

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.

**ORDER ON
RECONSIDERATION**

DISPOSITION: ARBITRATOR'S DECISION REGARDING ISSUES 4, 5,
AND 7 ADOPTED; ORDER NO. 08-486 VACATED IN
PART

I. INTRODUCTION

On March 11, 2008, Sprint Communications Company L.P. (Sprint) filed a petition with the Public Utility Commission of Oregon (Commission) requesting arbitration of an Interconnection Agreement (ICA) with CenturyTel of Oregon, Inc. (CenturyTel), under section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996¹ (the Act). The parties agreed to waive the statutory timeline. CenturyTel responded to Sprint's petition on April 4, 2008.²

The Arbitrator's Decision was issued September 2, 2008, and both parties filed exceptions to the decision on September 15, 2008. The Commission issued Order No. 08-486 on September 30, 2008, adopting the Arbitrator's Decision as modified. On November 6, 2008, CenturyTel filed an ICA that it believed conformed with Order No. 08-486 and a letter explaining that the parties had been unable to agree on how to appropriately incorporate the Commission's decision regarding what had been identified as Issue 7 during the arbitration. CenturyTel requested that the Commission order Sprint to sign CenturyTel's proposed ICA. Sprint filed its own version of a conforming ICA on November 7, 2008, together with a motion for approval of its ICA. During a telephone conference held on November 13, 2008, a schedule was set for both parties to file written responses the other party's filing. Sprint and CenturyTel filed responses on November 21, 2008.

¹ 47 USC §§ 151-614.

² For a discussion of the procedural history of this docket from the time CenturyTel filed its response until the Arbitrator's Decision was issued, see Order No. 08-486 at 1-2.

After reviewing the parties' filings regarding the proposed ICAs, the Commission determined that reconsideration of Issue 7 was appropriate. Because Issue 7 was closely related to Issues 4 and 5, the Commission decided to also reconsider its decision regarding those issues. The Arbitrator's Decision is attached as Appendix A. During a telephone conference on December 11, 2008, the Arbitrator informed the parties that the Commission was treating the parties' competing ICAs as a request for reconsideration of Issues 4, 5, and 7, and asked the parties if further briefing was required. Sprint responded by requesting official notice under OAR 860-014-0050 of the interconnection agreements approved in Commission dockets ARB 209, ARB 232, ARB 463, and ARB 585, which the Arbitrator granted. Sprint also requested the opportunity to submit written argument regarding the relevance of these interconnection agreements, and CenturyTel requested the opportunity to reply. Both requests were granted. Sprint filed its opening brief on reconsideration on January 9, 2009, and CenturyTel filed its reply brief on January 30, 2009.

In this order, we again consider the Arbitrator's decisions regarding Issues 4, 5, and 7, as well as the parties' exceptions to those decisions. We conclude that the modifications made to the Arbitrator's decisions on Issues 4, 5, and 7 in Order 08-486 are unnecessary, and therefore adopt the Arbitrator's decisions on those issues without modification.

II. PROCEDURAL ISSUES

At the parties' request, the Arbitrator took official notice of the interconnection agreements approved in the following dockets: ARB 209, ARB 232, ARB 370, ARB 463, ARB 526, ARB 585, ARB 653, and ARB 833. In its reply brief on reconsideration, CenturyTel also requested official notice of the interconnection agreements in dockets ARB 698, ARB 699, ARB 757, and ARB 816. CenturyTel's request is granted. We note, however, that all but one of the interconnection agreements adopted in these 12 dockets were the product of negotiation between the parties to the agreements, and not the product of a contested arbitration before this Commission.³

Except for claims that particular terms in these agreements demonstrate that CenturyTel is attempting to discriminate against Sprint, we believe that the terms in negotiated interconnection agreements are of little precedential value in deciding the appropriate terms for an arbitrated agreement. Without knowing why a party agreed to a particular term during a negotiation, it is inappropriate to infer that the party's agreement indicates acceptance of that term under different circumstances with different counterparties.

III. STATUTORY AUTHORITY

The standards for arbitration are set forth in section 252(c) of the Act:

In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall—

³ In ARB 585, the majority of the interconnection agreement was the product of negotiation. Only one issue was presented for the Commission's resolution: whether reciprocal compensation should be paid for traffic bound for internet service providers. That issue is irrelevant in this docket.

