

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, Washington 98512
Fax (360) 753-6862

Richard A. Finnigan
(360) 956-7001
rickfinn@localaccess.com

Kathy McCrary, Paralegal
(360) 753-7012
kathym@localaccess.com

January 30, 2009

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

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

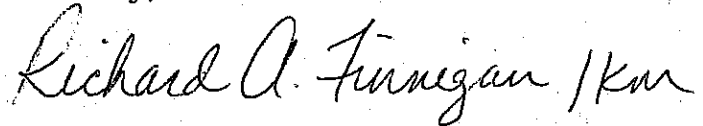
Re: ARB 830 – Reply Brief of CenturyTel of Oregon, Inc.

Dear Sir/Madam:

Enclosed are the original and five copies of Reply Brief of CenturyTel of Oregon, Inc. and Certificate of Service.

Thank you for your attention to this matter.

Sincerely,



RICHARD A. FINNIGAN

RAF/km
Enclosures

cc: Service List (via e-mail or e-mail and 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

In the Matter of

DOCKET NO. ARB 830

SPRINT COMMUNICATIONS COMPANY
L.P.

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

REPLY BRIEF OF

CENTURYTEL OF OREGON, INC.

Richard A. Finnigan
Law Office of Richard A. Finnigan
2112 Black Lake Blvd. S.W.
Olympia, Washington 98512
Tel: 360.956.7001
Fax: 360.753.6862
Email: rickfinn@localaccess.com

and

Thomas J. Moorman
WOODS & AITKEN LLP
2154 Wisconsin Avenue, N.W., Suite 200
Washington, D.C. 20007
Tel: 202.944.9502
Fax: 202.944.9501
Email: tmoorman@woodsaitken.com

Date: January 30, 2009

TABLE OF CONTENTS

	<u>Page</u>
I. SUMMARY OF CENTURYTEL'S ARGUMENT	2
II. CLARIFICATION OF STATEMENTS MADE IN THE SPRINT BRIEF IS NECESSARY	4
III. THERE IS NO NEED FOR RECONSIDERATION OF THE ORDER AND THE TERMS OF THE CMRS ICAs DO NOT DISTURB THIS CONCLUSION.....	5
A. The CMRS ICAs do not support reconsideration of the Order	8
1. The CMRS ICAs address a factually different form of interconnection from that requested and negotiated by Sprint as set forth in the Conforming Agreement	8
2. The CMRS ICAs provide greater flexibility to CenturyTel to seek a direct form of interconnection than the Conforming Agreement herein	10
B. To the Extent that Sprint Favors the CMRS ICAs, Sprint Can Elect to Opt Into a CMRS ICA pursuant to 47 U.S.C. § 252(i)	15
C. No discrimination issues are presented by the CMRS ICAs	16
IV. CONCLUSION.....	17

REPLY BRIEF OF CENTURYTEL OF OREGON, INC.

CenturyTel of Oregon, Inc. (“CenturyTel”) hereby files this Reply Brief in response to the “Sprint Communications Company L.P.’s Brief Regarding Relevance and Significance of Interconnection Agreements” (“*Sprint Brief*”) filed January 9, 2009 by Sprint. In the *Sprint Brief*, Sprint is attempting to justify reconsideration of the decision issued September 30, 2008 in this proceeding (the “*Order*”) by the Public Utility Commission of Oregon (the “Commission”). There is no factual or legal basis for the Commission to reconsider the *Order* and the *Sprint Brief* provides none.¹ Rather, Sprint fundamentally mischaracterizes the plain wording and import of the CMRS ICAs² upon which it relies. In doing so, Sprint mischaracterizes not only the *Order* but also CenturyTel’s position regarding the proper language of the interconnection agreement

¹On December 11, 2008, Sprint and CenturyTel (the “Parties”) participated in a telephone conference called by ALJ Wallace. In that telephone conference, ALJ Wallace informed the parties that the Commission was undertaking a reconsideration, *sua sponte*, of the disposition of Issues 4, 5 and 7 (the “Issues”) as set out in the *Order*. A Commission staff person, Shelly Jones, formerly employed by Sprint, and whose job responsibilities at Sprint included negotiation of interconnection agreements, was in attendance. ALJ Wallace stated that the Commission had apparently become aware of certain pre-existing CenturyTel interconnection arrangements that might bear upon the disposition of the Issues. When CenturyTel inquired as to the source of such information, ALJ Wallace responded that there was no intent on the part of the Commission to consider evidence outside the record of this case. The Parties were asked for their positions regarding the procedural process that should be used in light of the Commission’s stated intent to reconsider the Issues and, to ensure that counsel could address the issue with their clients, another conference call was set for December 17, 2008.

During the December 17th conference call, Sprint’s request that the Commission take official notice of four interconnection agreements approved by the Commission in Dockets ARB 585, ARB 463, ARB 232 and ARB 209 (the “CMRS ICAs”) was granted. Although CenturyTel did not object to this action, CenturyTel did not agree that the CMRS ICAs had any bearing on the instant proceeding, and therefore, requested the opportunity to provide a written analysis of the effect, if any, of the CMRS ICAs on the Issues. ALJ Wallace agreed, permitting Sprint to file its brief setting forth its analysis of the relevance of the CMRS ICAs on or before January 9, 2009, with CenturyTel providing this reply brief on or before January 30, 2009. See Conference Report, ARB 830, issued December 17, 2008.

