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July 23, 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 – Reply Brief of CenturyTel of Oregon, Inc.

Dear Sir/Madam:

Enclosed are the original and five copies of the Reply Brief of CenturyTel of Oregon, Inc. and Certificate of Service for the above-referenced matter.

Sincerely,

RICHARD A. FINNIGAN

RAF/km
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)
James Overcash (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.

REPLY BRIEF OF

CENTURYTEL OF OREGON, INC.

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Date: July 23, 2008

TABLE OF CONTENTS

I. INTRODUCTION

In accordance with the Prehearing Conference Report issued by Administrative Law Judge, Sarah K. Wallace (the "ALJ"), on April 22, 2008, the due date for reply briefs was established as July 23, 2008. This Reply Brief is submitted on behalf of CenturyTel of Oregon, Inc. ("CenturyTel") in response to the Initial Brief of Sprint Communications Company L.P. ("Sprint"). It is CenturyTel's understanding that by affording the parties the opportunity to submit reply briefs in this proceeding, the ALJ intended that in such reply brief each party would limit its arguments presented to those addressing the positions of the other party as set forth in such party's initial brief. As such, in this Reply Brief, CenturyTel will present legal authorities and legal arguments that address the positions presented by Sprint in its Initial Brief. CenturyTel's expectation is that the scope of Sprint's Reply Brief will be similarly so limited.

In order to provide the ALJ with a convenient point of reference to the competing provisions of the parties' proposed Interconnection Agreement, CenturyTel attaches to this Reply Brief as Attachment One a revised and updated Disputed Points List ("Updated DPL") that sets forth those Issues that have been resolved through the parties' negotiations, the agreed upon language that disposes of such Issues, and the language of the relevant sections of the Interconnection Agreement that are associated with the Issues that remain in dispute.[1]

In CenturyTel's Initial Brief (the "*CenturyTel Brief*"), CenturyTel advised the ALJ that, as the record reflects, this proceeding is one of four companion arbitrations involving Sprint and CenturyTel.[2] Prior to the filing of the *CenturyTel Brief,* one of the companion arbitrations had

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[1] Attachment One, the Updated DPL, is not provided by CenturyTel for advocacy purposes, but rather as a convenient point of reference for the use of the ALJ. In the event, and to the extent that Sprint takes any exception to the contents of the Updated DPL, CenturyTel will work with Sprint to resolve any such exceptions in order that the Updated DPL will serve as a jointly filed document.

[2] *See CenturyTel Brief,* fns. 2, 5.

been completed and a decision had been entered by the Michigan Public Service Commission (the "MPSC"). Copies of the Recommended Decision of the Michigan Arbitration Panel and the Decision of the MPSC were attached to the *CenturyTel Brief* as Exhibits A and B, respectively.[3] Subsequent to the filing of the *CenturyTel Brief,* the Order of Presiding Officer Arthur H. Stuenkel, issued pursuant to delegation of the Arkansas Public Service Commission (the "APSC"), was entered on July 18, 2008 (the *"Arkansas Order"*). A copy of the *Arkansas Order* is attached to this Reply Brief as Attachment Two.[4] CenturyTel will refer to the *Arkansas Order* in the presentation of its positions with regard to the issues that have not been resolved by the parties in this proceeding.

II. RESOLVED ISSUES

In the *CenturyTel Brief,* Issues 3, 9, 11 and 12 were identified as having been resolved by the parties (the "Resolved Issues"). In Sprint's Initial Post Hearing Brief (the "*Sprint Brief*"), Sprint concurs that the parties have reached agreement with regard to the Resolved Issues. (*Sprint Brief,* 3) The Interconnection Agreement language pertaining to each of the Resolved Issues is set forth in the *CenturyTel Brief,*[5] and Sprint has not notified CenturyTel that it takes any exception to such language.

III. ARGUMENT

For the reasons stated herein, CenturyTel respectfully requests that the ALJ adopt CenturyTel's position on each disputed issue in its entirety. Through its evidence and post hearing submissions (including the *CenturyTel Brief,* this Reply Brief and the Updated DPL),

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[3] *See, id.*

[4] According to the Designation Order entered in Docket No. 08-031-U on February 29, 2008, the parties have ten (10) days following the entry of the *Arkansas Order* to file objections thereto, and the Designation Order sets forth procedures that the APSC will follow in the event that objections are filed.

[5] *See, CenturyTel Brief,* 12-13 (Issue 3); 48 (Issue 9); 51 (Issue 11); and 52 (Issue 12).

CenturyTel has amply demonstrated that its positions are consistent with the applicable facts, law, rational public policy and common sense. Contrary to this effort, however, Sprint continues to play "cat and mouse" with many issues.

For example, while Sprint touts various state commission decisions that do not involve the facts or the parties at issue in this proceeding (and thus are not relevant to the ALJ's consideration of the issues here), Sprint has *failed to even reference* the existence of the MPSC decision that resolved a strikingly similar set of issue and facts presented by the same parties to this proceeding. Similarly, rather than fully addressing the record in the *Sprint Brief*, Sprint has elected to avoid addressing those significant and unquestionably controlling points raised in the CenturyTel testimonies that run contrary to Sprint's theories and positions.

CenturyTel trusts that the ALJ will recognize Sprint's questionable efforts for what they demonstrate – Sprint's strained effort to convince the ALJ that facts, law, and public policy support Sprint's views concerning the unresolved issues. Due to Sprint's "cat and mouse" approach, however, CenturyTel fully expects that Sprint will, *within its reply brief and for the first time*, provide new legal arguments in support of its positions even though CenturyTel would not have an opportunity to respond to thereto. Accordingly, CenturyTel respectfully requests that the ALJ be skeptical of any newly articulated legal positions presented by Sprint. Even though CenturyTel is confident as to the soundness of its legal, factual, and public policy positions taken in this proceeding, Sprint should not be rewarded for any conduct that would preclude CenturyTel's opportunity to respond to Sprint's legal arguments. In contrast to Sprint's approach, however, CenturyTel made every effort in the *CenturyTel Brief* to address the significant and potentially decision-affecting aspects of Sprint's positions. As a result, it should come as no surprise that many aspects of this Reply Brief state that the Sprint's position has

already been addressed within the *CenturyTel Brief*. Thus, CenturyTel respectfully requests that, based on the record, governing law, rational public policy and common sense that have been demonstrated through CenturyTel's positions and filings herein, the ALJ adopt CenturyTel's position on all unresolved issues in this proceeding.

Issue No. 1:

Issue No. 1. [Sprint's Formulation] Should disputes under the Interconnection Agreement be submitted to the Commission or to commercial arbitration?

Related Agreement Provisions: Article III, §§ 20.3, 20.4, and 20.5.

Issue No. 1. [CenturyTel's Formulation] Should the dispute resolution procedures, including commercial arbitration, be included in the Agreement?

Related Agreement Provisions: Article III, §§ 20.1, 20.1.1, 20.1.2, 20.2, 20.3, 20.3.1 and 20.3.2.

CenturyTel's Proposed Resolution: For the reasons set forth in the *CenturyTel Brief* and herein, CenturyTel submits that where the Commission has declined jurisdiction or does not have subject matter jurisdiction over a dispute, commercial arbitration should be required.

Initially, CenturyTel notes that the *innuendo* in the *Sprint Brief* that "CenturyTel's position and proposed language varied from the language provided to Sprint in negotiations" is unfounded. (*Sprint Brief*, 5) CenturyTel's position and proposed language for the Interconnection Agreement relative to Issue 1 were set forth in CenturyTel's Disputed Points List ("DPL") attached to the Response as Exhibit 1, and CenturyTel's advocacy on this Issue has been consistent thereafter. (CenturyTel/1, Miller/7-12; CenturyTel/14, Miller/3-6) In any event, the continuing dialogue between the parties regarding Issue 1 has limited the scope of disagreement on this issue as described in the *CenturyTel Brief*.[6] Setting aside Sprint's *innuendo*, Sprint concurs with CenturyTel's statements regarding the status of Issue 1 that the

[6] *See, CenturyTel Brief*, 5-6.

only remaining question is the dispute resolution procedure that is to be applied in the event that the Commission either declines jurisdiction or it is determined that the Commission lacks subject matter jurisdiction over a particular dispute.[7] (*CenturyTel Brief,* 5-6; *Sprint Brief,* 8)

Relying on the provisions of 47 U.S.C. § 252(e)(5), Sprint's position presumes that if a state commission does not exercise jurisdiction, either party may seek resolution by the FCC. (*Sprint Brief,* 7) This position reflects an incorrect reading of Section 252(e)(5).

Section 252(e)(5) provides that "[i]f a State commission *fails to act to carry out its responsibility* under this section . . .", then the FCC shall preempt the State commission's jurisdiction and "shall assume the responsibility of the State commission." (47 U.S.C. § 252(e)(5)(emphasis added)) This distinction was recognized by the MPSC in the *Michigan Commission Decision*: "This section [252(e)(5)] does not apply to matters where the Commission lacks jurisdiction."[8] However, the FCC's assumption of jurisdiction when a State commission "fails to act" is not guaranteed. Rather, as CenturyTel has noted (*CenturyTel Brief,* 7), the FCC has ruled that jurisdiction over disputes concerning payments pursuant to an interconnection agreement will not be accepted by the FCC.[9] Thus, Section 252(e)(5) cannot be

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[7] Sprint did not address the matter of the language of Article III, § 20.5 in its discussion of Issue 1. CenturyTel refers the ALJ to the *CenturyTel Brief,* 6, fn. 4 for a statement of its position regarding the wording of this section of the Interconnection Agreement wherein CenturyTel stated:

> While CenturyTel does not oppose the wording of § 20.5 as set forth on page 6 of Mr. Burt's Reply Testimony, CenturyTel requests the addition of the following sentence to such section: "The Parties shall equally split the fees of the arbitration and the arbitrator." *See,* Exhibit C to Sprint's Petition, p. 4. Mr. Burt does not present any basis for opposing the addition of the foregoing sentence to § 20.5. CenturyTel submits that this additional sentence is necessary to provide the parties and an arbitrator of any dispute between Sprint and CenturyTel with a clear understanding of the division of the fees incurred in an arbitration proceeding. CenturyTel also submits that the equal division of such fees is fair and reasonable and should be approved by the Administrative Law Judge.

[8] *Michigan Commission* Decision,, 4.

[9] *In re Qwest Communications Corp v Farmers and Merchants Mutual Telephone Company*, FCC 07-175, 22 FCC Rcd 17,973; 2007 WL 28727554, ¶ 29 (rel'd October 2, 2007).

used to thwart a right of a party to seek commercial arbitration. Sprint's reliance on *Starpower*[10] does not change this conclusion. (*Sprint Brief,* 7)

Nothing in *Starpower* requires that disputes for which a state commission declines jurisdiction *must* be referred to the FCC for resolution (and Sprint does not so contend), nor does *Starpower* require adoption of Sprint's proposed language for Article III, § 20.3. Rather, *Starpower* stands for the proposition that a dispute arising under an interconnection agreement must, in the first instance, be presented to a State commission for resolution. That unremarkable assertion of seeking a state commission review of an interconnection dispute is what Sprint and CenturyTel *have already agreed to do.*

To be sure, the Commission is required to "resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement." (47 U.S.C. § 252(b)(4)(C)) As stated in the *Arkansas Order,* in accordance with the FCC's ruling in *Starpower,* "a state commission may compel commercial arbitration as a part of an interconnection agreement."[11]

Based on this guidance, and consistent with CenturyTel's position, requiring the Interconnection Agreement arising from this proceeding to provide that commercial arbitration shall be utilized by the parties in the event that the Commission does not have jurisdiction over a dispute: (1) is within the Commission's authority under § 252(b)(4)(C); (2) avoids the gaps in the FCC's jurisdiction; and (3) brings to the dispute resolution process all of the benefits customarily associated with arbitration. These conclusions are amply support by the record.

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[10] *In re Starpower Communications, LLC,* 15 FCC Rcd 11277 (2000).

[11] *Arkansas Order,* 2. *See also, Starpower,* ¶ 6, fn. 14 providing: "[P]arties may be bound by dispute resolution clauses in their interconnection agreement to seek relief in a particular fashion . . ."

For example, the benefits of compulsory arbitration of disputes arising pursuant to the Interconnection Agreement which are not resolved by the Commission have been thoroughly discussed by CenturyTel. (*CenturyTel Brief*, 6) Moreover, the language CenturyTel seeks to resolve Issue 1 mirrors the provisions in the interconnection agreement approved by the APSC between Windstream and Sprint,[12] other than change of the name references and substitution of "shall" for "may" in Article III, § § 20.3.1 and 20.3.2 of the parties' Interconnection Agreement. (*CenturyTel Brief*, 6-7 *citing* CenturyTel/1, Miller/8-9, Exhibits CenturyTel/2 and CenturyTel/3)

Sprint's citations to OAR 860-016-0050 and to *Sanderson v. Allstate Insurance Company*, 164 Or. App. 58, 989 P.2d 486 (1999) (*Sprint* Brief, 7-8) do not change these conclusions. OAR 860-016-0050 pertains to petitions to enforce interconnection agreements and sets forth the procedures that govern such proceedings before the Commission. These procedures are not applicable if the Commission declines jurisdiction. Consequently, Sprint's reference to OAR 860-016-0050 is not helpful to the ALJ's consideration of the remaining question regarding Issue 1 – whether compulsory arbitration language should be included in the Interconnection Agreement in the event that the Commission does not act to resolve a dispute that arises under the Interconnection Agreement. The same is true with respect to Sprint's reference to *Sanderson*.

Sprint cites to *Sanderson* for the proposition that "under Oregon law CenturyTel is not entitled to mandatory arbitration without Sprint's consent and a party cannot be compelled to undergo mandatory arbitration." (*Sprint Brief*, 8) *Sanderson* was decided based upon a claim that an Oregon statute (ORS 742.504), requiring the institution of an arbitration proceeding in an action by an insured against an underinsured motorist carrier, was unconstitutional because

[12] *In the Matter of the Application of Alltel Arkansas, Inc. for Approval of Interconnection Agreement with Sprint Communications Company L.P.*, Docket No. 04-157-U (Nov. 12, 2004).

"mandatory arbitration of her [the insured's] claim would violate her right to trial by jury under Article I, section 17, of the Oregon Constitution." (*Sanderson*, 989 P.2d at 488) What Sprint fails to note, however, is that, in contrast to *Sanderson* which was governed by Oregon state law, this proceeding is governed by Federal law and the supremacy of the 1996 revision to the Communications Act of 1934, as amended (the "Act").

There can be no question that the Act governs this proceeding and interconnection between telecommunications carriers. Moreover, the Act "was clearly a congressional exercise of its Commerce Clause power." *MCI Telecommunications Corp. v. Bell Atlantic-Pa.*, 271 F.3d 491, 503 (3rd Cir. 2001); *see also*, *Illinois Bell Telephone Co. v. Village of Itasca, Il.*, 503 F.Supp.2d 928, 946 (N.D.Ill.,2007) ("Congress passed the Communications Act of 1934 and the Federal Telecommunications Act of 1996 pursuant to its Commerce Clause powers.")

Based upon the supremacy clause of the United States Constitution, federal law is supreme to any conflicting or interfering state law. *See*, *Hoeft v. Rain & Hail*, Civ. 01-581-AS, 2001 WL 34039497 at 3 (D. Or. 2001).[13] Consequently, *Sanderson* is inapplicable to this proceeding because this arbitration proceeding, and the resulting Interconnection Agreement that will be approved by the Commission, is based on and is being conducted pursuant to Federal law and a delegation of authority to the Commission by Congress. And, as was concluded in the *Arkansas Order* cited above, it is proper for this Commission to include provisions in the Interconnection Agreement requiring commercial arbitration (*Arkansas Order*, 2), a conclusion similarly shared by the MPSC. (*CenturyTel Brief*, 8 *citing Michigan Commission Decision*, 4-5)

[13] *Hoeft* concerned the Federal Crop Insurance Corporation and an arbitration provision within an insurance contract. In reviewing the Oregon constitutional right to jury trial provision, the Court recognized that when the federal government has acted to implement a law, that law is supreme to a potentially conflicting Oregon state constitutional provision. (*Hoeft*, 3-4) This reasoning is specifically applicable to this proceeding wherein the Commission, acting solely upon the delegation of authority pursuant to 47 U.S.C. § 252, will determine the terms and conditions of the Interconnection Agreement.

Accordingly, CenturyTel's proposed Interconnection Agreement provisions for the resolution of Issue 1 are sound and reasonable, have already effectively been agreed to by Sprint in another state, and should be approved by the ALJ and the Commission. For the reasons stated herein and in the *CenturyTel Brief* addressing Issue 1, the ALJ should adopt CenturyTel's proposed language for § 20.3, including §§ 20.3.1 and 20.3.2.

Issue No. 2:

Issue No. 2. [Sprint's Formulation] What are the appropriate terms for indemnification and limitation of liability?

Related Agreement Provisions: Article III, §§ 30.1 and 30.3.

Issue No. 2. [CenturyTel's Formulation] What are the appropriate terms for Indemnification?

Related Agreement Provisions: Article III, § 30.1.

CenturyTel's Proposed Resolution: For the reasons set forth in the *CenturyTel Brief* and herein, CenturyTel respectfully submits that the indemnification and limitation of liability provision, as proposed by CenturyTel, should cover claims arising out of content transmitted by the other party, its end users or the actual retail end users of a third party entity to which telecommunications services are provided on a wholesale basis.

