

¹⁹ The ALJ relied upon a reading of both *WWC License, LLC v. Public Service Commission*, 459 F.3d 880 (8th Cir. 2006) ("*WWC License*") and *Atlas/Oklahoma Corporation Commission* that misses the fact that the issues being addressed before the courts are not the issues here, and the courts' respective conclusions in those two cases are not inconsistent with and do not preclude CenturyTel's position on Issue 7 in this proceeding. In fact, those court decisions do not address the fundamental issue contained in Issue 7. In *WWC License*, the issue being addressed by the court was whether the carriers' respective dialing parity obligations under Section 251(b)(3) were altered based on a direct or indirect interconnection arrangement. As the *WWC License* Court stated: "We note also that the structure of the Act suggests that we should reject a direct connection *as a condition on local dialing parity*." (459 F.3d at 893 (emphasis added)) The issue in *Atlas/Oklahoma Corporation Commission* was whether the obligation to enter into reciprocal compensation obligations under Section 251(b)(5) was altered based on whether the requesting carrier was directly or indirectly connected. The Court's discussion was made as the preface to its statement that the "obligation to establish reciprocal compensation arrangements with the CMRS provider in the instant case is not impacted by the presence or absence of a direct connection." (*Atlas/Oklahoma Corporation Commission*, 400 F.3d at 1268) As the Commission is aware, however, there are no dialing parity or reciprocal compensation issues presented in this proceeding.

exchange boundary for reciprocal compensation traffic exchanged by the Parties through such an arrangement.²⁰ Accordingly, CenturyTel requests that the Commission confirm that fact in its final order.

CenturyTel believes that this confirmation will avoid unnecessary confusion and is proper. To that end, the confirmation that CenturyTel seeks is consistent with the ALJ's statement that "the Tenth Circuit Court of Appeals recognized the distinction between requiring direct interconnection to only occur on the incumbent LEC's network and requiring that the exchange of traffic occur solely on the incumbent LEC's network" (*AD*, 15 (footnote omitted)) since the confirmation that CenturyTel seeks would end the financial responsibility of CenturyTel for transit-related traffic at a point at the edge of the CenturyTel network.²¹ Likewise, the confirmation sought by CenturyTel would also be consistent from a practical perspective with the ALJ's findings regarding Issues 4 and 5. Thus, CenturyTel seeks confirmation from the Commission with respect to the disposition of Issue 7 in the *AD* that Sprint is the Party responsible for *any and all* transit-related costs for traffic transport beyond a point on the CenturyTel network.

²⁰ As already indicated in its discussion in Issue 4, the ALJ's language regarding the POI cannot be interpreted to mean that the POI concept does not apply to an indirect form of interconnection. If the ALJ's discussion was intended to suggest this approach, then that discussion cannot be reconciled with the fact that the FCC's rules regarding reciprocal compensation – 47 C.F.R. § 51.701(c) – specifically requires the POI (or as the rule states an "interconnection point") as does 47 U.S.C. § 251(c)(2)(B), and as confirmed in *Atlas/Oklahoma Corporation Commission* these obligations do not differ based on the form of interconnection (*i.e.*, direct or indirect). *See* fn. 15, *supra*. These facts are not changed by the form of interconnection that is used, and Sprint (and the ALJ) point to nothing to suggest otherwise. *See CenturyTel Opening Brief*, 14-15; *CenturyTel Reply Brief*, 14. Any other conclusion would, in effect, create a purported right for Sprint as provided for in the *AD* that is more burdensome to CenturyTel than the most onerous interconnection provisions found in Section 251(c). Such a result is avoided, however, with the confirmation requested by CenturyTel with respect to the practical effects of the ALJ's ruling with respect to Issue 7.

²¹ While CenturyTel was willing to share the costs of transit up to a DS1 level of traffic since such costs would be minimal, this willingness was and is withdrawn with respect to the way that the ALJ's discussion would permit Sprint to utilize an indirect third party transit arrangement indefinitely. Of course, if the Commission were to reconsider and modify the resolution of Issue 7 in its entirety as would otherwise be required to be consistent with applicable rules, law and public policy, and thereby adopted CenturyTel's position on Issue 7, CenturyTel's position on its willingness to absorb its portion of the transit costs up to a DS1 level of traffic would remain.