² See “Interconnection and Reciprocal Compensation Agreement By and Between CenturyTel And Nextel West Corp. For the state of Oregon”, approved May 8, 2000 in ARB 209 (the “*Nextel Agreement*”); “Interconnection and Reciprocal Compensation Agreement By and Between CenturyTel And Sprint Spectrum L.P. For the state of Oregon”, approved July 18, 2000 in ARB 232 (the “*Sprint Spectrum Agreement*”); “Interconnection and Reciprocal Compensation Agreement By and Between CenturyTel of Eastern Oregon, Inc. and CenturyTel of Oregon, Inc. And RCC Holdings, Inc. In the state of Oregon”, approved February 12, 2003 in ARB 463 (the “*RCC Agreement*”); and “Interconnection and Reciprocal Compensation Agreement By and Between CenturyTel of Eastern Oregon, Inc. and CenturyTel of Oregon, Inc. And Verizon Wireless In the State of Oregon”, approved October 2, 2004 in ARB 585 (the “*Verizon Wireless Agreement*”). The *Nextel Agreement*, *Sprint Spectrum Agreement*, *RCC Agreement*, and *Verizon Wireless Agreement* are referenced collectively as the “CMRS ICAs” and individually as a “CMRS ICA.”

between CenturyTel and Sprint that is to be executed by the Parties and approved by the Commission (the “Conforming Agreement”) that implements the directives of the *Order*.

I. SUMMARY OF CENTURYTEL’S ARGUMENT.

The CMRS ICAs provide no basis for Sprint’s argument that CenturyTel has agreed to provide a superior form of interconnection to the CMRS providers as compared to the form of interconnection CenturyTel had proposed to Sprint. To the contrary, the plain wording of the CMRS ICAs *allows either party to the CMRS ICAs to request a direct form of interconnection from the other party at any time*. Thus, the CMRS ICAs represent a less confining approach for CenturyTel, but not superior, for migrating from an indirect interconnection to the establishment of a direct interconnection than that proposed in this proceeding. In this proceeding, CenturyTel proposed a compromise to Sprint -- the establishment of a traffic volume trigger based on the existence of a DS1 level of traffic -- rather than the open process provided in the CMRS ICAs as to when Sprint and CenturyTel would migrate from an indirect to a direct interconnection arrangement. The conceptual result is the same – the proposal to Sprint and that contained in the unambiguous language of the CMRS ICAs provide for *no unfettered use of a third party tandem provider’s transiting* that Sprint now claims should be imposed upon CenturyTel.³

Of greater concern, however, is the improper “slight-of-hand” that the *Sprint Brief* attempts to cause the Commission to accept. Specifically, Sprint attempts to reintroduce the prohibited concept to “pick-and-choose” among the terms of the CMRS ICAs. Sprint claims, in effect, that the Commission should resolve the pending reconsideration of the Issues based upon selected provisions of the CMRS ICAs as opposed to an analysis of the totality of the terms and conditions of the CMRS ICAs in comparison to the terms and conditions of the Conforming

³ This is underscored by reference to ICAs between CenturyTel and carriers, other than the CMRS ICAs, which do contain the DS1 trigger for the type of transit arrangement Sprint seeks in this proceeding, as will be discussed *infra*, at page 6.

Agreement.

The Commission is well aware that the FCC has eliminated the “pick-and-choose” rule and has adopted the “all-or-nothing” rule in its place as a means of implementing the requirements of Section 252(i) as contained in the 1996 revisions to the Communications Act of 1934, as amended (the “Act”).⁴ Thus, if Sprint believes that its interests would be better served pursuant to the terms of one of the CMRS ICAs, Sprint can seek to adopt the terms and conditions of such CMRS ICA, *but Sprint must seek to adopt the entirety of that specific CMRS ICA.*

Consequently, the Commission need not be distracted by Sprint’s assertion that CenturyTel seeks a resolution of the Issues that differs from or is less favorable than the terms that CenturyTel has agreed to in the CMRS ICAs. In the *Order*, the Commission properly limited the network and financial responsibility of CenturyTel to its exchange boundary when a third party tandem transit interconnection arrangement is in place between the Parties. The terms proposed by CenturyTel in the Conforming Agreement properly reflect the limited network and financial responsibilities of CenturyTel as established by the Commission. The arguments presented in the *Sprint Brief* do not change that fact. Accordingly, the Commission should resolve this reconsideration by approving the terms of the CenturyTel Conforming Agreement and directing the Parties to execute that document for approval by the Commission pursuant to Section 252(e)(1) of the Act.

⁴ See 47 U.S.C. § 252(i); see also *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Second Report and Order*, CC Docket No. 01-338, FCC 04-164, released July 13, 2004 (the “*FCC Section 251(i) Order*”); 47 C.F.R. § 51.809.

II. CLARIFICATION OF STATEMENTS MADE IN THE *SPRINT BRIEF* IS NECESSARY.

There are two glaring misstatements contained in the *Sprint Brief* that could cause the Commission to erroneously conclude that CenturyTel has not properly reflected within the Conforming Agreement the Commission's directives set forth in the *Order*. Clarification is required to ensure that the record on which the Commission will resolve the reconsideration is clear.

Sprint claims that in the context of Issue 7 addressing the sharing of transiting fees beyond CenturyTel's service area, "CenturyTel had, in fact, agreed to do so during the negotiation process when it is the originating carrier."⁵ This is factually incorrect. Even though CenturyTel has no obligation for transit beyond its network, CenturyTel's compromise position on this point prior to the issuance of the *Order* was and has always been that transiting fees for CenturyTel's originating traffic to Sprint's remote Point of Presence ("POP") would be shared only up to the DS1 level.⁶ With the change by the Commission in the *Order* regarding Issue 7, CenturyTel was willing to accept the Commission's resolution and CenturyTel properly provided language to ensure that the Commission's directives were achieved.⁷

In addition, Sprint improperly suggests that in the *Order*, "The Commission issued somewhat ambiguous language in its resolution of Issue 7 that CenturyTel now claims allows it

⁵ *Sprint Brief* at 3. Even though it is factually incorrect, Sprint's reference to the gives and takes within the confidential negotiations is highly questionable.