Sprint freely admits that "Sprint's tariffs applicable to end users may contain such [indemnity] provisions." (*Sprint Brief*, 8-9) However, Sprint attempts to distinguish CenturyTel's proposed language whereby Sprint would be required to indemnify CenturyTel for the content transmitted by Sprint's end users based upon the purported distinction that the Interconnection Agreement pertains to "only interconnection and limited related services." (*Id.*, 8) The only rationale offered to support the foregoing assertion is Mr. Burt's statement that Sprint does not have control over the content transmitted by its end users, and therefore it is not

appropriate to make Sprint liable for such end user actions. (*Id.*, 9-10) Sprint's rationale cannot withstand scrutiny.

The obvious response to Sprint's rationale is that if Sprint lacks control of the content of its end users communications, certainly CenturyTel should not be held responsible for third party claims based upon such content, and should indeed receive the indemnity from Sprint as requested. Independently, however, and, more significantly, Sprint never directly addresses the following facts: (1) CenturyTel lacks any contractual relationship with Sprint's wholesale customers that would allow CenturyTel to shift this risk to such customer; (2) Sprint does have this contractual relationship; and (3) Sprint acknowledges that the traffic originated by its retail end users as well as its wholesale customers' end users is traffic for which Sprint is responsible for intercarrier compensation. (Sprint/4, Burt/44-45)

When properly viewed in this light, Sprint, and not CenturyTel, has the ability to negotiate an indemnification agreement with its wholesale customer that is symmetrical with the indemnity CenturyTel seeks pursuant to Article III, § 30.1(ix) of the Interconnection Agreement. CenturyTel's position simply places the risk in question on the party that has a direct relationship with the end user. Since Sprint has made clear it will be responsible for intercarrier compensation associated with its end users' traffic, Sprint should also be responsible for the indemnification since, logically, an indemnification associated with traffic is part of properly constructed intercarrier relationship.[14]

As set forth in the *CenturyTel Brief* at 9, the MPSC affirmed the following conclusion by the Michigan Arbitration Panel with regard to Issue 2:

[14] If the third party claim is, on the other hand, based upon the content transmitted by Sprint's own end users, Sprint obviously has the ability to obtain contractual protections in either its tariffs (as it admits it has done in the past) or in its customer contracts.

> The Panel finds that CenturyTel's proposed indemnification language is appropriate for inclusion in the interconnection agreement and is reasonable. . . . The Panel finds more significant CenturyTel's point that Sprint has the contractual relationship with the third parties and under the contractual relationship is in the better position to negotiate a similar indemnification provision from the third party wholesale customers.

(*Michigan Panel Decision,* 9) Further, based upon virtually identical reasoning, the Presiding Officer in Arkansas reached the same conclusion, stating as follows:

> [T]he Presiding Officer believes that CenturyTel's proposed language is reasonable and the language proposed by CenturyTel for Issue No. 2 in the DPL should be adopted.[15]

Accordingly, Sprint's effort to deny responsibility to indemnify CenturyTel against third party claims (which would arise from Sprint's retail and wholesale end user/customers) based upon the content of such traffic is entirely inconsistent and unreasonable. As such, CenturyTel requests that the ALJ and the Commission adopt CenturyTel's position on Issue 2.

Issue No. 3:

Issue No. 3. [Resolved by agreement of the Parties]

Issue No. 4:

Issue No. 4. [The Parties Agreed Formulation] What Direct Interconnection Terms should be included in the Interconnection Agreement?

Related Agreement Provisions: Article IV, §§ 2.2.2, 2.2.3, 2.2.4, 2.3.2.1, 2.3.2.4, 3.3.2.1, 3.3.2.2, and 3.4.2.1.1.

CenturyTel's Proposed Resolution: For the reasons set forth in the *CenturyTel Brief* and herein, CenturyTel respectfully submits that the Interconnection Agreement should provide for: (1) multiple Points of Interconnection ("POIs") between the parties' respective networks under the reasonable circumstances outlined by CenturyTel when and as applicable; (2) that each POI

[15] *Arkansas Order,* 3.

must be within the CenturyTel network; and (3) that the concept of POI, as the rules require, is equally applicable in instances where the parties are connected directly and indirectly.

Not surprisingly, Sprint continues its mantra that a "single POI per LATA" is a generalized rule. (*Sprint Brief,* 10-11, 12-14) CenturyTel has already discredited Sprint's theory, demonstrating that it has no application to a non-Bell Operating Company ("BOC") such as CenturyTel. Accordingly, regardless of the number of times that Sprint repeats its theory, Sprint's "single POI per LATA" assertions, as applied to CenturyTel, are without merit. (*CenturyTel Brief,* 15-19)

In the *Sprint Brief,* Sprint confirms its reliance on three FCC actions for Sprint's "single POI per LATA" proposition (*Sprint Brief,* 10-11) – the FCC's *Unified Intercarrier Compensation NPRM,*[16] the FCC's *Unified Intercarrier Compensation FNPRM*[17] and the *Verizon Arbitration Order.*[18] As has been explained by CenturyTel (*CenturyTel Brief,* 17), these three FCC actions ultimately rely upon the *SWBT Texas 271 Order*[19] (which Sprint now also cites). (*Sprint Brief,* 10, fn.33) Fundamentally, these four FCC actions all rely on a single provision of an agreement entered into between Southwestern Bell Telephone Company ("SWBT") (which is a BOC) and MCI Worldcom ("MCI"). Sprint's failure to demonstrate how a private agreement between two carriers unrelated to CenturyTel can bind CenturyTel is telling.

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[16] *See In the Matter of Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking,* CC Docket No. 01-92, FCC 01-132 (rel'd April 27, 2001) ("*Unified Carrier Compensation NPRM*").

[17] *See In the Matter of Developing a Unified Intercarrier Compensation Regime, Further Notice of Proposed Rulemaking,* CC Docket No. 01-92, FCC 05-33 (rel'd March 3, 2005) ("*Unified Carrier Compensation FNPRM*").

[18] *See In the Matter of Petitions of WorldCom, Inc., Cox Virginia Telcom, Inc., and AT&T Communications of Virginia, Inc. Pursuant to § 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.,* CC Docket Nos. 00-218, 00-249, and 00-251, FCC 02-1731 (rel'd July 17, 2002) ("*Verizon Arbitration Order*").

[19] *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications, Inc. d/b/a Southwestern Bell Long Distance, Pursuant to § 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, Memorandum Opinion and Order,* CC Docket No. 00-65, FCC 00-238 (rel'd June 30, 2000) ("*SWBT Texas 271 Order*"). Southwest Bell Telephone Company is a Bell Operating Company. *See* 47 U.S.C. § 153(5).

Simply put, the private contractual provision between SWBT and MCI cannot bind CenturyTel. Likewise, third parties' private contract provision *cannot* establish a generalized rule. (*CenturyTel Brief,* 18) Further, Sprint has not and cannot reconcile its position with the fact of the interplay of this SWBT/MCI provision with the conditions related to the removal of restrictions on a BOC that were established in an anti-trust case against that BOC. (*Id.*, 18-19)

In light of its discredited "single POI per LATA" theory as applied to CenturyTel, Sprint's assertion which arises from that theory – that "CenturyTel cannot force Sprint to establish direct end office trunks ("DEOTs")" (*Sprint Brief,* 11 (footnote omitted)) – also has no basis. For the reasons stated by CenturyTel, CenturyTel respectfully submits that the resolution of this Issue 4 should and must rely upon the specific language of the Act. Thus, the ALJ need only apply the Act's directives and, when that is done, the only logical conclusions are that: (1) the POIs are to be within the network of CenturyTel pursuant to 47 U.S.C. § 251(c)(2)(B); (2) the interconnection cannot be a superior form of interconnection (*i.e.*, no more than "equal to" that provided by CenturyTel to itself, and affiliate or another carrier) (47 U.S.C. § 251(c)(2)(C)); (3) and in any event, a lawful form of interconnection should be established to avoid any potential service degradation issues. (*CenturyTel Brief,* 20-22)

Sprint's claimed reliance on Section 251(a) as a means to trump the requirements of Section 251(c)(2) (*Sprint Brief,* 12) is without merit. Under Sprint's theory, Section 251(a) can create rights for Sprint that result in more burdensome obligations being imposed upon CenturyTel (*i.e.*, transport of local traffic beyond its network to Sprint's "Point of Presence" in Salem) than those established in Section 251(c)(2). Such a result is explicitly at odds with the principle confirmed by the FCC in its *Atlas Decision* that Section 251(a) cannot be interpreted in a manner that results in more onerous obligations upon CenturyTel than Section 251(c)(2).

(*CenturyTel Brief*, 38-40; *see also, In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation, Memorandum Opinion and Order*, File No. E-97-003, FCC 01-84, released March 13, 2001 ("*Atlas Decision*") at ¶¶ 23, 25, 26)

Further, Sprint's apparent suggestion that the POI requirements found in Section 251(c)(2) do not apply to a choice by Sprint to indirectly interconnect (*Sprint Brief*, 12-13) is without basis. (*CenturyTel Brief*, 14-15) Not surprisingly, Sprint cites to no FCC rule for this proposition because there is none. There is no rule that carves out an indirect interconnection arrangement from the Act's requirements that the POI must be "within" the ILEC's network. (47 U.S.C. § 251(c)(2)) Apparently, Sprint relies upon the concept of a "Point of Presence" or "POP" (*Sprint Brief*, 17-18) for its theory of an indirect form of interconnection under Section 251(a) as a replacement to the Act's concept of a "POI." This theory also suffers from the fact that nowhere in Section 251(a) or Section 251(c) is the concept of a POP identified, explained *or* applied in lieu of the POI being within the ILEC network. 47 U.S.C. § 251(c)(2)(B)

By cross-referencing the Burt Testimonies, Sprint cites to other state cases as support for Sprint's "single POI per LATA" ruling. (*Sprint Brief*, 13) Whatever improper conclusions other state commission may have reached with respect to an assertion by Sprint that a "single POI per LATA" is a general rule, those decisions are not relevant, and clearly cannot bind this Commission or the ALJ. (*CenturyTel Brief*, 22, fn.30) In contrast, the ALJ can and should look to the recent arbitration decisions in companion cases between Sprint and CenturyTel that confirm the proper interpretation of the law. These decisions are "entirely relevant since they involve *the same parties, at the same time as this proceeding, and substantially the same issues.*" (*Id.* (emphasis in original)) As noted by CenturyTel (*Id.*, 21), in the companion Michigan

arbitration between Sprint and CenturyTel, the *Michigan Panel Decision* explicitly rejected Sprint's position, stating as follows:

> The Panel is convinced that the LATA concept is not applicable to the issue at hand and does not apply to CenturyTel. The Panel recognizes that CenturyTel's network is structured significantly different in a pragmatic way than the BOCs and thus to apply the LATA concept is untenable and not at all required under the Act or FCC rules or orders.
>
> The Panel further agrees with CenturyTel concerning the superior nature of the interconnection requested by Sprint. Sprint's request would require CenturyTel to construct or create network trunking arrangements solely for Sprint's benefit. Such a result would be contrary to 47 USC section 251(c)(2).

(*Michigan Panel Decision,* 12) These conclusions were affirmed by the MPSC. (*Michigan Commission Decision*, 7-8)

Likewise, in the Arkansas companion case the Presiding Officer rejected Sprint's position. "The manner in which Sprint seeks to interconnect with CenturyTel goes beyond the requirements of 47 USC §251(c)(2) therefore, the language proposed by CenturyTel in the DPL Issue 4 is deemed reasonable and is adopted." (*Arkansas Order*, 4)

Sprint's contentions with respect to this Issue 4 continue to confuse the obligations of BOCs, on the one hand, and non-BOCs (such as CenturyTel) that do not operate ubiquitous networks, on the other. First, Sprint cites an AT&T Communications of the Pacific Northwest, Inc. arbitration from Oregon (the "*AT&T Arbitration*"). (*Sprint Brief*, 13) Sprint has failed to demonstrate that the *AT&T Arbitration* proposed some form of "more advanced network architecture" (*Id.*, *quoting* Order 97-003 (no page citation provided)), but more importantly, Sprint also failed to note that the *AT&T Arbitration* involved Qwest. Qwest is, of course, a BOC. Thus, while Sprint's theory of a "single POI per LATA" may have had some relevance in the Commission's decision in the *AT&T Arbitration*, Sprint's theory has been amply demonstrated by CenturyTel to be inapplicable to this proceeding. In any event, Sprint further

fails to note that the Commission's decision in Order 97-003 actually supports CenturyTel's position regarding Issue 4:

> As noted by CenturyTel witness Watkins (CenturyTel/12, Watkins/19-20), the Commission has already expressed concerns regarding network inefficiencies and arrangements that compromise network capabilities. *See* Order No. 97-003, Docket Nos. ARB 3 and ARB 6, entered January 6, 1997 at 4. The factors that CenturyTel's proposed language would provide with respect to considering when additional POIs are required between the networks of Sprint and CenturyTel are fully consistent with these expressions of Commission concerns.

(*CenturyTel Brief*, 23, fn.32) Thus, far from supporting Sprint's position, the Commission's Order No. 97-003 confirms the appropriateness of CenturyTel's proposed resolution of this Issue.

Second, Sprint continues its already discredited claim that Section 251(f) is at issue in this proceeding. (*Sprint Brief*, 14) CenturyTel has already demonstrated that this assertion by Sprint is without merit. "The evidence shows that CenturyTel's proposal would more than satisfy even the most onerous set of interconnection requirements while Sprint's proposals go well beyond those requirements." (*CenturyTel Brief*, 25) Section 251(f)(1) is not at issue in this proceeding.

Third, Sprint's parsing of the reference in Section 251(c)(2) to "technical feasibility" (*Sprint Brief*, 13-14) is equally without basis.[20] Sprint apparently proposes that the ALJ should

[20] Although Sprint cites *US West Communications v. Jennings*, 304 F.3d 950 (9th Cir. 2002) for its "technical feasibility" argument (*Sprint Brief*, 14-15), Sprint's reliance on *Jennings* is without basis. Sprint has not demonstrated that the facts in *Jennings* are comparable to those presented in this proceeding. For example, the issue in *Jennings* revolved around the proper arrangements between the BOC -- US West Communications (now Qwest) – and AT&T Communications of the Mountain States ("AT&T"). According to the Court, the agreement "allow[ed] AT&T to interconnect with US West's network at a single point per local access and transport area (LATA)." 304 F.3d at 961. As demonstrated by CenturyTel, however, the "single POI per LATA" concept that is being discussed by the Ninth Circuit is not applicable to CenturyTel. (*CenturyTel Brief*, 15-19) Moreover, the interconnection points at issue in *Jennings* were, presumably, all within the US West network or the Court's discussion – "to the extent that AT&T's desired interconnection points provide more expensive to US West, we agree that the ACC should considered shifting costs to AT&T" (*Id.*, 961) – would have no factual context. In this proceeding, however, Sprint wants the ALJ to conclude that the Sprint's POP *does not* have to be within the CenturyTel's network. The *Jennings* Court's discussion, therefore, of Section 251(c)(2) cannot form the basis of applying the Court's decision to CenturyTel. And, in any event, it does not appear that *Jennings* was addressing a situation, like here, where a superior form of interconnection is being requested by Sprint of CenturyTel. Thus, an isolated discussion of Section

ignore the fact that the cumulative requirements of other sub-sections of Section 251(c)(2), including the requirement that the POI must be within the network of the ILEC (in this case CenturyTel) (47 U.S.C. § 251(c)(2)(B)) and the fact that CenturyTel is not required to provide a form of interconnection to Sprint that is *more* than "equal to" (47 U.S.C. § 251(c)(2)(C)) that provided to CenturyTel, one of its affiliates, or another party to which CenturyTel provides interconnection. (*CenturyTel Brief*, 23-24) In short, Sprint's effort to interpret Section 251(c)(2) in a manner that ignores the wording thereof cannot be sustained.[21] Likewise, as noted above, the Michigan Arbitration Panel (*Michigan Panel Decision*, 10-11), and the MPSC (*Michigan Decision*, 8) agreed that to allow Sprint's proposed form of interconnection would result in CenturyTel providing local calling transport superior to the level it provides to itself, a result

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251(c)(2) such as that made by the *Jennings* Court, as well as being made in the context of a BOC, cannot control the application of *all* of the requirements within Section 251(c)(2). To interpret *Jennings* in any other manner would write out of the statute the specific requirements of no more than "equal to" in Section 251(c)(2)(C) as well as ignore the requirements that the POI must be "within" the network of the ILEC as required by Section 251(c)(2)(B).

[21] Section 251(c)(2) states as follows:

> (2) Interconnection
>
> The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network -
>
> (A) for the transmission and routing of telephone exchange service and exchange access;
>
> (B) at any technically feasible point within the carrier's network;
>
> (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; ***and***
>
> (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

47 U.S.C. § 251(c)(2)(emphasis added).

contrary to Section 251(c)(2) and to *IUB I* and *IUB II*.[22] In the *Arkansas Order* the Presiding Officer reached the same decision.[23]

Accordingly, for the foregoing reasons and those provided by CenturyTel in its testimonies[24] and the *CenturyTel Brief*, CenturyTel requests that the ALJ and the Commission adopt CenturyTel's position on this Issue 4 and direct the parties to conform the Interconnection Agreement to the language proposed by CenturyTel.

Issue No. 5:

Issue No. 5. [Sprint's Formulation] Should Sprint and CenturyTel share the cost of the Interconnection Facility between their networks based on their respective percentages of originated traffic?

Related Agreement Provisions: Article II, § 2.59; Article IV, §§ 2.2.2, 3.2.2, 3.2.5.1, 3.2.5.2, 3.2.5.3, 3.2.5.5, and Article VII, I.C.