In the alternative, and absent this requested confirmation, the Commission will need to reconcile the legal underpinnings for the ALJ's disposition of Issue 7 with (a) the need to establish a POI,²² (b) the fact that Section 251(a) provides no standards for interconnection or rights for either Party to dictate interconnection terms to the other Party,²³ (c) the reliance on a service – transit – that is not even an interconnection service under the Act as confirmed by the FCC,²⁴ (d) the imposition of a superior form of interconnection that runs afoul of Section 251(c)(2)(C),²⁵ (e) the anti-competitive results that arise from the indefinite use of an indirect form of interconnection,²⁶ (f) the fact that Sprint has already voluntarily agreed to the use of the DS1 standard for migration to a direct interconnection arrangement in Oregon,²⁷ and (g) the fact that the CenturyTel DS1 proposal is the *only* record-based proposal before the Commission that complies with the law and rational public policy. CenturyTel respectfully submits that no such reconciliation can be made, and therefore the Commission should reverse the ALJ's Decision regarding Issue 7 and adopt CenturyTel's position with respect to such Issue.²⁸

E. Issue 14 – Rates for NRCs

While reasonable people may differ on how to implement a forward-looking costing methodology with respect to NRCs, the ALJ found that the NRCs should be based on TELRIC pricing, relying on 47 C.F.R. § 51.505(e). (*AD*, 20) Likewise, while CenturyTel disagrees that its proposed rates were not already justified in the record, CenturyTel will agree to submit a

²² See *CenturyTel Opening Brief*, 14-15; *CenturyTel Reply Brief*, 14.

²³ See *CenturyTel Opening Brief*, 38-40.

²⁴ See *CenturyTel Reply Brief*, 24-25.

²⁵ See *CenturyTel Opening Brief*, 40.

²⁶ See *id.* 41.

²⁷ See *id.*, 41-42.

²⁸ Both the Michigan Commission and the Arkansas Commission have agreed with CenturyTel with respect to the companion issue in those states that relates to Issue 7 in this proceeding. See *id.*, 42; *CenturyTel Reply Brief*, 26-27.

revised cost study in light of the fact that the rates are, as the ALJ indicated, “interim” rates subject to true-up. (*Id.*, 20)

However, CenturyTel requests that the Commission modify the ALJ’s timing of the requirement to submit the cost study from 60 days of “the date of this decision” (*Id.*, 24 (Ordering Clause 3)) to 180 days from the date of the entry of the Commission’s final order in this proceeding. CenturyTel has evaluated the amount of time and effort necessary to prepare and file a new TELRIC study, and has determined that the *AD*’s 60-day time frame, of which only 47 days remain as of the date of filing these Comments, will not provide sufficient time for CenturyTel to accomplish this task. The filing of a new NRC-focused TELRIC study requires CenturyTel to confirm the availability of a cost consultant, design its cost model, research a multitude of cost information, populate the model, and review the model to identify and resolve any errors or miscalculations in order to ensure that the NRC study is proper.

Thus, the *AD*’s 60-day deadline for the submission of the NRC TELRIC study places an undue burden on CenturyTel to complete an important and complicated project within a very short time frame. Consequently, CenturyTel respectfully requests that the Commission reconsider the ALJ recommendation in this regard and grant CenturyTel 180 days from the entry of the Commission’s final order in this proceeding to submit its NRC-focused TELRIC study to the Commission.

Sprint will not be harmed by the extension. The ALJ has already properly concluded that the NRC rates at issue in this case will be subject to true-up upon Commission approval of CenturyTel’s study. At the same time, the public interest will be served by affording CenturyTel an appropriate and sufficient amount of time to develop a cost study for the limited number of NRC rates at issue in this proceeding, thus improving the quality of the study and providing the

Commission a better developed record upon which it can determine the levels of the permanent NRC rates. Accordingly, the grant of CenturyTel's request to modify the *AD* in this regard with respect to Issue 14 would serve the public interest.

III. CONCLUSION

For the reasons provided herein, CenturyTel respectfully requests that the Commission: (1) affirm the findings and conclusions reached with respect to the *Category I Issues* (Issues 2, 8, 13, 14 (with respect to the right to assess the individual Non-Recurring Charges at issue in this proceeding), and 16); (2) revisit the resolution of the *Category II Issues* (Issues 1, 10 and 15 based on the review of the CenturyTel's position stated in the *CenturyTel Opening Brief* and *CenturyTel Reply Brief*); and (3) confirm, clarify and/or modify, as set forth above, the statements and conclusions reached with respect to the *Category III Issues* (Issues 4, 5, 6, 7, and 14 (regarding the timing of the submission by CenturyTel of a revised cost study to support permanent NRC rates)).

Dated this 15th day of September, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have this day sent the attached Comments on Arbitrator's Decision of CenturyTel of Oregon, Inc. by electronic mail and Federal Express to the following:

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I further certify that I have this day sent the attached Comments on Arbitrator's Decision of CenturyTel of Oregon, Inc. by the delivery methods indicated below and electronic mail pursuant to OAR 860-013-0070, to the following Parties or attorneys of Parties:

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