⁶ See, e.g., See Letter to Oregon Public Utility Commission from Richard A. Finnigan, Counsel to CenturyTel of Oregon, Inc., Re: ARB 830 – Conforming Interconnection Agreement – Request for Direction to Sprint to Sign, dated November 6, 2008 (the "*CenturyTel November 6th Submission*") at 1-2; Response to Motion of Sprint Communications Company, L.P. and Statement of Objections, ARB 830, filed November 21, 2008 (the "*CenturyTel Response*") at 3-7.

⁷ See *CenturyTel November 6th Submission* at 2-3; *CenturyTel Response* at 7-9. Attachment A contains the language Parties' competing language to implement the Commission's directives arising from its resolution of Issue 7.

to avoid its agreed-upon responsibilities with respect to indirect interconnection.”⁸ First, the record in this proceeding is clear that the only compromise made by CenturyTel regarding transiting traffic *was the use of the DS1 level of traffic trigger for the migration to a dedicated trunking arrangement*. Second, the relevant language in the *Order* is also perfectly clear on the relationship of the factors to be considered between direct and indirect interconnection, providing as follows:

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

Thus, Sprint’s suggestion that the Commission’s language is ambiguous is simply not credible.

As the Commission directed, Sprint *cannot* “dictate the obligation of CenturyTel to pay for transport outside of its service area.”¹⁰ That the Conforming Agreement must comply with the Commission’s directive is obvious, and the language that CenturyTel has provided to the Commission for its approval properly implements the terms of the *Order*.

III. THERE IS NO NEED FOR RECONSIDERATION OF THE *ORDER* AND THE TERMS OF THE CMRS ICAs DO NOT DISTURB THIS CONCLUSION.

The *Sprint Brief* claims to address the relevance and significance of the CMRS ICAs.¹¹ The substance of the *Sprint Brief* rests upon the following unfounded statements: “The four ICAs that the Commission should consider here demonstrate that CenturyTel has agreed to bear the indirect interconnection costs at issue for other carriers in other ICAs. They also refute

⁸ *Sprint Brief* at 3.

⁹ *Order* at 7.

¹⁰ *Id.*

¹¹ *Sprint Brief* at 2.

CenturyTel's claim that Sprint is requesting a superior form of interconnection."¹² From these statements, Sprint leaps to the conclusion that: "Therefore, the fact that CenturyTel provides 'other carriers' with the same type of interconnection requested by Sprint disproves any CenturyTel claim regarding 'superior service.'"¹³ Sprint's contentions once again lack a factual basis.

Before presenting the analysis of the CMRS ICAs that will demonstrate why Sprint's reliance on CMRS ICAs is mistaken, it is important to note that Sprint failed to call to the Commission's attention interconnection agreements (ICAs) that are precisely on point. CenturyTel has executed ICAs with wireline CLECs in the state of Oregon that address indirect transport and all of them have DS1 triggers.¹⁴ A recent example is the ICA executed with 360networks.¹⁵ The reason that the *360 Agreement* is particularly on point is that 360networks is the only carrier other than CenturyTel that currently has numbering resources assigned to the Depoe Bay Exchange,¹⁶ which is where Sprint seeks to compete with CenturyTel through the interconnection arrangements being addressed in this proceeding. The *360 Agreement* contains a clear DS1 trigger for precisely the same type of interconnection sought by Sprint in this proceeding.

¹² *Id.* at 3.

¹³ *Id.* at 4.

¹⁴ CenturyTel respectfully requests that, pursuant to OAR 860-014-0050(1), the Commission take official notice of the ICAs identified below. During the December 17th conference call with ALJ Wallace, CenturyTel made clear that it reserved the right to place the CMRS ICAs in context. Thus, the factual basis underlying how the CMRS ICAs have been implemented is necessary to the proper resolution of the relevancy of the agreements as well as to rebut the incorrect assertions of alleged facts by Sprint reflected in the *Sprint Brief*. The ICAs are as follows: ARB 816 involving 360networks (USA) inc. [*sic*] (Order No. 07-521); ARB 757 involving Cal-Ore Communications, Inc. (Order No. 06-524); ARB 805 involving Charter Fiberlink OR-CCVII, LLC (Order No. 07-379); ARB 698 involving Comcast Phone of Oregon (Order No. 05-1166); and ARB 699 involving Rio Communications (Order No. 05-1167).

¹⁵ See Traffic Exchange Agreement Between CenturyTel of Oregon, Inc. and 360networks(USA) Inc. in the state of Oregon, ARB 816, approved under Order No. 07-521 filed November 26, 2007 (*360 Agreement*).

¹⁶ See Declaration of Ralph J. Teasley, attached hereto.

The CMRS ICAs, however, do not undermine CenturyTel's legal position regarding the issue of "superior interconnection" that CenturyTel has presented to ALJ Wallace and the Commission in this proceeding. Rather, the unambiguous language contained in the CMRS ICAs provides flexibility to CenturyTel to request migration from indirect interconnection to a form of direct interconnection and dedicated trunking that is not contingent upon the more generous CenturyTel compromise of the DS1 traffic volume trigger described in this proceeding. At the same time, however, Sprint seeks a result that not only goes beyond the provisions of the CMRS ICAs, but also beyond CenturyTel's originally proposed language in this proceeding. Sprint actually seeks to impose unlimited responsibility and costs on CenturyTel for the provision of transport beyond CenturyTel's current network service area relating to facilities or transit services required solely for Sprint's convenience and to facilitate Sprint's location of a POP at a distant location outside of CenturyTel's service area. Such a result is far beyond the plain meaning of the language provided in the *Order* as well as the provisions of the CMRS ICAs as more fully explained below. Accordingly, there is no basis for reconsideration of the *Order* and there is certainly no discrimination between the terms of the CMRS ICAs and the Conforming Agreement.