Issue No. 5. [CenturyTel's Formulation] Should Sprint and CenturyTel share the costs of the interconnection facility between their respective networks based on their respective percentages of originated traffic?

Related Agreement Provisions: Article II, § 2.59, Article IV, §§ 2.2.2, 3.2.2., 3.2.5.1, 3.2.5.2, 3.2.5.3, 3.2.5.5 and Article VII, I. C.

CenturyTel's Proposed Resolution: For the reasons set forth in the *CenturyTel Brief* and herein, CenturyTel respectfully submits that no separate facilities costs should be imposed upon

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[22] *CenturyTel Brief*, 14, 20-21; *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*"). The *IUB 1* Court indicated acceptance of the FCC's statements regarding some "modification" by an ILEC of its facilities. *Compare IUB I*, 120 F.3d at 813 (fn, 33) and *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order*, CC Docket No. 96-98, 11 FCC Rcd. 15499 (*First Report and Order*"), 15602 (¶ 198). However, Sprint is not seeking modification of facilities of the existing CenturyTel ILEC network. Sprint is seeking the *establishment of new facilities and/or trunking arrangements.*

[23] *Arkansas Order*, 4.

[24] Sprint claims that CenturyTel has not provided "any evidence that Sprint has requested interconnection where CenturyTel has no facilities." (*Sprint Brief*, 15) CenturyTel has demonstrated that Sprint's proposal would require trunking arrangements that do not exist. (CenturyTel/12, Watkins/17, 19-20; CenturyTel/15, Watkins/5,16) Moreover, Sprint's statements ignore the fact that "Sprint has not committed to an exact interconnection plan, so CenturyTel cannot determine the factors that would need to be considered in order to evaluate potential network impairment or extraordinary costs." (CenturyTe;/12, Watkins, 19-20) Accordingly, Sprint's claims are without merit.

CenturyTel as those costs are already recovered through the parties' agreed-to "bill and keep" arrangement. Sprint's efforts to suggest otherwise should be rejected by the ALJ and the Commission.

The FCC rule that Sprint cites in support of its position (*Sprint Brief*, 17) – 47 C.F.R. § 51.709(b) – addresses the *rate* that the parties develop for transport which is already accommodated within the bill and keep arrangement. The title of § 51.709 of the FCC's rules is "Rate structure for transport and termination." The rule states as follows:

> (a) In state proceedings, a state commission shall establish ***rates*** for the transport and termination of telecommunications traffic that are structured consistently with the manner that carriers incur those costs, and consistently with the principles in §§51.507 and 51.509.
>
> (b) The ***rate*** of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.

47 C.F.R. § 51.709 (emphasis added). There is no additional, separate rule apart from the rule that addresses the rate for transport (*CenturyTel Brief*, 30) and Sprint cites to none. As noted by CenturyTel,

> Sprint cannot escape the fact that § 51.709 is titled "Rate structure for transport and termination," not "Rate structure for separate facilities outside of transport and termination." Similarly, Sprint cannot escape the fact that the subsection (a) of § 51.709 explicitly states its purpose to be the establishment of rates for transport and termination, not separate facilities outside the scope of transport and termination.

(*Id.*, 31, fn.43) Rather than rely on the express language of the rule and reconcile that language with the parties' agreed-to "bill and keep" arrangement for the exchange of competitive local exchange traffic, Sprint, once again, relies on repetition to suggest that its position on Issue 5 should be adopted.

First, Sprint has not and cannot reconcile its views on the separate facilities charges (*Sprint Brief*, 17-18) with, for example: (1) the bundled Section 251(b)(5) reciprocal compensation agreement between the parties, namely the agreed-to use of "bill and keep" (*CenturyTel Brief*, 30); (2) the FCC's rules (*Id.*, 27-28); or (3) the fact that no charges for originating traffic are being assessed by either party. (*Id.*, 31) Second, Sprint's reliance on Section 51.709(b) of the FCC's rules (*Sprint Brief*, 17) as a means of dismantling the agreed-to "bill and keep" rate for both transport and termination has been demonstrated to be without merit. Sprint should not be permitted to circumvent the agreement it has made with CenturyTel to use "bill and keep" by imposing an additional transport facility charge upon CenturyTel. If the ALJ was to agree with Sprint on this point, Sprint would be "double recovering" a portion of its transport costs that have already been recovered under the agreed-to "bill and keep" arrangement. (*CenturyTel Brief*, 30)

Third, Sprint's contentions regarding a "no limit" on distance with respect to requiring CenturyTel to haul traffic beyond its network rely upon the *Verizon Arbitration Order* (*Sprint Brief*, 17-18) and cannot be reconciled with the fact that the transport at issue in that case was *wholly within* the Verizon network. (*CenturyTel Brief*, 28) That would not be the case here if Sprint's position is adopted. The facilities at issue would be those owned by Qwest since it has

the only facility arrangement in existence between the CenturyTel network and Qwest's Salem tandem.[25]

Fourth, Sprint's assertion that it is "simply requesting interconnection terms and conditions consistent with FCC rules and orders" (*Sprint Brief*, 18) is far from accurate. Although it protests greatly, there can be no question, based on the record here, that Sprint is requesting a superior form of interconnection that goes far beyond that required by the FCC's rules and applicable law. (*CenturyTel Brief*, 28-29; *see also* (*IUB II*) and (*IUB I*)) Even if CenturyTel was willing to offer such an arrangement for the sole benefit of Sprint, the record is clear that Sprint has no intention of paying the extraordinary costs for that superior form of interconnection as would otherwise be required if the superior requirements were still applicable. (*Id.*, 21)

Fifth, CenturyTel continues to believe that Sprint's assertion that "interconnection is separate and distinct from reciprocal compensation" (*Sprint Brief*, 17 (footnote omitted)) is without basis. (*CenturyTel Brief*, 30-31)[26] While Sprint cites to Sections 251(a), 251(b)(5), 252(d)(1) and 252(d)(2) (*Sprint Brief*, 17), there is no question that the concept of interconnection is the linking of networks and is a different concept from the recovery of the

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[25] As explained by CenturyTel (*CenturyTel Brief*, 33, fn. 44), CenturyTel notes that the Michigan Arbitration Panel and the Michigan Commission both determined that a separate facilities charge under Section 51.709(b) was appropriate. (*Michigan Panel Decision*, 13-14; *Michigan Commission Decision*, 9) However, while CenturyTel continues to believe that the foregoing conclusion is based upon an incorrect interpretation of Section 51.709(b) and the agreed-to bill and keep arrangement, CenturyTel accepted this resolution of Issue 5 based on the Michigan Arbitration Panel's and the Michigan Commission's proper resolution of Issue 4 requiring the Sprint "point of presence" to be on the network of CenturyTel. The Presiding Officer in Arkansas reached the same conclusion that, since CTL was not required to deliver traffic beyond its network, Sprint's POP must be at a location within CenturyTel's Arkansas network. (*Arkansas Order*, 9, 11-12) Consistent with Sprint's advocacy in Oregon, in both the Michigan and Arkansas arbitrations Sprint contended that its network began at its "point of presence." Thus, based upon the *Michigan Commission Decision* and the *Arkansas Order*, Sprint's POP must be located on CenturyTel's network, and thus, all of the facilities at issue would be within the CenturyTel network.

[26] While the Presiding Officer in Arkansas stated this same thought (*Arkansas Order*, 6), CenturyTel notes the fact that fifty percent (50%) of the facilities cost required to deliver the traffic to the POI have already been considered in the parties agreed-to "bill and keep arrangement. (Century/12, Watkins/30-31)

costs associated with that interconnection. (*CenturyTel Brief*, 30-31) Sprint's efforts to blend these two concepts into a method to double recover part of its transport costs to the POIs cannot be allowed to stand. As the ALJ is aware, Issue 5 focuses on the recovery of the costs of *transport* over the facilities used on the parties' respective sides of the POI. As the FCC's rules reflect, there are no separate charges for the transport portion of Section 251(b)(5) reciprocal compensation obligations other than reciprocal compensation itself. The FCC's definition of "transport" within its rules concerning reciprocal compensation confirms this fact. (CenturyTel/12, Watkins/25-26) When these rules are properly applied to the facts in this proceeding, any recovery beyond that "bill and keep" is, as demonstrated by CenturyTel, a request for "double recovery" by Sprint. (*CenturyTel Brief*, 30; CenturyTel/12, Watkins/ 23, 26, 29; CenturyTel/15, Watkins/12-13) Such recovery is impermissible and unjustified based on the parties' agreed-to use of "bill and keep."

In summary, Sprint's position on Issue 5 cannot be sustained. Sprint's request that CenturyTel and the CenturyTel's rate payers subsidize Sprint's entry based on Sprint's request for double recovery of a portion of its facilities costs should be rejected.[27]

Issue No. 6:

Issue No. 6. [The Parties Agreed Formulation] What are the appropriate rates for direct interconnection facilities?

Related Agreement Provisions: Article IV, §§ 2.3.1.1, 3.2.5.4 and Article VII, §§ I.D. and I.E.

CenturyTel's Proposed Resolution: For the reasons set forth in the *CenturyTel Brief* and herein, CenturyTel respectfully submits that direct interconnection facilities should be charged at CenturyTel's intrastate access rates.

[27]The fact that certain state commission decisions referenced by Sprint (*Sprint Brief*, 19-21) impermissibly reach beyond the FCC's rules and requirements need not be condoned by the ALJ.

Sprint confirms its position is that the FCC's generalized statements regarding the pricing under its Total Element Long Run Incremental Cost ("TELRIC") principles should apply to the pricing of direct interconnection facilities that CenturyTel may provide to Sprint under the Interconnection Agreement. (*Sprint Brief*, 22-24) CenturyTel has amply demonstrated that Sprint's position cannot be reconciled with applicable law. (*CenturyTel Brief*, 33-37) Sprint's reiteration of its position cannot change this law nor can Sprint's construction of the FCC's *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*") (*Sprint Brief*, 24 n.75) withstand scrutiny.

As CenturyTel noted, it would be illogical to apply Sprint's TELRIC pricing theory since, to do so, "would imply that the FCC's impairment analysis and conclusion meant nothing." (*CenturyTel Brief*, 35) Any suggestion that "the FCC removed entrance facilities from impairment pricing treatment (*i.e.*, TELRIC) in one sentence, and then subsequently reinstated that treatment in a subsequent sentence would illogically render the FCC's conclusions in the *TRRO* meaningless." (*Id.*, 35) Sprint's silence on this point is telling. CenturyTel respectfully submits that the ALJ should be leery of Sprint's position because, regardless of what Sprint may state in its reply brief, the contradiction that Sprint's approach would impose upon the FCC's *TRRO* cannot be explained.[28] Thus, Sprint's position on Issue 6 should be rejected.

Issue No. 7:

Issue No. 7. [The Parties Agreed Formulation] Should the Interconnection Agreement contain provisions limiting indirect interconnection?

Related Agreement Provisions: Article IV, §§ 3.3.1,1, 3.3.2.1, 3.3.2.2, 3.3.2.4, 3.3.2.5 and 3.3.2.6.

[28] Although the Presiding Officer in Arkansas concluded that TELRIC pricing for entrance facilities was required (*Arkansas Order*, 7) that decision likewise does not explain the same contradiction that Sprint's position creates within the *TRRO*.

CenturyTel's Proposed Resolution: For the reasons set forth in the *CenturyTel Brief* and herein, CenturyTel respectfully submits that CenturyTel's provision of an indirect interconnection arrangement involving a third party transit provider beyond that actually required by the interconnection rules, should be limited to traffic levels that are less than a DS1 level.

Sprint's position on Issue 7 can be summarized as follows:

> There are no conditions or limitations imposed on a competing carrier's ability to indirectly interconnect. Thus, the Interconnection Agreement should include language that provides for indirect interconnection without limitation. Sprint's position and the Interconnection Agreement language proposed by Sprint should be adopted.

(*Sprint Brief*, 28-29) Sprint is wrong.

Conspicuously absent from Sprint's recitation of the issue is that the FCC has not found that transit services are, in fact, an interconnection requirement. (*CenturyTel Brief* at 40 *citing Verizon Arbitration Decision*, ¶ 117) The fact that the FCC made a statement regarding transit service/indirect interconnection in its *Unified Intercarrier Compensation FNPRM* does not change this fact. (*Sprint Brief*, 28) Rather, Sprint fails to note that the FCC acknowledged the status of transit services under the Act's interconnection requirements five paragraphs earlier when it stated:

> Although many incumbent LECs, mostly BOCs, currently provide transit service pursuant to interconnection agreements, the Commission has not had occasion to determine whether carriers have a duty to provide transit service.

(*Unified Intercarrier Compensation FNPRM* at ¶ 120 (footnotes omitted)) Thereafter, the FCC made the following statements: "We seek comment on the Commission's legal authority to impose transiting obligations." (*Id.*, ¶ 127) "Assuming that the Commission [FCC] has the necessary legal authority, we solicit comment on whether we should exercise that authority to

require the provision of transit service." (*Id.*, ¶ 129) "If rules regarding transit service are warranted, we seek comment on the scope of such regulation." (*Id.*, ¶ 130) "We also seek comment on the need for rules governing the terms and conditions for transit service offerings." (*Id.*, ¶ 131) Moreover, even these statements within *Unified Intercarrier Compensation FNPRM* were made with the acknowledgement by the FCC that transit arrangements were assumed to be applicable to those situations "when carriers do not exchange significant amounts of traffic." (*Id.*, ¶ 126 (footnote omitted))

As these statements demonstrate, the unfettered and indefinite use of transit is not an "open and shut" issue as Sprint effectively suggests.[29] Notwithstanding CenturyTel's willingness to provide Sprint a "start-up" opportunity under which CenturyTel is willing to utilize a transit arrangement up to a DS1 level (even though CenturyTel is not obligated to do

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[29] Sprint cites to *WWC License, LLC v. Public Service Commission*, 459 F.3d 880, 891 (8th Cir. 2006)("*WWC License*") for the proposition that "competing carriers have the right to choose either direct or indirect interconnection." (*Sprint Brief*, 28, *citing WWC License*) Although the Eighth Circuit referenced the "general intent" of the Act "of eliminating monopolies and fostering competition" (459 F.3d at 891), Sprint fails to note that the Court also acknowledged that it "did not suggest that this general intent should be used *to impose duties on incumbents beyond those created by* Congress." *Id.* This latter statement from the Eighth Circuit is applicable here as the facts demonstrate. Sprint wants to take a service – transit – that the FCC has indicated is *not an interconnection requirement* and bootstrap its view into a "superior" form of interconnection indefinitely which is beyond the scope of Section 251(c)(2). In a similar vein, and consistent with its "cat and mouse" approach, Sprint (as it has done in Arkansas and in Michigan) may claim that CenturyTel's position somehow constrains Sprint's ability to choose the points of interconnection. While one court made general statements regarding these rights (*Atlas Telephone Company v. Oklahoma Corporation Commission*, 400 F.3d 1256, 1268 (10th Cir. 2005), the Court's discussion was made as foundation for its holding on the issue as to whether 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." (*Id.*) Reciprocal compensation between the parties (*i.e.*, the agreed-to "bill-and-keep" arrangement between Sprint and CenturyTel) in a transit arrangement is not an issue in this proceeding. The issue is the level of traffic exchanged between the parties that, in turn, triggers the migration away from a tandem transit interconnection arrangement. Even when the parties migrate away from a commingled traffic, tandem transit arrangement with a third party and establish dedicated trunks, Sprint is not required to connect directly with the CenturyTel network. Sprint may connect indirectly using trunking facilities it may obtain from a third party. However, the framework for the exchange of traffic, whether exchanged over directly or indirectly connected trunking facilities, requires no more from CenturyTel than to establish the POI with Sprint within its ILEC network as discussed in Issue 4, *supra*. Thus, any "choice" that may be present for a CLEC under Section 251(a) is how to reach the POI and not a substantive right for one party selecting an indirect form of interconnection trunking to the POI in order to shift its costs to the other party.

so), Sprint's position is that CenturyTel is obligated *indefinitely* to rely upon a transit service (*Sprint Brief*, 29 (Sprint should be able to use transit arrangements "without limitation.")) Sprint's position cannot be reconciled with:

(1) the status of the law (*CenturyTel Brief*, 38-40); *or*

(2) the fact that the POI must be established within the incumbent network of CenturyTel (47 U.S.C. § 251(c)(2)(B)); *or*

(3) the absence of an obligation of CenturyTel to provide interconnection arrangements that are more than equal to those provided to itself or with other carriers (*CenturyTel Brief*, 20-21); *or*

(4) the fact that transit is an inferior form of interconnection and raises practical ramifications associated with unfettered transit arrangements, including traffic measurement and networking arrangements (*Id.*, 41); *or*

(5) the fact that Sprint has voluntarily agreed to the DS1 standard in Oregon. (*Id.*, 41-42)

Sprint's position should be rejected and the DS1 standard proposed by CenturyTel should be adopted, just as was done by the Michigan Panel. (*Michigan Panel Decision,* 17-18), the MPSC (*Michigan Commission Decision*, 13), and most recently in Arkansas. As to the latter, the Presiding Officer in Arkansas concluded:

> Under Sprint's proposed language CenturyTel would be required to provide interconnection outside of its territory and in a manner that is superior to that which it provides access to itself and other carriers. Additionally, the FCC's decision *In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation*, FCC 01-85 released March 13, 2001, appears to support CenturyTel's position. Although Sprint argues that "other state commissions have recognized the right of the CLEC to choose indirect interconnection without the imposition of thresholds on that right" (Sprint Reply Brief p.21) the cases cited by Sprint do not support Sprint's assertions

concerning its right to interconnection in a manner that exceeds the requirements of 47 U.S.C. § 251(c)(2).