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [Federal Communications] Commission pursuant to section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

In addition, section 252(e)(3) of the Act permits the Commission to establish or enforce other requirements of state law in its review of an ICA when such requirements are consistent with the Act and Federal Communications Commission (FCC) regulations.

IV. DISCUSSION

A. Issue 4 – Direct Interconnection – 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

1. *Arbitrator’s Decision and Parties’ Exceptions*

Issue 4 involves a dispute over the appropriate direct interconnection terms to include in the parties’ ICA.⁴ Specifically, Sprint is concerned that CenturyTel will unnecessarily require multiple points of interconnection (POIs), thereby creating a barrier to entry. CenturyTel fears that allowing Sprint to choose only one point of interconnection (POI) per LATA would potentially require CenturyTel to build new facilities and may cause service degradation. To address both parties’ concerns, the Arbitrator adopted ICA language that was “intended to allow Sprint to propose a POI at any point on CenturyTel’s network, and to allow CenturyTel to address any technical feasibility issues at the time a POI is proposed.”⁵ The Arbitrator noted that the ICA language was “not intended to preclude multiple POIs if required by technical and operational constraints, and is not intended to require CenturyTel to provide interconnection service to Sprint that is superior to the service it provides to itself or other carriers.”⁶

In their exceptions, both CenturyTel and Sprint question the ICA language adopted by the Arbitrator. CenturyTel is concerned that the phrases “technical feasibility” and “technical and operational constraints” could be used by Sprint to undermine the Arbitrator’s findings that the POI provided to Sprint can be no better than that which CenturyTel provides to affiliated entities. CenturyTel asks the Commission to explicitly confirm that neither the Commission nor the Arbitrator require the establishment of a missing network link within the incumbent Local Exchange Carrier’s (LEC) network if the economics or existing network are ignored and a superior form of interconnection results. Sprint would like the Commission to clarify that the language on this issue in the Arbitrator’s

⁴ See Arbitrator’s Decision at 8-11.

⁵ *Id.* at 10.

⁶ *Id.*

Decision does not preclude multiple POIs if the requested points of interconnection are technically feasible.

2. *Resolution on Reconsideration*

In Order No. 08-486, we interpreted the Arbitrator's decision on Issue 4 to mean that CenturyTel was not required to provide a superior form of interconnection merely because, disregarding the cost, it is technically possible to do so. We therefore limited Sprint's ability to request multiple POIs only if *required* by technical and operational constraints. On reconsideration of this issue, we find that our conclusions in Order No. 08-486 were incorrect.

Under section 251(c)(2) of the Act, an incumbent local exchange carrier has a duty to provide:

[I]nterconnection 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.⁷

As interpreted by courts and the FCC, section 251(c)(2) allows competitive LECs like Sprint to choose where to interconnect on the incumbent LEC's network, including the option to establish only one POI per LATA. Section 251(c)(2) limits the competitive LEC's choices, however, to POIs that are technically feasible. In addition, an incumbent LEC (such as CenturyTel) must provide interconnection that is "at least equal in quality" to the interconnection it provides to itself, its affiliates, or to other carriers. Thus, the incumbent LEC is not *required* to provide superior quality interconnection to competitive LECs.

The Arbitrator's ICA language was intended to balance the parties' interests. The language allows Sprint to request a single POI or multiple POIs, and CenturyTel must allow interconnection at any technically feasible point on its network. CenturyTel is not required, however, to provide interconnection to Sprint that is superior in quality than that provided to CenturyTel itself, to its affiliates, or to other carriers. Given the unique structure and geography of CenturyTel's network, there is no single point in any Oregon LATA where CenturyTel has facilities linking all of the CenturyTel end offices in the LATA. Under the

⁷ 47 USC § 251(c)(2).

terms of the ICA as adopted by the Arbitrator, Sprint cannot require CenturyTel to build these links. If Sprint wants to directly interconnect with CenturyTel's entire network within a LATA, then multiple POIs may be necessary.

We find that the Arbitrator's language appropriately balances the parties' interests. The Arbitrator's findings and conclusions regarding this issue are therefore adopted.