In addition, Sprint admits within the *Sprint Brief* that it seeks to have the Commission engage in a classic "pick-and-choose" analysis in direct contravention of the *FCC Section 251(i) Order* and 47 C.F.R. § 51.809(a). "Certainly the Sprint ICA should not contain limitations that other carriers did not have in their ICAs or CenturyTel would be providing superior service to them."¹⁷ The Commission should not allow Sprint to end run the FCC's prohibition on "pick-and-choose" relative to interconnection agreements. If Sprint seeks to avail itself of the terms of

¹⁷ *Id.* at 7.

any of the CMRS ICAs, it has the ability to pursue that course through the Section 251(i) “all-or-nothing” opt-in process.¹⁸

A. The CMRS ICAs do not support reconsideration of the *Order*.

1. The CMRS ICAs address a factually different form of interconnection from that requested and negotiated by Sprint as set forth in the Conforming Agreement.

Contrary to Sprint’s suggestion, the CMRS ICAs do not represent “the same type of interconnection requested by Sprint.”¹⁹ Sprint’s position ignores the realities of interconnection pursuant to the CMRS ICAs.

Factually, the CMRS ICAs provide terms and conditions for wireless service interconnection between CenturyTel and the CMRS providers that are parties to the CMRS ICAs. The Commission is obviously well aware that wireless-wireline interconnection agreements raise a host of distinct operational, regulatory, definitional, legal and other issues regarding the geographic scope of traffic and the legal requirements that apply only to CMRS providers subject to Sections 332 and 251(b)(5) of the Act. Primary among these distinctions is the FCC’s use of the major trading area (“MTA”) for purposes of defining traffic that is subject to Section 251(b)(5) reciprocal compensation requirements.²⁰

As a result of the FCC’s intraMTA rule, asymmetrical traffic patterns exist between CenturyTel and the CMRS providers that are parties to the CMRS ICAs because the entire MTA

¹⁸ See 47 C.F.R. § 51.809(a). This rule provision states:

An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement.

¹⁹ *Id.* at 4.

²⁰ See 47 C.F.R. § 51.701(b)(2).

is the CMRS provider's local calling area. On the other hand, as a wireline carrier, CenturyTel's local calling area consists of the local exchange area and any Commission-approved extended area service ("EAS") area.

CMRS providers, such as those who are parties to the CMRS ICAs, typically assign their numbering resources in an MTA to major population centers such as Portland, Salem, Beaverton, and Eugene for the Portland MTA. This means that traffic subject to the CMRS ICAs that originates from CenturyTel in Depoe Bay for termination to a CMRS provider's customer is often routed to the calling customer's presubscribed interexchange carrier. CenturyTel has no responsibility for transport beyond its exchange boundary in the exchange of such traffic.²¹

The CMRS ICAs also do not involve interconnection comparable to that requested by Sprint in the instant proceeding since:

- The record is clear that Sprint did not seek to have intraMTA wireless traffic included in the Conforming Agreement; and
- Sprint and CenturyTel agreed to a bill and keep arrangement for the exchange of local traffic based upon the agreed-to position of both Parties that the traffic would be roughly in balance.²²

The terms of the CMRS ICAs demonstrate that the traffic exchanged between the CMRS providers and CenturyTel is not balanced.²³ For example, under the terms of the Verizon Wireless, RCC and Nextel agreements the parties agreed that seventy percent of the traffic terminates to CenturyTel and, under the terms of the *Sprint Spectrum Agreement*, the parties

²¹ See Declaration of Ralph J. Teasley. As explained by Mr. Teasley, some traffic is routed over EAS trunks. Transit charges do not apply to ILEC originated traffic on EAS trunks. *In the Matter of Southern Oregon Extended Area Service*, UM 1061, Order No. 04-354 (June 23, 2004).

²² See, e.g., CenturyTel Conforming Agreement, Article IV, Section 4.4.2.

²³ One of the reasons why the traffic is out of balance is that the CMRS ICAs include large MTAs as the area in which the CMRS providers may originate traffic that is subject to reciprocal compensation pursuant to the terms of the CMRS ICAs.

agreed that seventy-five percent of the traffic terminates to CenturyTel.²⁴ As a result, the CMRS ICAs provide for significant payments of reciprocal compensation by the CMRS providers to CenturyTel. Thus, the CMRS ICAs are unquestionably *not* balanced traffic “bill and keep” arrangements comparable to that which the Parties have agreed to in the Conforming Agreement, and unquestionably are distinguishable from the terms of the Conforming Agreement.

This distinction is highlighted by comparing the language and circumstances under the CMRS ICAs with the *360 Agreement* where the traffic is presumed to be in balance and there is an agreed use of third-party transit **up to a DS1 level of traffic.**²⁵

2. The CMRS ICAs provide greater flexibility to CenturyTel to seek a direct form of interconnection than does the Conforming Agreement.

Sprint’s claim “that CenturyTel has agreed to bear unlimited indirect interconnection costs”²⁶ for the CMRS providers pursuant to the terms of the CMRS ICAs is unsustainable and should be rejected.²⁷ For example, Sprint incorrectly contends that with respect to the *Verizon Wireless Agreement* and the *RCC Agreement*, “[n]either ICA contains any provision requiring direct interconnection when a certain level of traffic is achieved.”²⁸ In connection with the *Nextel Agreement* and *Sprint Spectrum Agreement*, Sprint also incorrectly contends that CenturyTel did not seek the type of interconnection limitations it requested in this proceeding – the DS1 trigger – and agreed to include “very broad interconnection terms.”²⁹ To be clear, what Sprint is actually saying is that CenturyTel has agreed to pay unlimited transiting fees associated

²⁴ See Attachment 1 to each of the CMRS ICAs (labeled Attachment I in the *Verizon Wireless Agreement*).

²⁵ *360 Agreement* at Article IV, Section 5.2.

²⁶ Sprint Brief at 3.