(*Arkansas Order*, 9) CenturyTel's position regarding Issue 7 should be adopted.

Issue No. 8:

Issue No. 8. [Sprint's Formulation] Should Sprint be required to reimburse CenturyTel when CenturyTel is acting as a transit provider if CenturyTel compensates third parties for the termination of Sprint-originated traffic?

Related Agreement Provisions: Article IV, §§ 3.3.1.3 and 4.6.4.2.

Issue No. 8 [CenturyTel's Formulation] Should Sprint be required to enter into traffic exchange agreements with a third-party Telecommunications Carrier for traffic that transits through CenturyTel's network to reach a third-party Telecommunications Carrier? Should CenturyTel be indemnified by Sprint, if Sprint does not have a traffic exchange agreement with the third-party for any actions or complaints, including any attorney's fees and expenses, against CenturyTel concerning the non-payment of charges levied by such third-party Telecommunications Carrier for Sprint's traffic?

Related Agreement Provisions: Article IV, §§ 3.3.1.3 and 4.6.4.2.

CenturyTel's Proposed Resolution: For the reasons set forth in the *CenturyTel Brief* and herein, CenturyTel respectfully submits that Sprint should be required to enter into traffic exchange agreements with third-party telecommunications carriers for traffic that transits CenturyTel's network to reach a third-party telecommunications carrier and, if Sprint does not do so, Sprint should be required to indemnify CenturyTel for any actions or complaints, including any attorney's fees and expenses, incurred by CenturyTel concerning the non-payment levied by such third-party telecommunications carrier regarding Sprint's traffic.

Apparently, Sprint's primary concern is that CenturyTel would voluntarily pay a third party carrier's claim for terminating access charges relating to Sprint's traffic that transits CenturyTel's network. (*Sprint Brief*, 29) However, Sprint fails to reference any evidence in the record that substantiates or provides any factual basis for this concern. Rather, Sprint asserts that CenturyTel "would have no incentive to challenge the rates and accuracy of the bills for such

traffic termination" and that CenturyTel's proposal "potentially could result in Sprint paying termination charges." (*Id.*) As a result, Sprint's position is based upon pure speculation. Contrary to Sprint's speculation, CenturyTel has made clear that Sprint's concern is unfounded. CenturyTel's witness, Mr. Miller, affirmatively testified that CenturyTel has no desire to be placed "in the middle of the intercarrier compensation dispute that would arise from Sprint's failure [to pay the third party carrier]." (*CenturyTel Brief*, 44)

Moreover, Sprint's position on Issue 8 cannot be reconciled with the uncontroverted fact that Sprint has agreed to bear financial responsibility to compensate a carrier that terminates Sprint's traffic, including the traffic of Sprint's wholesale customer. (Sprint/4, Burt/44-45) Particularly in light of Sprint's intention to use indirect interconnection with the attendant increased possibility of unidentified traffic being terminated to a third party carrier for which CenturyTel provides transit service, it is entirely reasonable, therefore, that Sprint provides indemnification to CenturyTel against adverse financial consequences relating to the termination of Sprint's traffic.

Without question, the thrust of CenturyTel's position regarding Issue 8 is that it *does not* want to be the "middle man" in any dispute between a third party carrier and Sprint regarding Sprint's traffic. The Michigan Panel accepted CenturyTel's position on this Issue 8 and found that "CenturyTel's language addresses this problem and should be adopted by the [Michigan] Commission."[30] Furthermore, in the *Arkansas Order,* the Presiding Officer reached the same conclusion, stating as follows:

> The Presiding Officer finds CenturyTel's proposed language to be appropriate in that it simply recognizes and makes a part of the ICA, the obligations which the parties have under the law which requires the originating carrier to pay for transit

[30] *Michigan Panel Decision*, 19.

traffic and requires that a party that transits traffic is entitled to be held harmless if it is required to pay a terminating carrier.[31]

These conclusions are equally applicable here. As such, CenturyTel respectfully requests the ALJ to direct the parties to incorporate into the Interconnection Agreement the language of Article IV, §§ 3.3.1.3 and 4.6.4.2 as proposed by CenturyTel.

Issue No. 9:

Issue No. 9. [Resolved by agreement of the Parties]

Issue No. 10:

Issue No. 10. [The Parties' Agreed Formulation] What terms for virtual NXX should be included in the Interconnection Agreement?

Related Agreement Provisions: Article II, § 2.135, Article IV, §§ 4.2.2.3, 4.2.2.4, and 4.2.2.5.

CenturyTel's Proposed Resolution: For the reasons set forth in the *CenturyTel Brief* and herein, CenturyTel respectfully submits that the clarification provisions regarding Virtual NXX service as proposed by CenturyTel should be adopted since neither party will be providing that service at the time the Interconnection Agreement is approved by the Commission.

The *Sprint Brief* sets forth no law or facts that constitute a basis for the ALJ to reject CenturyTel's position regarding Issue 10. Sprint's position on this Issue is encompassed by the following sentence: "An interconnection agreement is no place to simply state the outcome of a previous Commission order just for the sake of doing so."[32] Sprint's oversimplification of Issue 10 is without merit and should be rejected.

CenturyTel fully explained the rationale supporting its proposed language for resolution of this issue in the *CenturyTel Brief*.[33] To briefly reiterate such rationale, CenturyTel's witness,

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[31] *Arkansas Order,* 10.

[32] *Sprint Brief,* 32.

[33] *CenturyTel Brief,* 49-51.

Mr. Miller, explained that § 4.2.2.2 is offered in an effort to resolve this issue and to address CenturyTel's legitimate concerns that the Interconnection Agreement should: (1) expressly reflect the limitation of the use of VNXX consistent with the Commission's *VNXX Order*;[34] and (2) clearly set forth the applicable limitations on the use of VNXX for ISP traffic in the event that a third party carrier seeks to adopt the terms thereof pursuant to 47 U.S.C. § 252(i). (CenturyTel/14, Miller/14-15) Moreover, including terms within interconnection agreements that address the subject of VNXX traffic is a practice that is consistent with at least two other interconnection agreements between Sprint and incumbent LECs that have been approved by the Commission. Mr. Miller identified these agreements between Sprint and United Telephone Company of the Northwest and Sprint and Pioneer Telephone Cooperative in his direct and rebuttal testimonies. (CenturyTel/1, Miller/38-39; CenturyTel/14, Miller/18)

In light of the facts presented, Sprint's position on Issue 10 should be rejected, even with Sprint's affirmation that it has no current intention to utilize virtual NXX. Accordingly, for the reasons set forth in the *CenturyTel Brief* and above, CenturyTel submits that the language of Article IV, § 4.2.2.2 as set forth in the *CenturyTel Brief,* 49-50, is fair and reasonable and should be approved by the ALJ.

Issue No. 11:

Issue No. 11. [Resolved by agreement of the Parties]

Issue No. 12:

Issue No. 12. [Resolved by agreement of the Parties]

[34] *In the Matter of Level 3 Communications, LLC Petition for Arbitration of an Interconnection Agreement with Qwest Corporation pursuant to Section 252(b) of the Telecommunications Act*, ARB 665, Order No. 07-098 (Mar. 14, 2007) (the "*VNNX Order*").

Issue No. 13:

Issue No. 13. [The Parties Agreed Formulation] What are the appropriate rates for transit service?

Related Agreement Provisions: Article VII, § I.B.

CenturyTel's Proposed Resolution: For the reasons set forth in the *CenturyTel Brief* and herein, CenturyTel submits that the rates for transit services should be its intrastate access rates.

Sprint's position regarding the rates for transit services is related to the incorrect positions it takes in connection with Issues 7 and 8 regarding the purported obligation of so-called transit service (*i.e.*, according to Sprint (albeit improperly) that transit services are a form of interconnection envisioned under the Act)) and its position here that the service should be priced at TELRIC. (*Sprint Brief*, 33-34) CenturyTel has more that adequately demonstrated the fallacy of Sprint's position, including, by way of example, Sprint's improper suggestion that absent TELRIC pricing Sprint will be at a "competitive disadvantage" (*Id.*, 34) as compared to CenturyTel, let alone Sprint's prior suggestion that the pricing level of CenturyTel's intrastate access rates somehow raise issues of subsidy. (*CenturyTel Brief*, 55-56) CenturyTel's intrastate access rates "properly balance the need by Sprint for transit services and CenturyTel's proper expectation for reasonable and appropriate cost recovery."[35] (*Id.*, 56)

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[35] The Commission has the ability to establish alternative pricing since the FCC has confirmed that it has not established any pricing standards for transit.

> Further, if the Commission [the FCC] determines that rules governing transit service are warranted, we seek additional comment on the appropriate pricing methodology, if any, for transit service. The reciprocal compensation provisions of the Act address the exchange of traffic between two carriers, but do not explicitly address the intercarrier compensation to be paid to the transit service provider for carrying section 251(b)(5) traffic. Similarly, section 251(a)(1) does not address pricing.

Unified Intercarrier Compensation FNRPM, ¶ 132 (footnote omitted).

Sprint's reliance on other state commission decisions involving non-parties to this proceeding (*Sprint Brief*, 34-37) is equally flawed.[36] Regardless of such state commission determinations, Sprint has not demonstrated that, based on the facts and rational public policy in Oregon, that the same result should occur here. Whatever importance Sprint assigns to the state commission decisions it cites, the fact remains that this is an Oregon-specific proceeding and Oregon-specific pricing policies must be developed based on the facts and rational public policy. CenturyTel assumes that, ultimately, Sprint would have to agree to the foregoing propositions. Based on the record and the status of the law, the only sustainable and rational conclusion to be reached is that CenturyTel's Commission-filed intrastate access rates are the proper rates for the transit services that CenturyTel should be required to be applied for the transit service provided to Sprint, consistent with the proper resolution of Issue 4 and Issue 7. (*CenturyTel Brief*, 53-55)

Finally, as pointed out in the *CenturyTel Brief* at 37, fn.47, the *VNXX Order* appears to point to access-based pricing for an analogous form of transiting – the transport of VNNX traffic that benefits the CLEC – is not at TELRIC rates. *VNNX Order* at 6.

In effect, Sprint's position amounts to nothing more than effort to impose an improper pricing structure upon CenturyTel based on a legal theory that Sprint cannot reconcile with governing law and the status of CenturyTel's Commission-filed access rates. Sprint's position on Issue 13 cannot be sustained and should be rejected by the ALJ and the Commission.

[36] CenturyTel notes that the Arkansas Presiding Officer simply ruled that the CenturyTel's Arkansas-specific transit rates need to be "'provided at cost-based rates.'" (*Arkansas Order*, 12 *quoting* Sprint's proposed language.) This conclusion does not suggest that the Oregon-specific access rates are inappropriate. As the Commission's records reflect, CenturyTel is a member of the Oregon Exchange Carrier Association ("OCEA") pool for switched access rates. OCEA makes a filing of its traffic sensitive rates on an annual basis. That filing is reviewed by the Commission staff, taken to the Commission for approval and new rates are put into place each July.

Issue No. 14:

Issue No. 14. [The Parties Agreed Formulation] What are the appropriate rates for services provided in the Interconnection Agreement, including rates applicable to the processing of orders and number portability?

Related Agreement Provisions: Article VII, § II.

CenturyTel's Proposed Resolution: For the reasons set forth in the *CenturyTel Brief* and herein, CenturyTel respectfully submits that the Non-Recurring Charge ("NRC") rates it has proposed should be adopted and that the application thereof is appropriate in all instances.

Sprint's position on both aspects of this issue – whether the charges should be assessed and if so, at what rates – are without merit. CenturyTel has already demonstrated the lack of merit with respect to Sprint's repeated claims (*Sprint Brief*, 42) that the service charges associated with porting should not be assessed because they are anticompetitive and already recovered from disconnection charges assessed by CenturyTel. (*CenturyTel Brief*, 57-59) As the record reflects, these charges: (1) are not incurred but for the request (and thus not recovered); (2) involve functions unrelated to and in addition to disconnection of service;[37] (3) are otherwise in conformance with the FCC's pronouncements in *In the Matter of Telephone Number Portability, BellSouth Corporation Petition for Declaratory Ruling and/or Waiver, Order*, CC Docket 95-116, FCC 94-01, released April 13, 2004 at n.49; and (4) comply with traditional notions of "cost causation," *i.e.*, that the cost causer pays. (*CenturyTel Brief*, 57-60)

Sprint's additional claims – that the account initiation fee should be waived because Sprint will perform the same for CenturyTel (*Sprint Brief*, 40) and that manual processes are inefficient (*Id.*, 42) – are equally without merit. As to the former, a party incurring costs based on the actions it must undertake via-a-vis the request of another party should still be able to

[37] Sprint's alternative rate for porting service order charges – the FCC's default primary interexchange carrier ("PIC") charges (*Sprint Brief*, 43) – should be rejected based on the facts in the record demonstrating that the functions involved are different between the PIC change and the porting process. (*CenturyTel Brief*, 59-60)

recover those costs. That principle (and the underlying common sense associated with it) can be found throughout FCC regulation and decisions and does not evaporate simply because a like charge might be assessed by the other party at a future time. With respect to the assertion that manual processes are allegedly inefficient, Sprint has provided no fact to support it. Rather, the logic of the assertion raises the distinct possibility that the costs that would be incurred by CenturyTel, should an automated process be developed by CenturyTel, could exceed those at issue here because such "automatic" processes would be a "start-from-scratch" proposition. (*CenturyTel Brief*, 59, fn. 62; CenturyTel/15, Watkins/30) Thus, Sprint's effort to confuse the record with factually unsupported assertions should be rejected.

Further, and with respect to "subsequent service ordering charges," Sprint once again is attempting to take an agreed-to provision of the Interconnection Agreement, Article VI, Section 1.2.4, out of context and suggest that the parties have agreed not to assess this charge in all instances. (*Sprint Brief*, 43-44) As has already been discussed and demonstrated by CenturyTel to be the operative facts, Sprint's position fails to note that Section 1.2.4 applies only to *subsequent requests* to supplement any porting Local Service Request ("LSR") submitted to clarify, correct, change or cancel a previously submitted porting LSR.. (*CenturyTel Brief*, 60; *see also Response of CenturyTel of Mountain Home, Inc. to Petition for Arbitration*, Docket No. ARB 830, filed April 4, 2008, Exhibit 2 at 91-92) The parties have *not* agreed to waive this charge in other instances. Sprint's contentions to the contrary should be rejected outright as should its effort to confuse the record. Finally, and with respect to the rates, Sprint's position that it was not afforded sufficient opportunity to review the underlying support information (*Sprint Brief*, 38) is, at best, misleading. As Mr. Farrar indicates, additional support for the rates was provided to Sprint in discovery. (*Id.*) Moreover, as noted by CenturyTel, Sprint already

demonstrated its ability to extend the deadline for this arbitration had Sprint concluded that additional time was required to evaluate the information that was provided to it. (*CenturyTel* Brief, 62) Thus, Sprint's assertion that it "was unable to fully analyze the data" and that the information provided by CenturyTel left Sprint with supposed "unanswered questions" (*Sprint Brief*, 38) has no merit. Likewise, the inference left by Sprint that Sprint only saw the supporting information in Mr. Hankins' rebuttal testimony (*Sprint Brief*, 46) is, at best, also misleading. Sprint had already been provided such information through discovery. CenturyTel's submission of the information in Mr. Hankins' rebuttal testimony was to ensure that the information that CenturyTel provided to Sprint in discovery was, in fact, on the record in this proceeding. Sprint's efforts to confuse the record in this regard should be rejected outright.

Placing its contentions in context, therefore, Sprint's claims that the cost support provided by CenturyTel for the NRCs do not justify the rates proposed is fundamentally only a self-serving opinion. All necessary information was provided by CenturyTel to the Commission and to Sprint that justifies the NRC rates that CenturyTel proposes. To establish the identified NRC rates, CenturyTel utilized four factors – labor rates, processing time, system costs and demand. The labor rates are derived from CenturyTel's internal labor rate study/analysis, based on a time and motion study to perform the various functions associated with the NRC, plus the actual systems cost that support the related functions divided by the total orders processed. Demand volumes were based on actual levels that have reasonably been estimated to be experienced in the future and therefore, are considered forward-looking. (CenturyTel/9, Hankins/8-10; CenturyTel 16/, Hankins/3-4; *see also* CenturyTel/10 (Confidential), CenturyTel/11 (Confidential); CenturyTel/17 (Confidential)) Sprint's "pot shots" as to that

support and its mischaracterization of the availability of the underlying information[38] should not dissuade the Commission or the ALJ from this conclusion.

To that end, it is apparent that, ultimately and notwithstanding its unfortunate rhetoric, Sprint's intent is clear – it either wants a "$0" rate (*Id.*, 46) or the "lowest rate" that CenturyTel has in place in other agreements. (*Id.*, 43) Sprint's not-so-obvious ploy should not stand. Costs are incurred and should be recovered; Sprint's "$0" rate defies this principle. Likewise, Sprint's claim for the lowest rate that CenturyTel has negotiated is inappropriate as Sprint would not be bound to whatever significant concessions another CLEC may have made to obtain another rate.