B. Issue 5 – Interconnection Facility Costs – 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, and 3.2.5.5; Article VII, Section I.C

1. Arbitrator's Decision and Parties' Exceptions

Issue 5 involves whether the parties should share the costs of direct interconnection facilities between their networks based on their respective percentages of originated traffic. The Arbitrator found:

Sprint is correct that the parties should share the costs of interconnection facilities proportionally based on usage. I disagree, however, that CenturyTel is responsible for a proportional share of interconnection facilities beyond its exchange boundary. CenturyTel should only be responsible for the proportional share for interconnection facilities between CenturyTel's network and its exchange boundary. Sprint must pay 100 percent of the cost of interconnection facilities from CenturyTel's exchange boundary to Sprint's point of presence or switch.

Accordingly, I adopt CenturyTel's proposed language for Article II, section 2.59. The appropriate language for Article IV, section 2.2.2 is set forth above. Sprint's proposed language for Article IV, sections 3.2.2, 3.2.5.1, 3.2.5.2, 3.2.5.3, and 3.2.5.5 is adopted, as well as Sprint's proposed language for Article VII, section I.C.⁸

Although CenturyTel disagrees with the Arbitrator's interpretation of section 51.709(b) regarding the formula for reciprocal compensation and the agreed-upon bill-and-keep arrangement, CenturyTel does not contest that finding provided that the Commission affirms the Arbitrator's decision on this issue. In CenturyTel's view, the Arbitrator's finding precludes any requirement that CenturyTel would have to expand its network payment responsibility for direct interconnection facilities beyond its exchange boundary.

Sprint objects to the Arbitrator's findings limiting CenturyTel's cost sharing to its exchange boundary. Sprint notes that the obligation to deliver traffic includes the payment of transit charges to a third party tandem provider when the carriers are indirectly connected and that the costs of direct interconnection should be treated in an identical fashion. Therefore, Sprint asks that the Arbitrator's Decision be modified to require

⁸ Arbitrator's Decision at 12 (footnote omitted).

CenturyTel to pay the costs of transporting traffic to a designated Sprint point of presence (POP) in the LATA. Sprint therefore requests that we adopt its language for Article II, section 2.59.

2. Resolution on Reconsideration

In Order No. 08-486, we found:

Where 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 where those parties are directly connected.⁹

The Arbitrator's conclusions on Issue 5, however, were not intended to address costs related to the parties' ongoing exchange of traffic, but rather were intended to address shared responsibility for the costs of direct interconnection facilities. As expressed in the Decision, it was the Arbitrator's understanding that the parties had agreed to provisions governing the ongoing exchange of traffic and that the only issue for arbitration was the cost of interconnection facilities. Thus, to the extent our decision applied the Arbitrator's conclusions regarding payment for interconnection facilities to payment for transport and termination, our decision went too far.

We affirm and adopt the Arbitrator's findings and conclusions regarding Issue 5. We clarify, however, that the Arbitrator's decision on this issue is limited to the costs of the interconnection facilities and is not intended to affect or modify the parties' agreed-upon bill-and-keep arrangement for the transport and termination of traffic.

C. Issue 7 – Indirect Interconnection – Article IV, Sections 3.3.1.1, 3.3.2.2, 3.3.2.2.1, 3.3.2.4, 3.3.2.4.1-3.3.2.4.2, 3.3.2.5, 3.3.2.5.1-3.3.2.5.5, and 3.3.2.6

1. Arbitrator's Decision and Parties' Exceptions

Issue 7 involves whether the ICA should include provisions that limit indirect interconnection. Sprint argues that CenturyTel has an ongoing duty to interconnect either directly or indirectly under section 251(a) of the Act, and therefore it is inappropriate for the ICA to require direct interconnection once certain triggers are met. Sprint reads section 251(a) as preventing CenturyTel from requiring direct interconnection under any circumstances.

CenturyTel contends that indirect interconnection should be used only when volume is low, and CenturyTel should not be required to provide indirect interconnection indefinitely. CenturyTel reads section 251(a) as requiring an incumbent LEC to make one of these options available, but CenturyTel argues that section 251(a) does not require the incumbent LEC to provide a competitive LEC its choice of direct or indirect interconnection without qualification. CenturyTel proposes that once traffic levels reach a DS1 level, Sprint

⁹ Order No. 08-486 at 5.

must directly interconnect or establish other mutually beneficial arrangements. CenturyTel contends that its proposal is reasonable because it allows Sprint the opportunity to establish its business before incurring the expense of direct interconnection. CenturyTel further contends that indirect interconnection relies on a tandem operator and limits the ability of the terminating carrier to receive the proper traffic identification information necessary to bill for the traffic. According to CenturyTel, Sprint's proposal would require CenturyTel to provide a superior form of interconnection because it creates an obligation for CenturyTel to provide transport beyond its network.