²⁷ As explained above, the vast majority of the CenturyTel originating traffic under the CMRS ICAs is routed to interexchange carriers and CenturyTel has no financial obligation for transport of such traffic beyond its service area. See Declaration of Ralph J. Teasley.

²⁸ *Sprint Brief* at 4 (footnote omitted).

²⁹ *Id.* at 6 (footnote omitted).

with the delivery of its traffic to a point beyond the CenturyTel network to each of the CMRS providers. That assertion is wrong. Sprint misstates the intent and language of these CMRS ICAs.

Sprint apparently cites to Section 3.3 of the *Verizon Wireless Agreement* and the *RCC Agreement* for the proposition that those agreements include terms for the unlimited use of transiting arrangements. While Sprint references Section 3.4 of each of those agreements, conspicuously absent from Sprint's Brief is any substantive discussion of the meaning of Section 3.4, other than a claim by Sprint that: "These ICAs **do not** include any terms similar to those CenturyTel unsuccessfully sought to impose on Sprint that require additional POIs based on a DS1 volume. Nor do they limit indirect cost responsibilities to their service area boundary."³⁰ Notably, Sprint fails to bring to the Commission's attention the impact of the language of Section 3.4 in these agreements.

Specifically, the *Verizon Wireless Agreement* states:

In the case where the Parties exchange Local Traffic indirectly through a common third party tandem, if traffic volumes grow to a point where it necessitates a direct Type 2 Wireless Interconnection between CenturyTel and VZW or if such a direct Type 2 Wireless Interconnection is otherwise required, then CenturyTel and VZW shall establish a POI within CenturyTel's local exchange serving area.³¹

The *RCC Agreement* contains the following language regarding the subject of indirect interconnection:

If traffic volumes grow to a point where it necessitates a direct Type 2 Wireless Interconnection between CenturyTel and RCC or if such a direct Type 2 Wireless Interconnection is otherwise required, then CenturyTel and RCC shall establish a POI within CenturyTel's local exchange serving area.³²

Both of these agreements make clear that the migration of the interconnection to a "Type 2

³⁰ *Id.* (emphasis in original).

³¹ *Verizon Wireless Agreement* at Section 3.4.

³² *RCC Agreement* at Section 3.4.

Wireless Interconnection” is a form of direct interconnection, *i.e.*, dedicated trunking.³³

Rather than using a defined DS1 level of traffic as CenturyTel proposed in this proceeding,³⁴ either the CMRS provider or CenturyTel may seek a “direct Type 2 Wireless Interconnection” at any time the party believes that the following test is met: “if traffic volumes grow to a point where it necessitates a direct Type 2 Wireless Interconnection...” or “if such a direct Type 2 Wireless Interconnection is otherwise required...”³⁵ The provisions of both CenturyTel’s compromise DS1 level of traffic trigger and those contained in the Conforming Agreement are more confining upon CenturyTel with respect to when CenturyTel may seek direct interconnection as compared to the “at-any-time” traffic or “is otherwise required” standards contained in the *Verizon Wireless Agreement* and *RCC Agreement*.

This same conclusion is applicable to the *Nextel Agreement* and the *Sprint Spectrum Agreement*. In fact, there is even *more flexibility* for CenturyTel to seek to migrate to a form of direct interconnection pursuant to the terms of these two agreements.

Under the terms of the *Nextel Agreement* and the *Sprint Spectrum Agreement*, either party may seek interconnection arrangements, including Type 2 Wireless Interconnection with each other, *at any time*. The fact that the *Nextel Agreement* and the *Sprint Spectrum Agreement* include comparable language regarding “Type 2 Wireless Interconnection” to that contained in the *Verizon Wireless Agreement* and the *RCC Agreement*,³⁶ indicates that the parties to those agreements contemplated the use of direct connections between the “LEC central office with a

³³ See *Verizon Wireless Agreement* at Section 1.23; *RCC Agreement* at Section 1.22. For the Commission’s convenience, Attachment B contains the language used in the referenced section for each of these agreements.

³⁴ See, e.g., *CenturyTel Response* at 6 quoting Opening Testimony of Steven E. Watkins, CenturyTel/12, Watkins/55, 5-14 (May 5, 2008).

³⁵ *Verizon Wireless Agreement* at Section 3.4; *RCC Agreement* at Section 3.4.

³⁶ See *Nextel Agreement* at Section 1.18; *Sprint Spectrum Agreement* at Section 1.18; see also Attachment B containing the language used in Section 1.18 for each of these agreements.

CMRS provider's mobile switching center."³⁷ But, by omitting the comparable Section 3.4 included in the *Verizon Wireless Agreement* and the *RCC Agreement*, there are no constraints with the Nextel and Sprint agreements as to when a direct connection can be sought.

Moreover, a careful reading of all of the CMRS ICAs reflects the fact that none of the CMRS ICAs implicitly or explicitly require CenturyTel to use a transit provider to deliver its traffic to the CMRS provider. For example, under Section 3.1 in the *Nextel Agreement* and *Sprint Spectrum Agreement*, the following language applies:

- 3.1 The traffic subject to this Agreement shall be that Local Traffic which originates from a subscriber on the network of one Party and is delivered to a subscriber on the network of the other Party. Such traffic includes that traffic which is delivered via a third party tandem switch. Terms and conditions for the interchange of traffic between the Parties via Type 1 Wireless Interconnection are governed by CenturyTel's applicable local tariff.³⁸

There is no constraint upon CenturyTel as to how its traffic is to be "delivered to a subscriber on the network" of the CMRS provider.³⁹

Similar language is contained in Section 3.1 of the *Verizon Wireless Agreement* and *RCC Agreement* which provides as follows:

- 3.1 The traffic subject to this Agreement shall be that Local Traffic which originates from a subscriber on the network of one Party and is delivered to a subscriber on the network of the other Party via a Type 2 Wireless Interconnection through direct Interconnection Facilities. Terms and conditions for the interchange of traffic between the Parties via Type 1 Wireless Interconnection are governed by CenturyTel's applicable local tariff.⁴⁰

Further, when read in conjunction with the provisions of Section 3.3 of the *Verizon Wireless Agreement* and *RCC Agreement* that the "Parties may exchange Local Traffic" or the "Parties

³⁷ *Nextel Agreement* at Section 1.18; *Sprint Spectrum Agreement* at Section 1.18.