In response to Sprint's refusal to agree on a rate, CenturyTel provided a cost-based rate that it believes is consistent with applicable FCC pricing and Commission requirements. Sprint cannot have it both ways. If Sprint wanted to negotiate the rates it could have done so. Since Sprint did not agree with CenturyTel as to those rates, Sprint cannot be heard to object to them now when cost-based rates have been provided by CenturyTel. Regardless, if Sprint wants a different rate, it could have addressed that need in a manner consistent with the requirements of Section 252(i) of the Act. Again, Sprint has not requested any action by CenturyTel pursuant to Section 251(i) of the Act. Therefore, Sprint should also not be heard to complain about the rates nor should it be permitted to suggest that the Commission allow Sprint to take a rate on a piecemeal basis.[39]

In summary, Sprint's claims as to the application and appropriate level of NRC rates proposed by CenturyTel should be rejected. CenturyTel has provided the necessary support and

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[38] As noted in the *CenturyTel Brief*, Sprint's assertions regarding CenturyTel's ezLocal® (*Sprint Brief*, 40-41) have already been shown to be without merit. (*CenturyTel Brief*, 62, fn. 66)

[39] The FCC has specifically stated that interconnection agreement terms may not be adopted on a pick and choose basis, which is the effective result of Sprint's request on this issue. *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Second Report and Order*, CC Docket 01-338, 19 FCC Rcd 13494, 13495 (¶ 1) (2004). In making this ruling, the FCC stated that its decision would "promote more 'give-and-take' negotiations . . . ." *Id.*

explanation of the rates it has proposed. (*CenturyTel Brief* at 60-62; *see also* CenturyTel/9; CenturyTel/10 (Confidential); CenturyTel/11 (Confidential); CenturyTel/16; CenturyTel/17 (Confidential)) CenturyTel respectfully requests that such rates be adopted in this proceeding.

Issue No. 15:

Issue No. 15. [Sprint's Formulation] If CenturyTel sells, assigns or otherwise transfers its territory or certain exchanges should CenturyTel be permitted to terminate the agreement in those areas?

Related Agreement Provisions: Article III, § 2.7.

Issue No. 15. [CenturyTel's Formulation] If CenturyTel sells, assigns or otherwise transfers its territory, or a portion of its territory, should CenturyTel be required to assign the Agreement to the purchasing entity or permitted to terminate the Agreement in those areas?

Related Agreement Provisions: Article III, § 2.7.

CenturyTel's Proposed Resolution: For the reasons set forth in the *CenturyTel Brief* and herein, CenturyTel respectfully submits that a purchaser of all or a portion of CenturyTel's operating territory should not be required to assume the Interconnection Agreement. In the event of a sale of all or a part of CenturyTel's service territory to a third party, CenturyTel should be permitted to terminate the Interconnection Agreement with regard to such territory. Sprint's position on this Issue 15 should be rejected for the following reasons.

First, although Sprint continues to advance its claim that continuing service to end users could be threatened if CenturyTel has the right to terminate the Interconnection Agreement upon the sale of all or part of its service territory to a third party (*Sprint Brief*, 46-47 *citing* Sprint/1, Burt/57-59), Sprint has failed to demonstrate how its claim is credible in light of Sprint's continuing failure to acknowledge the provisions of 47 C.F.R. §51.715(a). (*CenturyTel Brief*, 64 *citing* CenturyTel/1, Miller/46-49)

Contrary to Sprint's claim (*Sprint Brief,* 49), Mr. Miller has not misstated the language of 47 C.F.R. § 51.715. If CenturyTel's recommended language of Article III, Section 2.7 of the Interconnection Agreement is approved by the Commission, in the event of the sale or transfer of all or a portion of CenturyTel's operating area to an unaffiliated third party, the Interconnection Agreement would terminate following the provision of not less than 90 days' notice by CenturyTel to Sprint. Thus, by definition, Sprint would be "without an existing interconnection arrangement that provides for the transport and termination of telecommunications traffic" (47 C.F.R. § 51.715(a)(1)) with the purchasing entity. The FCC's discussion within the *First Report and Order* confirms this conclusion:

> To promote the Act's goal of rapid competition in the local exchange, we order incumbent LECs upon request from new entrants to provide transport and termination of traffic, on an interim basis, *pending resolution of negotiation and arbitration* regarding transport and termination prices, *and approval by the state commission. . . . The interim arrangement shall cease to be in effect when one of the following occurs:* (1) an agreement has been negotiated and approved; (2) an agreement has been arbitrated and approved; or (3) the period for requesting arbitration has passed with no such request.[40] (emphasis added)

The "arrangement" to which Section 51.715 refers exists (which would be the arrangement required of the "purchaser") until a negotiated or arbitrated interconnection agreement approved by a state commission is in place. Moreover, there can be no dispute that Sprint and its customers are entitled to the rights afforded them under Section 51.715 in the event of a termination of the Interconnection Agreement due to a sale of all or a portion of CenturyTel's operating area to an unaffiliated third party. Further, Sprint would be protected from adverse financial impact under an interim interconnection arrangement with a third party purchaser of all or a portion of CenturyTel's operating area based upon the "true up" requirements of 47 C.F.R. §

[40] *First Report and Order*, 11 FCC Rcd at 16029-30 (¶ 1065).

51.715(d). Thus, the ALJ should reject Sprint's contention that Section 51.715 does not afford it the rights CenturyTel has demonstrated exist.

Second, as pointed out in the *CenturyTel Brief,* the record demonstrates that Sprint itself has negotiated and has the benefit of interconnection agreement language comparable to that proposed by CenturyTel in its 13-state interconnection agreement with the AT&T Affiliates. (*CenturyTel Brief,* 64-65) Further, in the Master Interconnection Agreement for the State of Oregon between Sprint and United Telephone Company of the Northwest, dated February 1, 2005 (OR. PUC Docket No. ARB 240), the termination provisions read in pertinent part as follows:

> 5.5 Notwithstanding the above, should Sprint [the defined term for United Telephone Company of the Northwest] sell or trade substantially all the assets in an exchange or group of exchanges that Sprint uses to provide Telecommunications Services, then Sprint may terminate this Agreement in whole or in part as to that particular exchange or group of exchanges upon sixty (60) Days prior written notice.

Clearly, acceptance by Sprint of interconnection agreement provisions comparable to Article III, § 2.7 at issue in this proceeding is persuasive evidence that Sprint is trying to eliminate a right of CenturyTel that Sprint has already agreed to be reasonable and proper in when it is Sprint's right to terminate. Sprint's inconsistent position with respect to Issue 15 regarding a provision to which it has already agreed should be rejected by the ALJ and the Commission.

Finally, the record demonstrates that acceptance of Sprint's proposed language for Article III, § 2.7 could materially devalue CenturyTel assets by encumbering a potential sale with the obligations of CenturyTel's Interconnection Agreement with Sprint. (*CenturyTel Brief,* 64, 67; CenturyTel/1, Miller/47) This result should be avoided. The path to do so is for the ALJ and the Commission to approve CenturyTel's proposed language for Article III, § 2.7.

Accordingly, for all of the reasons stated herein and in the *CenturyTel Brief*, Sprint's challenges to CenturyTel's position regarding Issue 15 should be rejected. Thus, CenturyTel respectfully requests that its position and language in Article II, Section 2.7 be adopted to resolve Issue 15.

Issue No. 16:

Issue No. 16. [Sprint's Formulation] Not Contained in Sprint's Testimony.

Related Agreement Provisions: **Not Contained in Sprint's Testimony.**

Issue No. 16. [CenturyTel's Formulation] Do terms need to be included when Sprint utilizes indirect interconnection, and CenturyTel is not provided detailed records, nor is CenturyTel able to identify and bill calls based upon proper jurisdiction?

Related Agreement Provisions: Article IV, §§ 3.3.1.4, 4.5.2.2.

CenturyTel's Proposed Resolution: For the reasons set forth in the *CenturyTel Brief* and herein, CenturyTel respectfully submits that the terms and conditions regarding the obligation of Sprint to provide an auditable Percent Local Use ("PLU") factor are appropriate in those instances where Sprint uses indirect interconnection and CenturyTel is either not provided detailed billing records or is unable to identify and bill calls based upon the proper jurisdiction. Apparently, Sprint misses the latter point (*Sprint Brief*, 50); the PLU factor is only required to the extent that CenturyTel does not receive accurate information from the transit provider. (*CenturyTel Brief*, 67-68, 71)

Sprint's position amounts to nothing more that an effort to avoid providing to CenturyTel the necessary billing information arising from Sprint's election to use a third party tandem-based form of indirect interconnection. Sprint's position has already been shown in the *CenturyTel Brief* to be without basis.

First, CenturyTel has demonstrated that Sprint's contention that CenturyTel should be able to use Signaling System No. 7 ("SS7") for billing (*Sprint Brief*, 51) is technically infeasible. (*CenturyTel Brief*, 68, 71) Although Sprint claims that it is reasonable for CenturyTel to be ordered to "improve its network to measure traffic delivered to it" (*Sprint Brief*, 52), *but for* Sprint's election to use a tandem-based indirect interconnection arrangement there would be no reason for CenturyTel to augment its existing measurement capabilities. Thus, as the cost causer, Sprint, not CenturyTel, should pay for the necessary functions arising directly from its decision.

Second, while Sprint claims that the production of a PLU is "administratively burdensome and costly" when it "delivers adequate information for billing purposes" (*Sprint Brief*, 51), that position cannot be reconciled with the fact that Sprint, as a long distance provider, has more than adequate experience in developing auditable traffic factors. (*CenturyTel Brief*, 72) As demonstrated by CenturyTel, traffic factors for purposes of exchange access (which is the reason for the PLU in the first instance – to identify the traffic that is subject to exchange access charges) are common place devices for billing purposes. (*Id.*) Incredibly, however, Sprint's claimed administrative burden and cost is belied by its very qualifier, *i.e.*, when it "delivers adequate information for billing purposes." (*Sprint Brief*, 51) If Sprint possesses or knows it is delivering such information, then it can capture that information and provide an auditable PLU to CenturyTel, and Sprint admits the same. Sprint states that it "already provides CPN [Calling Party Number] in its signaling . . . . " (*Id.*) Thus, Sprint has the information to develop the PLU or can readily deploy such solution within its network.[41] Foisting such costs upon CenturyTel,

[41] Sprint's reliance on the FCC's statements regarding local measurement costs (*Sprint Brief*, 52) has been shown to be without merit. (*CenturyTel Brief*, 71-72)

however, raises issues of superior forms of interconnection that *IUB II* and *IUB I* properly determined cannot be imposed upon CenturyTel.

Finally, Sprint makes a series of statements regarding Section 251(a) (*Sprint Brief*, 52) that simply distract from the focus of this Issue 16 which is proper billing. Sprint's claims regarding Section 251(a) have already been demonstrated to be without basis by CenturyTel in on Issue 7 and need not be repeated here. (*See* pp. 23-27, *supra*; *CenturyTel Brief*, 38-41) However, it would be an astonishing leap of faith to suggest, as Sprint has effectively done, that Section 251(a) can be contorted in a manner to suggest that Congress, in enacting Section 251(a), would allow the party delivering traffic to a terminating carrier (in this case Sprint delivering *access traffic*, subject to *access charges*, to CenturyTel) to escape financial responsibility for the traffic that such delivering party has to the terminating carrier. Sprint's position should be rejected.

Sprint's position on Issue 16 defies common sense. The decision of the Michigan Panel that adopts CenturyTel's position on this Issue 16 is consistent with the foregoing fact,[42] and was affirmed by the MPSC.[43] No one gets a "free ride" on the Public Switched Telephone Network. Sprint is no exception.[44] Sprint's position on Issue 16 should be rejected in its entirety by the ALJ and the Commission.

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[42] *Michigan Panel Decision*, 28.

[43] *Michigan Commission Decision*, 27-28.

[44] Even though the Presiding Officer in Arkansas presumably relied upon the availability of Sprint's SS7 records and other billing information in his ruling on Issue 16 in favor of Sprint (*Arkansas Order*, 14), that conclusion cannot be reconciled with the record in Oregon. That record demonstrates that SS7 records cannot be used by CenturyTel for billing. (*CenturyTel Brief*, 71) Moreover, it is the lack of billing information that triggers the need for the PLU in the first instance. In any event, even the *Arkansas Order* reflects the fact that proper billing information is necessary. However, the need to incur the costs of any further regulatory intervention regarding the need for a PLU when billing records are not provided (*Arkansas Order*, 14-15) can be avoided because Sprint possesses the necessary information to establish the PLU (which is only a representative estimate of the traffic) as Sprint has already admitted. (*Sprint Brief*, 51)

IV. CONCLUSION

For the reasons set forth in CenturyTel's filings in this proceeding with regard to each of the foregoing issues that have not yet been resolved by agreement of the parties, CenturyTel respectfully requests that the Administrative Law Judge and the Commission:

(a) issue an order adopting and approving the language that CenturyTel proposes to resolve all open issues in this proceeding;

(b) retain jurisdiction of this arbitration until the parties have submitted a conforming agreement for approval pursuant to Section 252(e) of the Act; and

(c) retain jurisdiction of this arbitration and the parties hereto as necessary to enforce the arbitrated agreement.

Dated this 23rd day of July, 2008.

Respectfully submitted,

CenturyTel of Oregon, Inc.

By: _____

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CERTIFICATE OF SERVICE

I certify that I have this day sent the attached Reply Brief 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 Reply Brief 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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ATTACHMENT ONE

UPDATED DISPUTED POINTS LIST

[See attached]

CenturyTel's Updated Disputed Points List ("Updated DPL")
Sprint Communications Company L.P. / CenturyTel of Oregon, Inc.
July 23, 2008

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
1.	**Should the dispute resolution procedures, including commercial arbitration, be included in the Agreement?** **Section:** **Article III, Sections 20.3, 20.3.1, 20.3.2 and 20.5**	The wording of Section 20.1.1 was not disputed by the parties. Settled: Sprint agreed to accept CenturyTel's language in 20.1.2 and 20.2		20.1 **Alternative to Litigation** 20.1.1 Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, except for an action seeking a temporary restraining order, or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedures as the sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach. 20.1.2 Each Party agrees to promptly notify the other Party in writing of a dispute and may in the dispute notice invoke the informal dispute resolution process described in Section 20.2. The Parties will endeavor to resolve the dispute within thirty (30) days after the date of the dispute notice.	**CenturyTel's positions on the unresolved Issues are set forth in the filings made in this proceeding, including the testimonies of its witnesses, its Post-Hearing Brief and its Post-Hearing Reply Brief to which this Updated Disputed Points List is attached as Attachment One. Thus, no position statements are included in this Updated DPL on Issues 1, 2, 4, 5, 6, 7, 8, 10 13, 14, 15, and 16. Issues 3, 9, 11 and 12 have been settled by the parties.**

Sprint Terms in Bold Underline
CenturyTel Terms in Bold Italic
Agreed to Terms in Normal Text

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
				20.2 Negotiations. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted in a business-to-business fashion. It shall be left to each Party to select its own representative(s) for such negotiations. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or	

Sprint Terms in Bold Underline
CenturyTel Terms in Bold Italic
Agreed to Terms in Normal Text

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
				provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit. Unless otherwise provided herein, or upon the Parties' agreement, either Party may invoke formal dispute resolution procedures including arbitration or other procedures as appropriate, not earlier than thirty (30) days after the date of the dispute notice, provided the Party invoking the formal dispute resolution process has in good faith negotiated, or attempted to negotiate, with the other party. 20.3 ***Formal Dispute Resolution*** ***20.3.1 The Parties agree that all unresolved disputes arising under this Agreement, including without limitation, whether the dispute in question is subject to arbitration, shall be submitted to Commission for resolution in accordance with its dispute resolution process and the***	
		20.3 **Arbitration. If negotiations do not resolve the dispute, then either party may proceed with any remedy available to it pursuant to law, equity, or agency mechanisms. Notwithstanding the above provisions, if the dispute arises from a service affecting**			

Sprint Terms in Bold Underline
CenturyTel Terms in Bold Italic
Agreed to Terms in Normal Text

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
		issue, either Party may immediately seek any available remedy.		***outcome of such process will be binding on the Parties, subject to any right to appeal a decision reached by the Commission under applicable law.*** ***20.3.2 If the Commission does not have or declines to accept jurisdiction over any dispute arising under this Agreement, the dispute may be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A Party may demand such arbitration in accordance with the procedures set out in those rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section or upon approval or order of the arbitrator. Each Party may submit in writing to a Party, and that Party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: interrogatories; demands to produce documents; requests for admission. Additional discovery may be permitted upon mutual agreement of the***	

Sprint Terms in Bold Underline
CenturyTel Terms in Bold Italic
Agreed to Terms in Normal Text

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
				Parties. The arbitration hearing shall be commenced within ninety (90) days of the demand for arbitration. The arbitration shall be held in Oregon, unless otherwise agreed to by the Parties or required by the FCC. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties shall submit written briefs five days before the hearing. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The arbitrator has no authority to order punitive or consequential damages. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. 20.5 Costs. Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the reasonable costs of production of documents (including search time and reproduction costs).	