CenturyTel also contends that the Arbitrator erred in finding that CenturyTel's position was inconsistent with applicable precedent. The Arbitrator concluded that, in both *WWC License, LLC v. Public Serv. Comm'n* and *Atlas Tel. Co. v. Oklahoma Corp. Comm'n*, the federal circuit courts refused to interpret the various provisions of the Act to impose a duty on competitive LECs to connect directly rather than indirectly.¹⁰ She also noted that the Tenth Circuit Court of Appeals recognized the distinction between requiring direct interconnection to only occur on the incumbent LEC's network and requiring that the exchange of traffic occur solely on the incumbent LEC's network.¹¹

In its reply brief on reconsideration, CenturyTel argues that the Arbitrator misunderstood and misapplied the decisions in *WWC* and *Atlas*. CenturyTel states that the courts in those cases found that incumbent LECs could not make a competitive carriers' statutory rights to local dialing parity (*WWC*) or reciprocal compensation (*Atlas*) contingent on direct interconnection, but did not find that a competitive carrier has a right to indirect interconnection without qualification.

2. Resolution on Reconsideration

In Order No. 08-486, we interpreted the Arbitrator's decision regarding the limits on CenturyTel's financial obligations in Issue 4 to apply not only to the facilities required for direct interconnection, but also to the facilities required for indirect interconnection. We also applied the limits to the transport and termination of traffic. On reconsideration, we find that we inappropriately extended the applicability of the Arbitrator's decision on Issue 4. Payment for the transport and termination of traffic, whether by direct or indirect interconnection, had been agreed to by the parties and was not at issue in this arbitration. It was beyond the scope of our authority to decide questions that were not presented in the petition for arbitration or the response to the petition.¹²

We agree, however, with the Arbitrator's interpretation of applicable precedent. The statutory language in section 251(a) of the Act clearly allows a carrier to choose direct or indirect interconnection. Nothing in the statute indicates a legislative intent to restrict the right to choose indirect interconnection, and we decline to interpret the statute in a manner that would hinder rather than promote competition. The Arbitrator's findings and conclusions regarding Issue 7 are therefore adopted.

¹⁰ *WWC License, LLC v. Public Serv. Comm'n*, 459 F3d 880 (8th Cir 2006); *Atlas Tel. Co. v. Oklahoma Corp. Comm'n*, 400 F3d 1256, 1268 (10th Cir 2005).

¹¹ *Atlas*, 400 F3d at 1264, n 6.

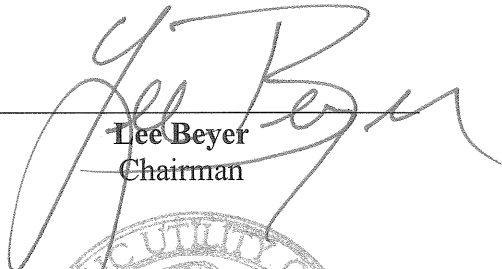
¹² 47 USC 252(b)(4)(A).

IV. ORDER

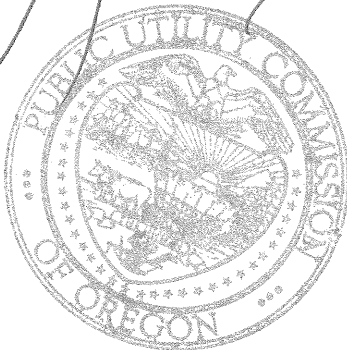
IT IS ORDERED that:

1. The Arbitrator's Decision regarding Issues 4, 5, and 7 is adopted.
2. The Commission's decisions regarding Issues 4, 5, and 7 in Order No. 08-486 are vacated. The Commission's decisions in Order No. 08-486 regarding Issues 2, 6, 8, 13, 14, and 16 remain valid and effective.
2. Within 30 days of the date of this order, Sprint Communications Company L.P. and CenturyTel of Oregon, Inc., must, in accordance with the provisions of OAR 860-016-0030(12), file an Interconnection Agreement complying with the terms of this order and Order No. 08-486.