³⁸ *Nextel Agreement* at Section 1.18; *Sprint Spectrum Agreement* at Section 1.18.

³⁹ *Id.*

⁴⁰ *Verizon Wireless Agreement* at Section 3.1; *RCC Agreement* at Section 3.1.

may transit Local Traffic” through an indirect interconnection,⁴¹ it is clear that these provisions *are permissive, not mandatory*. Moreover, as explained above, the vast majority of CenturyTel’s originating traffic that terminates to customers of CMRS providers is handed to an interexchange carrier and CenturyTel has no financial responsibility to transport such traffic beyond its service area.

In contrast to the foregoing circumstances regarding the CMRS ICAs, in this proceeding CenturyTel had offered to use a transit provider until traffic volume reaches a DS1 level.⁴² The permissive nature of the use of indirect interconnection in the CMRS ICAs can not be construed to suggest “that CenturyTel has agreed to bear the indirect interconnection costs. . . of other carriers”⁴³ in an unlimited manner. That is the result which Sprint seeks to accomplish in this proceeding, but it cannot be reconciled with the *explicit language* contained in the CMRS ICAs. Sprint’s position would clearly impose a mandatory superior form of interconnection upon CenturyTel, while the CMRS ICAs do nothing of the sort.

Accordingly, when the *actual and unambiguous language* used in the CMRS ICAs is compared to the CenturyTel compromise DS1 level of traffic trigger as well as the relevant language of the Conforming Agreement, it is clear that the CMRS ICAs cannot and do not undermine CenturyTel’s position taken in this proceeding regarding the illegality of imposing forms of superior interconnection upon it.⁴⁴ Thus, the CMRS ICAs cannot be used by Sprint to suggest that CenturyTel has agreed to some unlimited form of indirect interconnection/transiting

⁴¹ *RCC Agreement*, Section 3.3, and *Verizon Agreement*, Section 3.3, respectively.

⁴² See CenturyTel of Oregon, Inc. to Petition for Arbitration of Sprint Communications Company L.P., ARB 830, filed April 4, 2008, Exhibit 1, CenturyTel Disputed Points List, page 20 of 39, (CenturyTel Proposed Language for Sections 3.3.1.1 and 3.3.2.4.); *see also* CenturyTel/12, Watkins/43-44 beginning at line 20 on p. 43.

⁴³ Sprint Brief at 3.

⁴⁴ *Iowa Utilities Bd. v. F.C.C.*, 120 F.3d 753, 813 (8th Cir. 1997); *Iowa Utilities Board v. Federal Communications Commission*, 219 F.3d 744,758 (8th Cir. 2000).

arrangements that supports Sprint's claim that reconsideration of the disposition of the Issues in the *Order* is proper.

B. To the Extent that Sprint Favors the CMRS ICAs, Sprint Can Elect to Opt Into a CMRS ICA pursuant to 47 U.S.C. § 252(i).

The net effect of Sprint's contentions is that Sprint wants the Commission to focus on limited portions of the CMRS ICAs and selectively use those provisions as a basis to reconsider the *Order*. Sprint's desire to selectively adopt provisions of the CMRS ICAs that favor Sprint's interests is clear: "Certainly the Sprint ICA should not contain limitations that other carriers did not have in their ICAs or CenturyTel would be providing superior service to them."⁴⁵ Sprint seeks a classic "pick-and-choose" approach that is prohibited under applicable law. In adopting the "all-or-nothing" rule, the FCC stated as follows:

On the record now before us, we find that the pick-and-choose rule is a disincentive to give and take in interconnection negotiations. We also find that other provisions of the Act and our rules adequately protect requesting carriers from discrimination. Therefore, we conclude that the burdens of retaining the pick-and-choose rule outweigh the benefits. We also find the all-or-nothing approach to be a reasonable interpretation of Section 252(i) that will "restore incentives to engage in give-and-take negotiations while maintaining effective safeguards against discrimination."⁴⁶

The end that Sprint seeks in this proceeding is contrary to the concept of the give-and-take that is encouraged by the FCC's "all-or-nothing" rule. Thus, if Sprint seeks the benefits of one of the CMRS ICAs, under the terms of 47 C.F.R. § 51.809(a), it may seek to adopt the *entire interconnection agreement* and, in doing so, acknowledge its intent to accept the responsibilities established by such CMRS ICA.

If this were to occur, Sprint would be acknowledging its intent to be obligated to accept *all* of the terms of the CMRS ICA it might choose to opt into including, but not limited to, the

⁴⁵ *Sprint Brief* at p. 7.

⁴⁶ *FCC Section 251(i) Order* at ¶ 11 (footnote omitted).

seventy or seventy-five percent terminating traffic ratio in favor of CenturyTel, and payment to CenturyTel of substantial terminating revenues. Sprint would also need to accept the fact that CenturyTel could, at any time, request that direct interconnection be established.

In short, Sprint cannot be permitted to “pick-and-choose” provisions as it effectively seeks to do in the *Sprint Brief*.

C. No discrimination issues are presented by the CMRS ICAs.

Finally, Sprint contends that there may be discrimination issues presented by the CMRS ICAs.⁴⁷ Those contentions are without basis.