Sprint Terms in Bold Underline
CenturyTel Terms in Bold Italic
Agreed to Terms in Normal Text

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
				The Parties shall equally split the fees of the arbitration and the arbitrator.	
2.	**What are the appropriate terms for Indemnification?** **Section: Article III, Section 30.1**	30.1 Indemnification Against Third-Party Claims. Each Party (the "Indemnifying Party") agrees to indemnify, defend, and hold harmless the other Party (the "Indemnified Party") and the other Party's Subsidiaries, predecessors, successors, Affiliates, and assigns, and all current and former officers, directors, members, agents, contractors and employees of all such persons and entities (collectively, with Indemnified Party, the "Indemnitee Group"), from any and all Claims. "Claim" means any action, cause of action, suit, proceeding, claim, or demand of any third party (and all resulting judgments, bona fide settlements, penalties, damages, losses, liabilities, costs, and expenses (including, but not limited to, reasonable costs and attorneys' fees), arising out of or relating to, or based on allegations that, if true, would establish, (i) the Indemnifying Party's breach of this Agreement; (ii) the Indemnifying Party's		30.1 Indemnification Against Third-Party Claims. Each Party (the "Indemnifying Party") agrees to indemnify, defend, and hold harmless the other Party (the "Indemnified Party") and the other Party's Subsidiaries, predecessors, successors, Affiliates, and assigns, and all current and former officers, directors, members, agents, contractors and employees of all such persons and entities (collectively, with Indemnified Party, the "Indemnitee Group"), from any and all Claims. "Claim" means any action, cause of action, suit, proceeding, claim, or demand of any third party (and all resulting judgments, bona fide settlements, penalties, damages, losses, liabilities, costs, and expenses (including, but not limited to, reasonable costs and attorneys' fees), arising out of or relating to, or based on allegations that, if true, would establish, (i) the Indemnifying Party's breach of this Agreement; (ii) the Indemnifying Party's	

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
		misrepresentation, fraud or other misconduct; (iii) the Indemnifying Party's negligence; (iv) infringement by the Indemnifying Party or by any Indemnifying Party product or service of any patent, copyright, trademark, service mark, trade name, right of publicity or privacy, trade secret, or any other proprietary right of any third party; (v) the Indemnifying Party's liability in relation to any material that is defamatory or wrongfully discloses confidential information; or (vi) the Indemnifying Party's wrongful use or unauthorized disclosure of data; (vii) with respect to Sprint as Indemnifying Party, any act or omission of Sprint Third Party Provider; (viii) any act or omission of the Indemnifying Party, or its contractors or agents, in connection with its performance or nonperformance under this Agreement; or (ix) the bodily injury or death of any person, or the loss or disappearance of or damage to the tangible property of any person, relating to the Indemnifying Party's performance or obligations under this Agreement.		misrepresentation, fraud or other misconduct; (iii) the Indemnifying Party's negligence; (iv) infringement by the Indemnifying Party or by any Indemnifying Party product or service of any patent, copyright, trademark, service mark, trade name, right of publicity or privacy, trade secret, or any other proprietary right of any third party; (v) the Indemnifying Party's liability in relation to any material that is defamatory or wrongfully discloses confidential information; or (vi) the Indemnifying Party's wrongful use or unauthorized disclosure of data; (vii) with respect to Sprint as Indemnifying Party, any act or omission of Sprint Third Party Provider; (viii) any act or omission of the Indemnifying Party, or its contractors or agents, in connection with its performance or nonperformance under this Agreement; ***(ix) defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by the Indemnifying Party's End Users, and, with respect to***	

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
		"Reasonable costs and attorneys' fees," as used in this Section 30.1, includes without limitation fees and costs incurred to interpret or enforce this Section 30.1. The Indemnified Party will provide the Indemnifying Party with reasonably prompt written notice of any Claim. At the Indemnifying Party's expense, the Indemnified Party will provide reasonable cooperation to the Indemnifying Party in connection with the defense or settlement of any Claim. The Indemnified Party may, at its expense, employ separate counsel to monitor and participate in the defense of any Claim. In the case of any Claim alleged or claimed by an End User of either Party, the Party whose End User alleged or claimed such Claim (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") against any and all such Claims by its End Users regardless of whether the underlying function, facility, product or service giving rise to such Claim was provided or provisioned by the Indemnified Party, unless such Claim was		***Sprint as Indemnifying Party, content transmitted by any Sprint Third Party Provider;*** or (x) the bodily injury or death of any person, or the loss or disappearance of or damage to the tangible property of any person, relating to the Indemnifying Party's performance or obligations under this Agreement. "Reasonable costs and attorneys' fees," as used in this Section 30.1, includes without limitation fees and costs incurred to interpret or enforce this Section 30.1. The Indemnified Party will provide the Indemnifying Party with reasonably prompt written notice of any Claim. At the Indemnifying Party's expense, the Indemnified Party will provide reasonable cooperation to the Indemnifying Party in connection with the defense or settlement of any Claim. The Indemnified Party may, at its expense, employ separate counsel to monitor and participate in the defense of any Claim. In the case of any Claim alleged or claimed by an End User of either Party, the Party whose End User alleged or claimed such Claim (the "Indemnifying Party") shall defend and	

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Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
		caused by the negligence or willful misconduct of the Indemnified Party. The Indemnified Party will provide the Indemnifying Party with reasonably prompt written notice of any Claim. At the Indemnifying Party's expense, the Indemnified Party will provide reasonable cooperation to the Indemnifying Party in connection with the defense or settlement of any Claim. The Indemnified Party may, at its expense, employ separate counsel to monitor and participate in the defense of any Claim. The Indemnifying Party shall not be liable under this Section for settlement by the Indemnified Party, if the Indemnifying Party has not approved the settlement in advance, unless the Indemnifying Party has had the defense of the applicable Claim tendered to it in writing and has failed to assume such defense. In the event of such failure to assume defense, the Indemnifying Party shall be liable for any reasonable settlement made by the Indemnified Party without approval of the Indemnifying Party.		indemnify the other Party (the "Indemnified Party") against any and all such Claims by its End Users regardless of whether the underlying function, facility, product or service giving rise to such Claim was provided or provisioned by the Indemnified Party, unless such Claim was caused by the negligence or willful misconduct of the Indemnified Party. The Indemnified Party will provide the Indemnifying Party with reasonably prompt written notice of any Claim. At the Indemnifying Party's expense, the Indemnified Party will provide reasonable cooperation to the Indemnifying Party in connection with the defense or settlement of any Claim. The Indemnified Party may, at its expense, employ separate counsel to monitor and participate in the defense of any Claim. The Indemnifying Party shall not be liable under this Section for settlement by the Indemnified Party, if the Indemnifying Party has not approved the settlement in advance, unless the Indemnifying Party has had the defense of the applicable Claim tendered to it in writing and has failed to assume such defense.	

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Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
				In the event of such failure to assume defense, the Indemnifying Party shall be liable for any reasonable settlement made by the Indemnified Party without approval of the Indemnifying Party.	
3.	**How should the Bill and Keep arrangement be incorporated in the Agreement or should it accurately reflect what is agreed to in Section 4.4.2 and 4.2.3?** **Section: Article VII I.A.**		**This issue has been resolved by the parties as follows:** I. INTERCONNECTION PRICING A. Reciprocal Compensation (Transport and Termination) Transport and Termination for Local Traffic excluding Local Traffic that is also ISP-Bound Traffic TBD (If invoked pursuant to Article IV, Section 4.4.2) Local Traffic that is also ISP-Bound Traffic (pursuant to Article IV, Section 4.2.3) Bill and Keep		**This issue has been resolved by the parties. See language in column "Sprint Position."**
4.	**What Direct Interconnection Terms should be included in the Interconnection Agreement?**	2.2.2 Points of Interconnection (POIs): A Point of Interconnection (POI) is a point in the network where the Parties deliver Local Traffic to each other. **For direct**		2.2.2 Points of Interconnection (POIs): A Point of Interconnection (POI) is a point in the network where the Parties deliver Local Traffic to each other ***and also serves as***	

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Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
	Section: **Article IV Sections 2.2.2, 2.2.3, 2.2.4, 2.3.2.1, 3.3.2.1, 3.3.2.2, 3.3.2.2.1 and 3.4.2.1.1**	**interconnection, Sprint will establish a minimum of one POI within the LATA at any technically feasible point on the ILEC's network.** Requirements for a Local POI are set forth in Section 3.3.2 of this Article Sprint proposes deleting 2.2.3		***a demarcation point between the facilities that each Party is responsible to provide.*** Requirements for a Local POI are set forth in Section 3.3.2 of this Article. ***In some cases, multiple POI(s) may be necessary to provide the best technical implementation of Interconnection requirements to each End Office within a CenturyTel company's service area.*** 2.2.3 ***The Parties agree to meet as often as necessary to negotiate the selection of new POIs. Criteria to be used in determining POIs include existing facility capacity, location of existing POIs, traffic volumes, relative costs, future capacity needs, etc. Agreement to the location of POIs will be based on the network architecture existing at the time the POI(s) is/are negotiated. In the event either Party makes subsequent changes to its network architecture, including but not limited to trunking changes or adding new switches, then the Parties will negotiate new POIs if required.***	

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Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
		2.2.4 **Subject to Section 3.3.2 of this Article, each** Party is responsible for the facilities to its side of the POI(s) and **Sprint will select a** method of Interconnection described in this Section 2. Each Party is responsible for the appropriate sizing, **and** operation, of the transport facility to the POI(s). Sprint proposes deleting CenturyTel's additional language in 2.3.2.1. Sprint proposes deleting CenturyTel's 3.3.2.1 language. Sprint's 3.3.2.1 language is under Issue 9.		2.2.4 ***Each*** Party is responsible for the facilities to its side of the POI(s) and ***may utilize any*** method of Interconnection described in this Section 2. Each Party is responsible for the appropriate sizing, operation, ***maintenance and cost*** of the transport facility to the POI(s). 2.3.2.1 Fiber Meet Interconnection between CenturyTel and Sprint can occur at any ***mutually agreeable and*** technically feasible point(s) between a CenturyTel End Office and Sprint's premises within the local calling area. ***Sprint shall request a Fiber Meet Point of Interconnection by submitting a Bona Fide Request (BFR).*** **3.3.2.1** ***Unless the parties mutually agree otherwise, a Direct Network Connection and a Local POI shall be established upon occurrence of any of the triggers set forth in Section 3.3.2.4 of this Article. In some cases, multiple POI(s) will be necessary to provide the best technical implementation***	

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Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
				of Interconnection requirements to each End Office within a CenturyTel's service area.	
		3.3.2.2 **At Sprint's request, a direct network connection** shall be established by connecting Sprint's network to CenturyTel's network at **any technically** feasible point on CenturyTel's network **within the LATA pursuant to Sec. 2.0 of this Article IV.**		3.3.2.2 ***A Direct Network Connection*** shall be established by connecting Sprint's network to CenturyTel's network at a ***mutually agree upon*** point on CenturyTel's network within the ***CenturyTel local exchange. The connection can be established in any of the manners described in Section 2 of this Article.***	
		Sprint proposes deleting language in 3.3.2.2.1.		***3.3.2.2.1 A two-way local trunk group shall be established between Sprint switch and each CenturyTel Tandem in the local exchange area. Inter-Tandem switching is not provided.***	
		3.4.2.1.1 The Parties shall establish direct End Office primary high usage Local Interconnection trunk groups for the exchange of Local traffic **by mutual agreement.**		3.4.2.1.1 The Parties shall establish direct End Office primary high usage Local Interconnection trunk groups for the exchange of Local traffic ***where actual or projected traffic demand is or will be twenty four (24) or more trunks, as described in Section 3.3.2.5 of this Article.***	
5.	**Should Sprint and CenturyTel share the**	2.59 Interconnection		Article II	

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
	costs of the Interconnection Facility between their respective networks percentages of originated traffic? **Section:** **Article II Section 2.59,** **Article IV Sections 2.2.2, 3.2.2., 3.2.5.1, 3.2.5.2, 3.2.5.3, 3.2.5.5 and Article VII I. C.**	Facility Interconnection Facility is the dedicated transport facility used to connect the two Parties' networks. **For purposes of this Agreement the Interconnection Facility is the network facility that connects the POI to Sprint's Point of Presence in the LATA.** 2.2.2 Points of Interconnection (POIs): A Point of Interconnection (POI) is a point in the network where the Parties deliver Local Traffic to each other. **For direct interconnection, Sprint will establish a minimum of one POI within the LATA at any technically feasible point on the ILEC's network.** Requirements for a Local POI are set forth in Section 3.3.2 of this Article. 3.2.2 Sprint proposes deleting the additional language added by CenturyTel.		2.59 CenturyTel proposes deleting Sprint's additional language in 2.5.9. Article IV 2.2.2 Points of Interconnection (POIs): A Point of Interconnection (POI) is a point in the network where the Parties deliver Local Traffic to each other ***and also serves as a demarcation point between the facilities that each Party is responsible to provide.*** Requirements for a Local POI are set forth in Section 3.3.2 of this Article. ***In some cases, multiple POI(s) may be necessary to provide the best technical implementation of Interconnection requirements to each End Office within a CenturyTel company's service area.*** 3.2.2 The Parties agree that two-way trunk groups for Local, IntraLATA and InterLATA traffic shall be established between a Sprint switch and a	

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Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
				CenturyTel tandem switch or End Office switch pursuant to the terms of this Article. Trunks will utilize Signaling System 7 (SS7) or multi-frequency (MF) signaling protocol, with SS7 signaling being used whenever possible. Two-way trunking for Local Traffic will be jointly provisioned and maintained, ***with each Party being responsible for costs on its side of the POI. The costs associated with transporting Information Access Traffic and/or ISP-Bound Traffic to Sprint shall be the sole responsibility of Sprint.*** For administrative consistency Sprint will have control for the purpose of issuing Access Service Requests (ASRs) on two-way groups. Either Party will also use ASRs to request changes in trunking. Both Parties reserve the right to issue ASRs, if so required, in the normal course of business. CenturyTel proposes deleting Sprint's language in 3.2.5.1, 3.2.5.2, 3.2.5.3, 3.2.5.5 and Article VII C.	
		3.2.5.1Compensation for Interconnection Facilities is separate and distinct from any transport and termination per minute of use charges or an otherwise agreed upon Bill and Keep			

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
		arrangement. To the extent that one Party provides a two-way Interconnection Facility, regardless of who the underlying carrier is, it may charge the other Party for its proportionate share of the recurring charges for Interconnection Facilities based on the other Party's percentage of the total sent Traffic. **3.2.5.2 When either one way or two-way Interconnection Facilities are utilized, each Party shall be financially responsible for the proportion of the Interconnection Facility used to transmit its originating Traffic.** **3.2.5.3 A state-wide shared facilities factor may be agreed to by the Parties that represents each Party's proportionate use of all direct two-way Interconnection Facilities between the Parties. The shared facilities factor may be updated by the Parties annually based on current traffic study data, if requested by either Party in writing.**			

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Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
		3.2.5.5 Notwithstanding any other provision of this Agreement or ILEC's tariff, if Sprint elects to order Interconnection Facilities from ILEC's access tariff or purchases the Interconnection Facility from ILEC under this Agreement the terms in this Section 3.2.5 will apply. **C. Initial Factors:** **Initial Shared Facility Factor 50%**			
6.	**What are the appropriate rates for direct Interconnection Facilities?** **Section:** **Article IV Section 2.3.1.1, 3.2.5.4, Article VII, Section I. D and I.E.**	2.3.1.1 Sprint proposes deleting the additional language added by CenturyTel. **3.2.5.4 Interconnection Facilities that are leased from ILEC for interconnection purposes must be provided to Sprint at forward-looking economic cost-based rates.** **D. Interconnection Facility TELRIC Study based**		2.3.1.1 Where facilities exist, either Party may lease facilities from the other Party ***pursuant to applicable tariff,*** may lease facilities from a third party or may construct or otherwise self-provision facilities. CenturyTel proposes deleting 3.2.5.4. *Article VII* ***E. Entrance Facility:*** ***See Access Tariff***	
7.	**Should the Interconnection**	Sprint proposes deleting CenturyTel's language in		***3.3.1.1 Indirect Network Connection in intended only***	

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Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
	Agreement contain provisions limiting Indirect Interconnection? **Section:** **Article IV Sections 3.3.1.1, 3.3.2.2, 3.3.2.2.1, 3.3.2.4, 3.3.2.5, and 3.3.2.6**	sections 3.3.1.1 and 3.3.2.1		***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.*** ***3.3.2.1 Unless the parties mutually agree otherwise, a Direct Network Connection and a Local POI shall be established upon occurrence of any of the triggers set forth in Section 3.3.2.4 of this Article. In some cases, multiple POI(s) will be necessary to provide the best technical implementation of Interconnection requirements to each End Office within a CenturyTel's service area.***	
		3.3.2.2 **At Sprint's request a direct network connection** shall be established by connecting Sprint's network to CenturyTel's network at **any technically feasible** point on CenturyTel's		3.3.2.2 ***A Direct Network Connection*** shall be established by connecting Sprint's network to CenturyTel's network at ***a mutually agree upon*** point on CenturyTel's network within the ***CenturyTel local exchange.***	

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Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
		network within the **LATA pursuant to Sec. 2.0 of this Article IV.** Sprint proposes deleting the language in 3.3.2.2.1 Sprint proposes deleting the additional language in 3.3.2.4, 3.3.2.5 and 3.3.2.6		***The connection can be established in any of the manners described in Section 2 of this Article*** ***3.3.2.2.1 A two-way local trunk group shall be established between Sprint switch and each CenturyTel Tandem in the local exchange area. Inter-Tandem switching is not provided.*** ***3.3.2.4 Unless the parties agree otherwise, a Direct Network Connection and Local POI shall be established upon the occurrence of either of the following:*** ***3.3.2.4.1 Sprint has begun serving end users within a CenturyTel local exchange, or has assigned to any end user numbers that are rated to a rate center that is within the local calling area of a CenturyTel exchange and the resulting Local Traffic that is to be exchanged between the Parties is equal to or greater than a DS-1 trunk equivalency as described in Section 3.3.2.5 of this Article.*** ***3.3.2.4.2 Either Party is assessed transiting costs by a third party and such charges***	

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Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
				associated with a single traffic exchange route exceed $200.00 for one month. ***3.3.2.5 A DS-1 trunk equivalency is deemed established in any the following instances:*** ***3.3.2.5.1 Traffic studies of peak busy CCS indicate that the number of trunks necessary to achieve a .001 Grade of Service based upon application of the Erlang B table is equal to or exceeds 24 for three consecutive months, or for three months of any consecutive five month period.*** ***3.3.2.5.2 Combined two-way traffic between two single switches of each Party reaches 200,000 combined minutes of use per month for two consecutive months, or for any two months in a consecutive three-month period.*** ***3.3.2.5.3 At any point where a traffic forecast prepared pursuant to requirements of Article III, Section 11 or Article IV, Section 3.5 indicates that combined two-***	