Made, entered and effective MAR 31 2009.

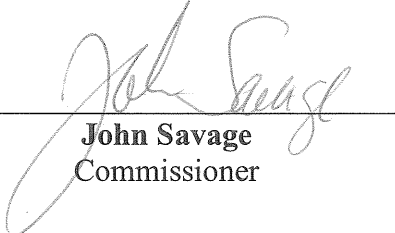


Lee Beyer
Chairman





Ray Baum
Commissioner



John Savage
Commissioner

A party may appeal this order to a court pursuant to applicable law.

ISSUED: September 2, 2008

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 830

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|------------------------------------|---|-----------------------|
| In the Matter of |) | |
| |) | |
| SPRINT COMMUNICATIONS COMPANY L.P. |) | ARBITRATOR'S DECISION |
| |) | |
| Petition For Arbitration of an |) | |
| Interconnection Agreement with |) | |
| CENTURYTEL OF OREGON, INC. |) | |

**I. PROCEDURAL HISTORY
AND RULING ON MOTION TO STRIKE**

On March 11, 2008, Sprint Communications Company L.P. (Sprint) filed a petition with the Public Utility Commission of Oregon (Commission) requesting arbitration of an Interconnection Agreement (ICA) with CenturyTel of Oregon, Inc. (CenturyTel), under section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996¹ (the Act). The parties agreed to waive the statutory timeline due to the number of arbitrations pending in different states. CenturyTel responded to Sprint's petition on April 4, 2008.

Telephone conferences were held in this matter in April and June 2008 to establish a schedule and discuss procedural matters. General Protective Order No. 08-524 was issued on May 14, 2008.

The parties submitted written testimony on May 5 and June 4, 2008. The parties waived cross-examination and submitted the case for consideration based on their pre-filed testimony. The hearing scheduled for June 24, 2008, was therefore canceled. The parties submitted opening briefs on July 16, 2008. CenturyTel submitted its reply brief on July 23, 2008. Sprint received a one-day extension and submitted its reply brief on July 24. Because this extension gave Sprint the opportunity to review CenturyTel's reply brief before submitting its own, CenturyTel was permitted to file a surreply brief on July 28, 2008.

In the ruling granting an extension to Sprint and allowing the filing of a surreply by CenturyTel, the arbitrator instructed CenturyTel to limit its surreply brief to addressing any items in Sprint's reply brief that CenturyTel believed were included due

¹ 47 USC §§ 151-614.

to Sprint's opportunity to review CenturyTel's reply brief before submitting its own. On July 29, 2008, Sprint filed a motion to strike a portion of CenturyTel's surreply brief as outside of the scope of the arbitrator's ruling. Sprint specifically objects to the portion of CenturyTel's surreply that accuses Sprint of raising new arguments in its reply brief. CenturyTel responded to the motion to strike on August 1, 2008, arguing that its surreply brief was within the scope of the arbitrator's ruling.

I agree with Sprint that the last paragraph on page two of CenturyTel's surreply brief is outside of the scope of my ruling. After stating that it could not determine whether any items in Sprint's reply brief were included because of the opportunity to review CenturyTel's reply brief, CenturyTel contends that "what is obvious is that the warning that CenturyTel raised in its Reply Brief has become reality. . . . Sprint held back arguments from the Sprint Opening Brief . . . raising a number of points and arguments for the first time in its Reply Brief." CenturyTel states that this "sandbagging" effectively prevents CenturyTel from responding to the new arguments and requests that I give "little weight" to Sprint's reply brief. Because CenturyTel exceeded the scope of my ruling, and because Sprint has no opportunity to reply to CenturyTel's accusations, I grant Sprint's motion to strike the last paragraph on page two of CenturyTel's surreply brief. If CenturyTel believed that Sprint raised new arguments in its reply brief that should not be considered by this Commission, then CenturyTel should have filed a motion to strike those specific portions of Sprint's brief.

II. STATUTORY AUTHORITY

The standards for arbitration are set forth in section 252(c) of the Act:

In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall—

- (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [Federal Communications] Commission pursuant to section 251;
- (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
- (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

In addition, section 252(e)(3) of the Act permits the Commission to establish or enforce other requirements of state law in its review of an ICA when such requirements are consistent with the Act and Federal Communications Commission (FCC) regulations.