In approving the CMRS ICAs, the Commission was required to find that discrimination did not occur under the terms of Section 252(e)(2)(A). Under this directive, a state commission may reject an interconnection agreement adopted by negotiation if the agreement or a portion thereof discriminates against a telecommunications carrier not a party to the agreement or the implementation of such agreement is not consistent with the public interest, convenience, and necessity. At the time the CMRS ICAs were presented to the Commission, there was apparently neither any issue of discrimination nor any concern that the terms of such agreements adversely impacted the public interest, convenience and necessity. CenturyTel is confident the Commission understood its role when it approved each of the CMRS ICAs. Sprint cannot be heard to now claim that previously approved CMRS ICAs now constitute a form of discrimination.

In addition, Sprint’s discrimination arguments run directly contrary to the FCC’s findings when it adopted the “all-or-nothing” rule. As the FCC stated, selective choice of isolated language from an interconnection agreement for adoption in a second interconnection agreement

⁴⁷ *Sprint Brief* at 7-8.

is not needed to protect the second carrier from discrimination.⁴⁸

IV. CONCLUSION.

As demonstrated herein, there is no factual or legal basis for the Commission to reconsider the *Order* and the *Sprint Brief* provides no such basis. Sprint fundamentally mischaracterizes the plain wording and import of the CMRS ICAs, and, in doing so, mischaracterizes not only the Commission's *Order* but also CenturyTel's position regarding the proper language of the Conforming Agreement. The directives from the *Order* should be affirmed and the Commission should direct the Parties to execute the Conforming Agreement submitted by CenturyTel and thereafter the Commission should approve the Conforming Agreement.

Dated this 30th day of January, 2009.

Respectfully submitted,

CenturyTel of Oregon, Inc.

By: 

Richard A. Finnigan
Law Office of Richard A. Finnigan
2112 Black Lake Blvd. S.W.
Olympia, Washington 98512
Tel: 360.956.7001
Fax: 360.753.6862
Email: rickfinn@localaccess.com

and

Thomas J. Moorman DC Bar No. 384790
WOODS & AITKEN LLP
2154 Wisconsin Avenue, N.W., Suite 200
Washington, D.C. 20007
Tel: 202.944.9502
Fax: 202.944.9501
Email: tmoorman@woodsaitken.com

⁴⁸ See FCC Section 252(i) Order at ¶ 11.

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:

FILING CENTER
PUBLIC UTILITY COMMISSION OF OREGON
550 CAPITOL STREET NE SUITE 215
SALEM, OR 97301-2551
puc.filingcenter@state.or.us

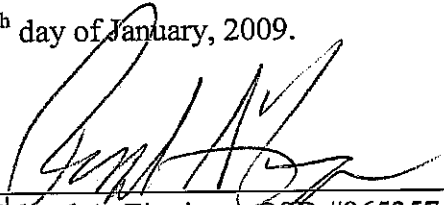
I further certify that I have this day sent the attached Reply Brief of CenturyTel of Oregon, Inc. by the delivery methods indicated below and electronic mail pursuant to OAR 860-013-0070, to the following parties or attorneys of parties:

JANETTE LUEHRING
6450 SPRINT PKWY
MAILSTOP: KSOPHN0304 – 3b653
OVERLAND PARK, KS 66251
janette.w.luehring@sprint.com
VIA E-MAIL ONLY

JUDITH ENDEJAN
2801 ALASKAN WAY
SUITE 300
SEATTLE, WA 98121
jendejan@grahamdunn.com
VIA E-MAIL AND FEDERAL EXPRESS

KRISTIN L. JACOBSON
201 MISSION ST STE 1400
SAN FRANCISCO, CA 94105
kristin.l.jacobson@sprint.com
VIA E-MAIL ONLY

Dated at Olympia, Washington, this 30th day of January, 2009.


Richard A. Finnigan, OSB #965357
Attorney for CenturyTel of Oregon, Inc.

Attachment A
Page 1 of 2
Disputed Language to Implement Commission Directives
Arising from Issue 7 within the Order

CenturyTel's proposed language is as follows:

3.3.1 Indirect Network Connection

3.3.1.1 Intentionally left blank.

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

3.3.1.3 Intentionally left blank.

3.3.1.4 To the extent a Party combines Local Traffic and Jointly-Provided Switched Access Traffic on a single 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.

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

Sprint's proposed language for Section 3.3.1 is as follows:

3.3.1 Indirect Network Connection

3.3.1.1 **INTENTIONALLY LEFT BLANK.**

3.3.1.2 Indirect Network Connection shall be accomplished by CenturyTel and Sprint each being responsible for the delivery and switching of its originated local traffic

Attachment A

Page 2 of 2

**Disputed Language to Implement Commission Directives
Arising from Issue 7 within the Order**

at the Tandem Switch serving the terminating parties [*sic*] switch. Each Party is responsible for the facilities to its side of the tandem. Each Party is responsible for the appropriate sizing, operation, and maintenance of the transport facility to the tandem. The Parties agree to enter into their own agreement with third party tandem providers.

3.3.1.3 INTENTIONALLY LEFT BLANK.

3.3.1.4 To the extent a Party combines Local Traffic and Jointly-Provided Switched Access Traffic on a single 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.

Attachment B
Page 1 of 2
Excerpts from
Verizon Wireless Interconnection and RCC Agreement

The *Verizon Wireless Agreement* defines Type 2 Wireless Interconnection as follows:

- 1.23 “Type 2 Wireless Interconnection” is a trunk interconnecting the LEC Central Office with a CMRS Provider’s Mobile Switching Center. This type of connection may only be used for exchanging Local Traffic or terminating wireless to wireline interMTA traffic.
- i) Type 2A: is trunk interconnection between a LEC Tandem Switch and a CMRS Provider Mobile Switching Center. Through this interface, VZW can connect to CenturyTel’s End Offices and non-CenturyTel End Offices that subtend the CenturyTel Tandem Switch.
 - ii) Type 2B: is a trunk interconnection between a LEC End Office and a CMRS Provider Mobile Switching Center. This interconnection will only provide access to numbers residing in the LEC End Office to which the interconnection is made, including EAS served by the LEC End Offices.