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
				way traffic between two single switches of each Party will exceed 200,000 minutes of use per month. ***3.3.2.5.4 In any instance where Sprint has requested to port a number or numbers associated with an end user customer and it is known that local trunks previously associated with that customer and those numbers equaled or exceeded 24. In any other instance where it can be shown that a customer that Sprint is about to serve previously had 24 or more local trunks associated with the service that the customer will disconnect or has disconnected in migrating its service to Sprint.*** ***3.3.2.5.5 In any instance where Sprint is providing a tandem function then Sprint must direct connect to CenturyTel pursuant to the terms of this section. Language should also require them to record and provide billing records for that traffic transiting their switch and terminating to CenturyTel.*** ***3.3.2.6 The Parties may***	

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
				mutually agree to establish a Direct Network Interconnection even where none of the conditions set forth in Section 3.3.2.4 of this Article has occurred.	
8.	**Should Sprint be required to enter into traffic exchange agreements with a third-party Telecommunications Carriers for traffic that transits through CenturyTel's network to reach a third-party Telecommunications Carrier? Should CenturyTel be indemnified by Sprint, if Sprint does not have a traffic exchange agreement with the third-party for any actions or complaints, including any attorney's fees and expenses, against CenturyTel concerning the non-payment of charges levied by such third-party Telecommunications Carrier for Sprint's traffic?**	3.3.1.3 The Parties agree to enter into their own agreements with third-party providers **as necessary.** In the event that Sprint sends traffic through CenturyTel's network to a third-party provider with whom Sprint does not have a traffic interexchange agreement, **Parties agree that CenturyTel has no obligation to pay charges levied by such third-party Telecommunications Carrier, including any termination charges related to such traffic.** 4.6.4.2 The originating carrier is responsible for payment of appropriate rates to the carrier providing the Transit Service and to the terminating carrier. In the event one Party originates traffic that transits the second Party's network to reach a third-party Telecommunications Carrier		3.3.1.3 The Parties agree to enter into their own agreements with third-party providers. In the event that Sprint sends traffic through CenturyTel's network to a third-party provider with whom Sprint does not have a traffic interexchange agreement, ***then Sprint agrees to indemnify CenturyTel for any termination charges rendered by a third-party provider for such traffic.*** 4.6.4.2 The originating carrier is responsible for payment of appropriate rates to the carrier providing the Transit Service and to the terminating carrier. ***The Parties agree to enter into traffic exchange agreements with third-party Telecommunications Carriers as necessary. In***	

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
	Section: Article IV, Sections 3.3.1.3 and 4.6.4.2	with which the originating Party does not have a traffic exchange agreement, Parties agree that the second Party has no obligation to pay charges levied by such third-party Telecommunications Carrier, including any termination charges related to such traffic. In the case of IntraLATA Toll Traffic where CenturyTel is the designated IntraLATA Toll provider for existing LECs, CenturyTel will be responsible for payment of appropriate usage rates.		***the event one Party originates traffic that transits the second Party's network to reach a third-party Telecommunications Carrier with which the originating Party does not have a traffic exchange agreement,*** Parties agree that the second Party has no obligation to pay charges levied by such third-party Telecommunications Carrier, including any termination charges related to such traffic. ***The originating Party will indemnify, defend and hold harmless the second Party against any actions or complaints, including any attorney's fees and expenses, against the second Party concerning the non-payment of charges levied by such third-party Telecommunications Carrier for such traffic.*** In the case of IntraLATA Toll Traffic where CenturyTel is the designated IntraLATA Toll provider for existing LECs, CenturyTel will be responsible for payment of appropriate usage rates.	
9.	**Should the Interconnection**		**This issue has been resolved by the parties as follows:**		**[This issue has been resolved by the parties. See language in**

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
	Agreement permit the Parties to combine traffic subject to reciprocal compensation charges and traffic subject to access charges on the interconnection trunks? **Section:** **Article IV, Sections 3.2.5.6, 3.3.1.4, 3.3.2.1, 3.3.2.8, 3.3.2.8.1, 3.3.2.8.3, 4.5.1.3, 4.5.2.2, and Article VII, I. C.**		**Sprint's proposed section 3.2.5.6 will be deleted.** **Sprint's proposed section 3.3.2.1 will be deleted.** **CenturyTel's proposed language in 3.3.2.8 and 3.3.2.8.1, and 3.3.2.8.3 will be included as follows.** 3.3.2.8 Sprint and CenturyTel shall, where applicable, make reciprocally available, the required trunk groups to handle different traffic types. Sprint and CenturyTel will support the provisioning of trunk groups that carry combined or separate Local Traffic. Notwithstanding the above, CenturyTel requires separate trunk groups from Sprint to originate and terminate Non-Local Traffic calls and to provide Switched Access Service to IXCs. To the extent Sprint desires to have any IXCs originate or terminate switched access traffic to or from Sprint, using jointly provided switched access facilities routed through a CenturyTel access tandem,		**column "Sprint Position."]**

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
			it is the responsibility of Sprint to arrange for such IXC to issue an ASR to CenturyTel to direct CenturyTel to route the traffic. If CenturyTel does not receive an ASR from the IXC, CenturyTel will initially route the switched access traffic between the IXC and Sprint. If the IXC subsequently indicates that it does not want the traffic routed to or from Sprint, CenturyTel will not route the traffic. 3.3.2.8.1 Each Party agrees to route traffic only over the proper jurisdictional trunk. (Last sentence proposed by Sprint has been removed.) 3.3.2.8.3 Initially, Sprint will not use this interconnection arrangement to exchange traffic subject to access charges. If Sprint intends to use this interconnection arrangement to exchange traffic subject to access, the Parties will work cooperatively to develop mutually agreed upon processes and terms necessary to affect such		

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
			exchange. Such processes shall address, but not be limited to, the identification and measurement of traffic that goes over each trunk, the use of factors, auditing provisions, the type of traffic, the jurisdiction of traffic, and the amount or volume of traffic. If the Parties are unable to agree upon such terms and processes, the Dispute Resolution Procedures under Section 20 of Article III will be invoked. Until such time, neither Party shall route Switched Access Service traffic over local connection trunks or Local Traffic over Switched Access Service trunks. **Sprint's proposed section 4.5.1.3 will be deleted.** **CenturyTel's language in Article VII – I.C. will be included.** Article VII – I. C. Initial Factors: Initial CenturyTel Originated local Traffic Factor - 50%		

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
10.	**What terms for virtual NXX should be included in the Interconnection Agreement?** **Section:** **Article II, section 2.135** **Article IV, section 4.2.2.2**	2.135 **Reserved for future use** Sprint proposes deleting the language in 4.2.2.2, 4.2.2.3, 4.2.2.4 and 4.2.2.5		*2.135 Virtual NXX Traffic (VNXX Traffic)* *As used in this Agreement, Virtual NXX Traffic or VNXX Traffic is defined as calls in which a Party's End User is assigned a telephone number with an NXX Code (as set forth in the LERG) assigned to a Rate Center that is different from the Rate Center associated with the Customer's actual physical premise location.* *4.2.2.2 The Commission has historically prohibited VNXX arrangements in Oregon. In Order No. 07-098 the Commission created an exception in permitting assignment of VNXX numbers to ISP customers only upon certain conditions. Consistent with Commission Order 07-098 the Parties agree that Sprint will be permitted to assign VNXX numbers to ISP customers only to facilitate the exchange of dial-up internet traffic and only to the extent that Sprint pays the applicable tariff rate for interexchange/interstate trunks used to transport VNXX-routed*	

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
				ISP-bound traffic from the Oregon local calling areas where ISP calls originate to Sprint's media gateway. CenturyTel proposes that the language set forth in Sprint's section 4.2.2.5 be deleted.	
11.	**What are the appropriate terms for reciprocal compensation under the bill and keep arrangement agreed to by the parties?** **Section:** **Article IV, section 4.4.3.1; Article VII, Section I. A and I. B.**		**This issue has been resolved by the parties as follows:** 4.4.3Transport and Termination Rate 4.4.3.1 The Transport and Termination rate(s) apply to Local Traffic that is delivered to the other Party for termination. This includes direct-routed Local Traffic that terminates directly to the End Office as well as Local Traffic that has combined Tandem Office Switch, transport and End Office Switch functions.		**This issue has been resolved by the parties. See language in column "Sprint Position."**
12.	**Should the Performance Review terms include language for refunds and dispute resolution if appropriate remedies are not**		**This issue has been resolved by the parties as follows:** Article III, 9. Disputed Amounts. If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties,		**This issue has been resolved by the parties. See language in column "Sprint Position."**

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
	agreed to when performance is not adequate? **Section:** **Article VI, Section 5.0**		including disputes related to Sec. 1.2 of Article VI, the billed Party shall give written notice to the billing Party of the amounts it disputes ("Disputed Amounts") and shall include in such notice the specific details and reasons for disputing each item. Article VI, Section 5.0: (vi) the specific steps taken or proposed to be taken to remedy such problem. In addition to the foregoing, the Parties may meet to discuss any matters that relate to the performance of this Agreement, as may be requested from time to time by either of the Parties. This meeting is in addition to the normal day-to-day business to business discussions, including those with the respective accounts teams.		
13.	**What are the appropriate rates for Transit service?** **Section:** **Article VII, Section I. B .**	**B. <u>Transit Charge:</u>** **<u>- Price should be based on TELRIC study</u>**	Transit service should be provided at cost-based rates.	***B. Transiting Charge:*** ***Tandem switching :*** ***Intrastate Switched access tariff rate*** ***Tandem Transport :*** ***Intrastate Switched access***	

<u>Sprint Terms in Bold Underline</u>
CenturyTel Terms in Bold Italic
Agreed to Terms in Normal Text

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
				tariff rate ***Transport Termination :*** ***Intrastate Switched access tariff rate***	
14.	**What are the appropriate rates for services provided in the Agreement including rates applicable to the processing of orders and number portability?** **Section:** **Article VII, Section II**	Sprint proposes deleting CenturyTel's CLEC Account Establishment charge. **Customer Record Search - TELRIC Study Based** **Custom Handling:** **Service Order Expedite:** **All LSRs (In addition to Service Order Charge) - TELRIC Study Based** **"Service Order Charge" all for LSRs – (including Number Portability LSRs) TELRIC Study Based**		***CLEC Account Establishment - $254.68*** ***Customer Record Search- $8.58*** ***"Service Order Charge" Simple and Subsequent - $13.76*** ***"Service Order Charge" Complex - $64.48***	
15.	**If CenturyTel sells, assigns or otherwise transfers its territory, or a portion of its territory, should CenturyTel be required to assign the Agreement to the purchasing entity or**	2.7 Termination Upon Sale: Notwithstanding anything to the contrary contained herein, a Party may terminate this Agreement as to a specific operating area or portion thereof if such Party sells or otherwise transfers the area or portion thereof to a non-affiliate. The selling or		CenturyTel proposes deleting Sprint's additional language in 2.7.	

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
	permitted to terminate the Agreement in those areas? **Section:** **Article III, Section 2.7**	transferring Party shall provide the other Party with at least ninety (90) calendar days' prior written notice of such termination, which shall be effective on the date specified in the notice. Notwithstanding termination of this Agreement as to a specific operating area, this Agreement shall remain in full force and effect in the remaining operating areas. **Except, should CenturyTel sell or trade substantially all the assets in an exchange or group of exchanges that CenturyTel uses to provide services under this Agreement, then CenturyTel will assign this Agreement to the purchasing or acquiring entity for those exchanges/markets where Sprint is actually interconnecting and providing services.** The Parties agree to abide by any applicable Commission Order regarding such sale or transfer.			
16.	**Do terms need to be included when Sprint utilizes indirect**	Sprint proposes deleting 3.3.1.4		***3.3.1.4 To the extent a Party combines Local Traffic and Jointly-Provided Switched Access Traffic on a single***	

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
	interconnection, and CenturyTel is not provided detailed records, nor is CenturyTel able to identify and bill calls based upon their proper jurisdiction? **Section:** **Article IV, Sections 3.3.1.4, 4.5.2.2; and Article VII, I.C.**	Sprint proposes deleting 4.5.2.2		***trunk group for indirect delivery through a tandem, the originating Party, at the terminating Party's request, will declare quarterly Percentages of Local Use (PLUs). Such PLUs will be verifiable with either call summary records utilizing Calling Party Number (CPN) information for jurisdictionalization of traffic or call detail samples. Call detail or direct jurisdictionalization using CPN information may be exchanged in lieu of PLU, if it is available. The terminating Party should apportion per minute of use (MOU) charges appropriately.*** 4.5.2.2 ***To calculate intrastate toll access charges, each Party shall provide to the other, within twenty (20) calendar days after the end of each quarter (commencing with the first full quarter after the effective date of this Agreement), a PLU (Percent Local Usage) factor. Each company should calculate the PLU factor on a LATA basis using their originating IntraLATA minutes of use.***	

Issue No.	Issue Description and Section Reference	Sprint Proposed Language	Sprint Position	CenturyTel Proposed Language	CenturyTel Position
		Sprint proposes deletion of CenturyTel's language in Article VII. – I.C.		***The Parties shall provide a separate PLU for each CenturyTel operating company covered under this Agreement. The percentage of originating Local Traffic plus ISP-Bound Traffic to total intrastate (Local Traffic, ISP-Bound Traffic, and intraLATA toll) originating traffic would represent the PLU factor.*** **Article VII** C . Initial Factors: ***PLU: 100%***	

ATTACHMENT TWO

***In the Matter of the Petition of Sprint Communications Company L.P. for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with CenturyTel of Mountain Home, Inc.*, Docket No. 08-031-U, before the Arkansas Public Service Commission, Presiding Officer Order (July 18, 2008).**

[See attached]

ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF A PETITION FOR ARBITRATION BY SPRINT COMMUNICATIONS COMPANY L.P. VS CENTURYTEL OF MOUNTAIN HOME, INC.	))))	DOCKET NO. 08-031-U ORDER NO. 6

ORDER

This docket was initiated by the filing of a Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"), 47 U.S.C. §252(b), and Ark. Code §23-17-409, by Sprint Communications Company L.P. ("Sprint") against CenturyTel of Mountain Home, Inc. ("CenturyTel"). Exhibit C to the Petition is a Disputed Points List ("DPL") which are commonly used in arbitration proceedings under §252(b) to develop and define the issues presented. The DPL was refined and revised by the parties during the course of the proceeding and resulted in the DPL dated June 16, 2008 which was filed as Attachment One to the Post-Hearing Reply Brief of CenturyTel. References to the DPL contained in this Order refer to the June 16, 2008 DPL.

The DPL lists 16 issues and this Order will deal with the issues as presented in the DPL.

Issue No. 1 concerns the use of commercial arbitration in the event that this Commission determines that it lacks jurisdiction over a particular issue. First it should be noted that it seems highly unlikely that this Commission would refuse to resolve a dispute arising under an interconnection agreement ("ICA") which was approved by this Commission, and the parties have not provided any specific example. However, Issue No. 1 was largely resolved by the parties in briefs and rebuttal testimony. In the rebuttal

testimony of Mr. Burt (T. 87), he states that "Sprint is willing to accept the new proposed Section 23.3.1 although the language indicates that some disputes may not be subject to arbitration and it is my understanding that all issues included in the interconnection agreement are subject to resolution by the Commission." The revised language referred to by Mr. Burt is contained in the updated DPL of June 16, 2008 filed as an exhibit to CenturyTel's reply brief. CenturyTel asserts that where the Commission has declined jurisdiction or does not have subject matter jurisdiction over a dispute, commercial arbitration should be required and the only remaining issue between Sprint and CenturyTel concerns the dispute resolution procedure to be applied in the event that the Commission declines or lacks jurisdiction. CenturyTel states that it does not object to the wording of Section 20.5 as set forth in Mr. Burt's testimony (T. 88) but requests that an additional sentence be added stating, "The Parties shall equally split the fees of the arbitration and the arbitrator."

Under the Federal Communication Commission's ("FCC's") ruling in *Star Power Communications LLC*, 15 FCCR 11277, a state commission may compel commercial arbitration as a part of an interconnection agreement. Additionally, under 47 U.S.C. § 252(b)(4)(C) a state commission may impose appropriate conditions as required to implement subsection (c) and requiring commercial arbitration is a reasonable condition in the event the Commission lacks or declines jurisdiction. As noted by CenturyTel at page 5 of its Post Hearing Reply Brief, such an action "avoids the gaps in the FCC's jurisdiction" and "brings to the dispute resolution process all of the benefits customarily associated with arbitration." The Presiding Officer concurs and therefore finds that the language agreed to by the parties with the inclusion of the language

proposed by CenturyTel, to the effect that the parties will split the fees of the arbitration and the arbitrator is reasonable. The language proposed for Section 20.3 by Sprint, which seeks an exception from the thirty day notice requirement proposed in Section 20.2 by CenturyTel in instances where the dispute arises from a service affecting issue will be allowed; however, the language should be modified to recognize that only commercial arbitration can be immediately sought if the Commission declines jurisdiction.