Further, Section 3.1 of the Verizon Wireless and RCC Agreements provides as follows:

- 3.1 The traffic subject to this Agreement shall be that Local Traffic which originates from a subscriber on the network of one Party and is delivered to a subscriber on the network of the other Party via a Type 2 Wireless Interconnection through direct Interconnection Facilities. Terms and conditions for the interchange of traffic between the Parties via Type 1 Wireless Interconnection are governed by CenturyTel’s applicable local tariff.

The *RCC Agreement* defines Type 2 Wireless Interconnection as follows:

- 1.22 “Type 2 Wireless Interconnection” is a trunk interconnecting the LEC Central Office with a CMRS Provider’s Mobile Switching Center. This type of connection may only be used for exchanging Local Traffic or terminating wireless to wireline interMTA traffic.
- i) Type 2A: is trunk interconnection between a LEC Tandem Switch and a CMRS Provider Mobile Switching Center. Through this interface, RCC can connect to CenturyTel’s End Offices and non-CenturyTel End Offices that subtend the CenturyTel Tandem Switch.
 - ii) Type 2B: is a trunk interconnection between a LEC End Office and a CMRS Provider Mobile Switching Center. This interconnection will only

Attachment B
Page 2 of 2
Excerpts from
Verizon Wireless Interconnection and RCC Agreement

provide access to numbers residing in the LEC End Office to which interconnection is made, including EAS served by the LEC End Offices.

Further, Section 3.1 of the *RCC Agreement* provides as follows:

- 3.1 The traffic subject to this Agreement shall be that Local Traffic which originates from a subscriber on the network of one Party and is delivered to a subscriber on the network of the other Party via a Type 2 Wireless Interconnection through direct Interconnection Facilities. Terms and conditions for the interchange of traffic between the Parties via Type 1 Wireless Interconnection are governed by CenturyTel's applicable local tariff.

The *Nextel Agreement* defines the term "Type 2 Wireless Interconnection" as follows:

- 1.18 "Type 2 Wireless Interconnection" is a trunk interconnecting the LEC central office with a CMRS provider's mobile switching center. This type of connection may only be used for Local Traffic or terminating interMTA traffic.
- i) Type 2A: is trunk interconnection between a LEC local tandem and a CMRS provider mobile switching center. Through this interface, NEXTEL can connect to Century Tel's end offices.
 - ii) Type 2B is a trunk interconnection between a LEC end office and a CMRS provider mobile switching center. This interconnection will only provide access to numbers residing in the LEC end office to which the interconnection is made.

The *Sprint Spectrum Agreement* defines the term "Type 2 Wireless Interconnection" as follows:

- 1.18 "Type 2 Wireless Interconnection" is a trunk interconnecting the LEC central office with a CMRS provider's mobile switching center. This type of connection may only be used for Local Traffic or terminating interMTA traffic.
- i) Type 2A is trunk interconnection between a LEC local tandem and a CMRS provider mobile switching center. Through this interface, SPCS can connect to Century Tel's end offices.
 - ii) Type 2B is a trunk interconnection between a LEC end office and a CMRS provider mobile switching center. This interconnection will only provide access to numbers residing in the LEC end office to which the interconnection is made.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

ARB 830

In the Matter of

SPRINT COMMUNICATIONS COMPANY
L.P.

DECLARATION OF RALPH P. TEASLEY

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

I, Ralph P. Teasley, hereby declare under penalty of perjury under the laws of the State of Oregon that the following statements are true and correct:

1. I am Manager-Network Support Centers for CenturyTel, Inc. In that capacity, I am responsible for Translations, which determines how calls are routed, for all CenturyTel voice switches.
2. I have reviewed the way in which traffic is routed to CMRS providers from CenturyTel's Depoe Bay exchange. Depoe Bay is the CenturyTel exchange that is the initial subject of the interconnection request from Sprint Communications Company, L.P. In checking the assignment of number resources for the Depoe Bay rate center, I determined via Telcordia's Local Exchange Routing Guide (LERG) that the only carrier other than CenturyTel that has number resources associated with the Depoe Bay Exchange as of January 29, 2009 is 360 Networks. 360 Networks has one pooled thousand

DECLARATION OF RALPH P. TEASLEY - 1

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

1 block (541-764-6XXX) assigned to them for the Depoe Bay rate center. Additionally, Depoe Bay has
2 extended area service (EAS) to Lincoln City and Newport. To the extent that a CMRS provider has
3 assigned numbering resources for the Newport rate center or the Lincoln City rate center, traffic destined
4 to that CMRS provider for those numbers are routed to the Newport local tandem and the Lincoln City
5 EAS trunk group for that particular EAS route, respectively.

6
7 3. For all other traffic originating from CenturyTel in Depoe Bay and routed to CMRS
8 providers outside the local and EAS calling scope of Depoe Bay, including traffic under the 4 CMRS
9 Agreements, to the extent that they apply to Depoe Bay, that traffic is routed to the CenturyTel
10 customer's pre-subscribed inter-exchange carrier.

11 4. CenturyTel has no financial obligation for traffic beyond its exchange boundaries for the
12 CMRS traffic originated by CenturyTel customers which is destined to customers of CMRS providers.
13 For the traffic that is routed to inter-exchange carriers, the financial obligation is that of the inter-
14 exchange carrier. For the traffic routed on EAS trunks, under the Commission's ruling establishing the
15 EAS routes, there is no charge for traffic beyond CenturyTel's exchange boundary. This traffic pattern
16 for Depoe Bay is what I would expect for most of CenturyTel's Oregon exchanges.
17

18 Dated this 29th day of January, 2009.

19
20 *Ralph P. Teasley*
21 RALPH P. TEASLEY

22
23
24
25
26 DECLARATION OF RALPH P. TEASLEY - 2

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001