Issue No. 2 concerns the appropriate terms for indemnification, CenturyTel asserts that any indemnification and limitation of liability provision should cover claims arising out of content transmitted by the other party, its end users or the actual retail end users of a third party entity to which telecommunication services are provided. (CenturyTel Reply Brief p.4). Sprint asserts that it does not have control over the content transmitted by end users and therefore it is inappropriate to make Sprint liable for such content. Sprint, however, admits that its tariffs applicable to end users often contain such indemnity provisions and, more importantly, Sprint has a contractual relationship with its wholesale customers and has the potential to shift the risk in its contracts with those customers. CenturyTel, on the other hand, has no means of limiting its liability except through its interconnection agreement with Sprint. Therefore, the Presiding Officer believes that CenturyTel's proposed language is reasonable and the language proposed by CenturyTel for Issue No. 2 in the DPL should be adopted.

Issue No. 3 from the DPL has been resolved by agreement of the parties.

Issue No. 4 concerns what direct interconnection terms should be included in the ICA. Sprint asserts that under 47 U.S.C. Section 251 and 47 C.F.R. Section 51.305 Sprint is permitted to interconnect with CenturyTel at any technically feasible point within the LATA. (Sprint Reply Brief p. 8). CenturyTel asserts that its network is geographically limited and dispersed and as a result, CenturyTel does not own transport networks between all of its exchanges as do some other local exchange companies ("LECs"). Further, if CenturyTel were to meet Sprint's request CenturyTel would be required to construct network facilities for the sole benefit of Sprint. Under 47 U.S.C. § 251 CenturyTel has a duty to provide "for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network" to allow for the transmission and routing of an exchange service and exchange access. The Act further states that a carrier may request interconnection at any technically feasible point within the carrier's network and must receive access equal in quality to that provided by the local exchange carrier to itself or any subsidiary or affiliate. The manner in which Sprint seeks to interconnect with CenturyTel goes beyond the requirements of 47 USC § 251(c)(2) therefore, the language proposed by CenturyTel in the DPL Issue No. 4 is deemed reasonable and is adopted.

Issue No. 5 concerns how the companies should share the cost of interconnection facilities between their respective networks. Sprint here asserts that based upon FCC rules and orders Sprint and CenturyTel are required to share the cost of interconnection facilities between their networks based on their respective percentages of originated traffic and that the interconnection facilities used are separate and distinct from the network costs recovered in a reciprocal compensation arrangements. Sprint notes that

47 C.F.R. § 51.709(b) requires that a carrier "providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the portion of the trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network." Sprint also notes that 47 C.F.R. § 51.703(b) provides that an LEC may not assess charges on any other telecom carrier for the telecom traffic that originated on the LEC's network. (Sprint Reply Brief pp.14-15).

The issue presented has recently been resolved by the Eighth Circuit in *Southwestern Bell Telephone et al. v. Missouri Public Service Commission et al.*, Case No. 06-3701 wherein the Eighth Circuit states, at page 7:

> In 2005, the FCC issued its Triennial Review Remand Order (TRRO), which no longer required ILECs to make all elements of their local networks available under Section 251 at TELRIC rates. See Order on Remand, In the Matter of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 20 FCCR 2533 (2005).
>
> The TRRO also concluded CLECs were no longer impaired with respect to "entrance facilities" and ILECs were not required to provide such facilities as UNEs at TELRIC rates. An entrance facility is a connection between a switch maintained by an ILEC and a switch maintained a CLEC. It is a means of transferring traffic from one carrier's network to another's, and facilitates an ILEC's obligation under the Act to interchange traffic among networks. CLECs also use entrance facilities to route customer traffic between a CLEC's customer and a CLEC's switch – a practice known as "backhauling." When use to transfer traffic from one network to another entrance facilities are used for interconnection purposes. When used for backhauling they are not used for interconnection. The TRRO found that CLECs did not need entrance facilities for backhauling CLEC to CLEC traffic. Conversely, the TRRO reiterated that ILECs are required to provide entrance facilities at TELRIC rates under Section 251(c)(2) if necessary for interconnection purposes.

In addition to the Eighth Circuit decision filed June 20, 2008, Sprint also cites numerous state cases wherein state commissions have determined that the "calling party network pays" principal requires the originating carrier to be financially responsible for delivering that call to the terminating carrier.

In view of the forgoing, it is the opinion of the Presiding Officer that the bill and keep arrangements agreed to by the parties do not include the cost of transport for the purpose of direct interconnection because the direct interconnection facilities are not a part of either carrier's network, interconnecting parties must compensate each other for dedicated transmission services between networks in addition to reciprocal compensation.

Issue No. 6 involves the appropriate rates for direct interconnection facilities. Sprint asserts that 47 U.S.C. § 252(d)(1) establishes the pricing standard for interconnection facilities stating:

> Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purpose of subsection (c)(2) of 251 of this title, and the just and reasonable rates for network elements for purposes of subsection (c)(3) of such section –
>
> (A) shall be –
>
> (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
>
> (ii) nondiscriminatory and
>
> (B) may include a reasonable profit.

Sprint also notes 47 C.F.R. § 251.505 requires the use of the TELRIC methodology to determine the appropriate forward looking cost. CenturyTel argues that

where interconnection facilities are used as entrance facilities, pricing the service at its intrastate access rates is proper. CenturyTel asserts that the record and prior Commission actions demonstrate that such rates are based on cost, are nondiscriminatory, include a reasonable profit and are otherwise consistent with existing Commission policy.

The Presiding Officer takes administrative notice of the fact that the intrastate access tariffs filed by CenturyTel are not reviewed by this Commission as a result of the requirements of Arkansas Act 77 of 1997. Additionally, in the Eighth Circuit's June 20, 2008 decision, the Eighth Circuit clearly states that ILECs are required to provide entrance facilities at TELRIC rates under 47 U.S.C. § 251(c)(2) if necessary for interconnection purposes. Therefore, Issue No. 6 is decided in favor of Sprint.

Issue 7 concerns whether the ICA should contain provisions limiting interconnection.

Sprint asserts that it has a right under 47 U.S.C. §251 (a) to interconnect directly or indirectly with the facilities and equipment of other carriers, and that "CenturyTel cannot dictate that Sprint interconnect with it directly, including requirements to directly interconnect at a volume threshold or when transit charges reach a certain amount." (Sprint Reply Brief p. 20).

CenturyTel describes the issue as "whether Sprint can transform the general duty under Section 251 (a)(1) of all telecommunications carriers to be directly or indirectly interconnected with the facilities and equipment of other telecommunications carriers into an absolute right of Sprint to demand that

CenturyTel provide a form of superior interconnection. (CenturyTel Initial Brief p. 33).

CenturyTel asserts that Sprint's proposed language would force CenturyTel to absorb transport and switching costs beyond its local calling area and even beyond its network to indirectly terminate calls to Sprint. Further, Sprint's proposal is indiscriminate of the amount of traffic and in perpetuity. CenturyTel also notes that Section 251(a) is a general duty of all telecommunications carriers and, as such, is not a duty that requires the negotiation of terms under Section 251. As stated in CenturyTel's initial DPL:

> When a carrier seeks an agreement for terms under 251, the duty of the parties is moved lo Section 251(b) and (c) terms. Section 251(c)(2) obligates the CLEC to interconnect with the local exchange carrier's network at any technically feasible point within die carrier's network. This does not imply that indirect is permissible in perpetuity but only under terms that are mutually agreeable to both parties.
>
> CenturyTel has agreed to indirect connection for *de minimis* traffic from the CenturyTel tandem to the various subtending end offices but only on a start up basis, and only where the POI is at a location within the CenturyTel network. However as traffic grows, network congestion will occur in the common trunk facilities between CenturyTel's tandem and its subtending offices. Moreover, CenturyTel notes that these common transport trunk facilities that were designed for toll and not local traffic.
>
> Sprint has failed to justify why CenturyTel should be forced to absorb transport costs outside of a CenturyTel's local service area on a route designed by Sprint to take local calls outside of the State of Arkansas. Requiring additional local POIs when traffic dictates, such as that proposed by CenturyTel, is rational and reflects the evolving level of traffic envisioned under the agreement and the need to maintain the level of quality with respect to it. The Arkansas Commission can, and should accept CenturyTel's contract language that provides for establishment of a POI within the local calling area when a traffic volume or transiting charge trigger is met.

As noted by CenturyTel 47 U.S.C.§ 251(c)(2)requires interconnection "at any technically feasible point within the carrier's network that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any

other party to which the carrier provides interconnection; and on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252."

Under Sprint's proposed language CenturyTel would be required to provide interconnection outside its territory and in a manner that is superior to that which it provides access to itself and other carriers. Additionally, the FCC's decision *In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation*, FCC 01-85 released March 13, 2001, appears to support CenturyTel's position. Although Sprint argues that "other state commissions have recognized the right of the CLEC to choose indirect interconnection without the imposition of thresholds on that right" (Sprint Reply Brief p. 21) the cases cited by Sprint do not support Sprint's assertions concerning its right to interconnection in a manner that exceeds the requirements of 47 U.S.C.§ 251(c)(2). Therefore, Issue No. 7 is resolved in favor of CenturyTel.

Issue No. 8 involves the language that would require Sprint to compensate CenturyTel when CenturyTel is acting as a transit provider and CenturyTel is required to compensate other parties for termination of Sprint originated traffic. In discussing this issue, it is clear that both parties agree that the originating carrier bears the financial responsibility to compensate a terminating carrier which could include the traffic of a wholesale customer of the originating carrier. Sprint notes that CenturyTel recognizes that CenturyTel is not obligated to pay terminating charges for traffic it transits. Sprint then argues that "if CenturyTel pays such compensation Sprint is obligated under

CenturyTel's language to reimburse CenturyTel for acting as "mere conduit" that has no incentive to ensure that the rates applied to the traffic are appropriate cost-based reciprocal compensation rates . . . ." (Sprint Brief p. 31). CenturyTel on the other hand argues that it simply wants to be "extricated from being the 'middle man' in any dispute between a third party carrier and Sprint over Sprint's traffic." (CenturyTel Post Hearing Brief p. 21). The Presiding Officer finds CenturyTel's proposed language to be appropriate in that it simply recognizes and makes a part of the ICA, the obligations which the parties have under the law which requires the originating carrier to pay for transit traffic and requires that a party that transits traffic is entitled to be held harmless if it is required to pay a terminating carrier. In addition the Presiding Officer believes that inclusion of the language proposed by CenturyTel is consistent with the holding in *The Matter of Telcove Investment L.L.C.'s Petition for Arbitration,* APSC Docket No. 04-167-U Oder No. 10, p 44. which held that Telcove could not treat SBC as the default originating carrier for unidentified traffic sent to Telcove.

Issue No. 9 is resolved by an agreement of the parties.

Issue No. 10 concerns what terms, if any, for Virtual NXX traffic should be included in the ICA. As stated by CenturyTel in its Reply Brief, p. 22:

> In Sprint's DPL attached to the Sprint Petition as Exhibit C at pp. 34-36, Sprint advocated deletion of CenturyTel's proposed Article IV, §§ 4.2.2.2.3 and 4.2.2.2.4. In Mr. Miller's Reply Testimony at 43, CenturyTel agreed to such deletions. Mr. Miller also agreed that § 4.2.2.5 be revised to read as follows:
>
> > *Absent a future negotiated amendment, this ICA does not permit a Party's use of VNXX traffic.* [Emphasis added to denote the only proposed change.] Sprint is not currently using Virtual NXX, when Sprint desires to use VNXX Sprint will contact CenturyTel and the parties will negotiate

> appropriate terms, including compensation. If the parties are unable to agree, either party may invoke the dispute resolution process in Section 20 of Article III.

The quoted language from CenturyTel's brief clearly indicates the sentence added to the beginning of § 4.2.2.5 appears to add little, if anything, to the remainder of the paragraph. It is clear that Sprint has indicated that it is not currently using Virtual NXX and that it will not do so without contacting CenturyTel and negotiating the appropriate terms. Therefore, the language proposed by CenturyTel is deemed unnecessary.

Issues No. 11 and 12 have been resolved by agreement of the parties.

Issue No. 13 concerns the appropriate rates for transit service.

Sprint correctly argues that "Generally, only the incumbent LEC has ubiquitous interconnection throughout a specific geographic area to enable widespread indirect interconnection. If the incumbent LEC is not obligated to provide transit service, Section 251(a)(1) of the Act has little meaning." Sprint also notes that this Commission has emphasized the necessity of incumbent LECs to provide transit service. (See Sprint Post Hearing Brief p.26, footnote 75). Sprint has also emphasized the FCC's notation that transit service is increasing critical and explicitly recognized and supported by the Act. (*Id.* at p. 25, footnote 72).

Issue No. 7 of this order recognizes the limitations on CenturyTel's obligations with regard to interconnection and recognizes that the interconnection, and in this instance, transit service, must be "at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any party to which the carrier provides interconnection . . . ." (47 U.S.C. Section 251 (c)(2)(C)). This Order has also recognized Sprint's assertion that <u>generally</u> the incumbent LEC has ubiquitous

interconnections throughout a specific geographic area; however, such is not always the case. The requirements established for transiting services in this order give due considerations to the legitimate concerns of CenturyTel and will not require CenturyTel to provide service of a quality beyond that which it provides to itself. However, CenturyTel is not required to provide cost justification for its intrastate switched access tariff rate under Act 77 of 1977. Therefore, those rates cannot be said to be consistent with the requirements of 47 U.S.C. Section 252(d)(2)(A). In view of the foregoing, the language proposed by Sprint with regard to Issue 13 which simply states that "transit service should be provided at cost-based rates" is hereby adopted.

Issue No. 14 concerns the appropriate rates and rate levels for services provided in the ICA including rates applicable to processing of orders and number portability. Sprint's assertions that several of the charges should not be assessed, such as account initiation fees and certain manual processing charges, are inconsistent with the concept that a party incurring costs at the request of another party should be able to recover those costs. Sprint's assertion that the manual processes are inefficient does not relieve Sprint from the obligation to pay costs incurred on Sprint's behalf. Sprint's primary complaint about CenturyTel's rates derives from the fact that Sprint had little time to review the rates and cost justification. Sprint also notes that CenturyTel notified Sprint that it was proposing new rates than those previously provided during discussions just prior to the filing of the testimony in this docket. The Presiding Officer agrees with Sprint that there is little cost justification for the rates proposed.

At the hearing, the Presiding Officer questioned Sprint's witness, Mr. Farrar, regarding how to establish the rates if sufficient cost data is not provided. Mr. Farrar

noted that Sprint witness, Mr. Burt, did propose some alternative rates based on some FCC decisions that he thought might be comparable. When questioned by Counsel, Mr. Farrar indicated that an alternative to the adoption of Mr. Burt's rates would be to adopt interim rates subject to a true-up. Upon cross examination by Counsel for CenturyTel Mr. Farrar indicated that another alternative could be that the Commission accept the rates proposed by CenturyTel subject to a true-up.

Under the circumstances, and given the fact that there is simply inadequate evidence in the record to establish cost based rates as required by the Federal Act, the Presiding Officer directs that the interconnection agreement use the rates proposed by CenturyTel on an interim basis subject to true-up after the establishment of cost-based rates which will remain under consideration in this docket.

Issue No. 15 concerns whether CenturyTel should be permitted to terminate the ICA in the event that it sells, assigns or otherwise transfers any portion of its territory or exchanges. Sprint opposes this position primarily based upon its concern that it needs to protect the continuation of service to existing end user customers. Sprint also notes that lack of an interconnection agreement could jeopardize its ability to obtain numbers from the North America Numbering Plan Administrator and Sprint asserts that it is common in merger transactions for the acquiring party to be responsible for the contracts entered into by the acquired party including interconnection agreements.

CenturyTel argues that such a condition would interfere with its rights to enter into a market-based asset sale, it would require a third party to assume CenturyTel's obligations, including those that are specific to CenturyTel, it would materially devalue CenturyTel's assets without compensation and that it could create a potential conflict

with other interconnection agreements in that an acquirer of a CenturyTel exchange might have an existing interconnection agreement with Sprint applicable to Arkansas. CenturyTel also asserts that Sprint may exercise its legal and administrative remedies under Article 3 of the ICA and CenturyTel asserts that the Commission can require a provider to continue an interim arrangement under 41 C.F.R. § 51.715.

The language proposed by CenturyTel indicates that notwithstanding any other provisions to the contrary contained in the ICA, a party may terminate the ICA as to a specific operating area upon the sale or transfer of the area by providing 90 days notice. It is the opinion of the Presiding Officer that this provision is far too likely to lead to a possible discontinuation of service which would be contrary to the public interest and the Presiding Officer therefore adopts the language proposed by Sprint with regard to Issue No. 15.

Issue No. 16 concerns whether the ICA should include terms to be utilized when Sprint utilizes indirect interconnect and CenturyTel has not provided detailed records to identify and bill calls based on proper jurisdiction.

As noted at page 33 of Sprint's Post Hearing Reply Brief, the FCC has recognized that the cost of measurement of exchange traffic is likely to be substantially outweighed by the limited benefits to be derived. Sprint has indicated that it will provide all SS7 signaling information and other billing information available and will conform to industry standard billing formats. Sprint's proposal appears reasonable and adequate and conforms to industry billing standards and is therefore adopted. In the event that a situation should arrive where a significant amount of traffic is stripped of information to properly bill a call the matter can be brought to the attention of this Commission and,

depending on the significance of the problem, the Commission could require data sufficient to provide an auditable percentage local use factor.

BY ORDER OF THE PRESIDING OFFICER PURSUANT TO DELEGATION.

This 18th day of July, 2008.

Arthur H. Stuenkel
Presiding Officer

Diana K. Wilson
Secretary of the Commission

I hereby certify that the following order issued by the Arkansas Public Service Commission has been served on all parties of record this date by U.S. mail with postage prepaid, using the address of each party as indicated in the official docket file.

Diana K. Wilson
Secretary of the Commission

7/18/08