III. DISPUTED ISSUES

During the course of the proceeding, the parties successfully resolved Issues 3, 9, 11, and 12. The issues remaining in dispute are identified in the Disputed Points List (DPL), attached to this decision as Appendix A.²

A. Issue 1 – Dispute Resolution – Article III, Sections 20.3 and 20.5

In sections 20.1 and 20.2 of the ICA, the parties agree to contract language outlining an informal dispute resolution process. The parties also agree to section 20.6, which provides that the parties must continue to provide services to each other during any dispute resolution process, although CenturyTel may refuse to accept new Sprint service orders under limited circumstances. The question to be resolved in this arbitration is the appropriate formal dispute resolution process to be used for disputes that remain unresolved after the informal process. The parties agree that any unresolved disputes should first come before this Commission, but disagree on the language to be used to reflect this agreement. The parties also disagree about the process to be used if the Commission lacks or declines jurisdiction over a dispute.

Specifically, CenturyTel’s proposed section 20.3.1 requires that disputes first be brought before this Commission under the Commission’s dispute resolution process.³ Sprint agrees with this language.⁴ If the Commission lacks or declines jurisdiction, CenturyTel’s proposed 20.3.2 requires the parties to use commercial arbitration to resolve the dispute.⁵ In its section 20.3, Sprint proposes that a party may seek “any remedy available to it pursuant to law, equity, or agency mechanisms.”⁶ Sprint further proposes language allowing a party to forgo informal dispute resolution and seek immediate relief under the formal dispute resolution process for any “service affecting issue.”⁷

I agree that it is appropriate for the parties to bring formal disputes to this Commission for resolution under the Commission’s rules governing the enforcement of interconnection agreements (OAR 860-016-0050). Although Sprint states that it agrees with the language in CenturyTel’s section 20.3.1, Sprint expresses concern about that portion of the section that states that all disputes must be submitted to the Commission, “including without limitation, whether the dispute in question is subject to arbitration.”⁸

² The parties submitted several versions of the disputed points list over the course of the proceedings. Any references to the DPL in this decision are to the version filed by CenturyTel as an attachment to its reply brief on July 23, 2008.

³ DPL at 4-5.

⁴ See Opening Brief of Sprint Communications Co. L.P. at 5 (July 16, 2008) (“Sprint Opening Brief”).

⁵ DPL at 4-5.

⁶ *Id.* at 3. The language in CenturyTel’s 20.3.1 and Sprint’s 20.3 do not appear to be compatible unless one assumes that the first sentence of Sprint’s section 20.3 only applies to disputes over which the Commission lacks or declines jurisdiction. The second sentence of Sprint’s section 20.3 is clearly meant to apply to all service affecting issues.

⁷ *Id.* at 3-4. CenturyTel originally included section 20.4, which proposed an expedited procedure for service affecting issues. CenturyTel has since withdrawn its proposed section 20.4.

⁸ See Sprint/1, Burt/12.

I agree with Sprint that this language is confusing. I therefore instruct the parties to use the following language in section 20.3.1:

20.3.1 The Parties agree that all unresolved disputes arising under this Agreement must be submitted to the Commission for resolution in accordance with its dispute resolution process. The outcome of the Commission process will be binding on the Parties, subject to any right to appeal a Commission decision under applicable law.

I also agree with Sprint that there should be an expedited dispute resolution process for a service affecting issue. CenturyTel did not object to such an expedited process in its briefs or testimony. The parties are instructed to include contract language allowing a party to forgo the informal dispute resolution process in 20.2 and pursue formal resolution of a dispute involving a service affecting issue under 20.3.1 after giving notice of the dispute to the other party.⁹ This contract language is most appropriately included, however, at the end of section 20.1.2 rather than at the beginning of section 20.3.

The next question is whether the parties should be required to resolve their dispute through commercial arbitration in the unlikely event the Commission lacks or declines jurisdiction over the parties' dispute. Sprint argues that the parties should be able to pursue a remedy before the FCC or agree to binding commercial arbitration.¹⁰ Sprint asserts that the FCC has jurisdiction over the enforcement of an interconnection agreement if a state commission refuses to act under 47 USC section 252(e)(5),¹¹ and Sprint should not be compelled to forgo any right to pursue resolution of a dispute before the FCC if this Commission declines jurisdiction. Sprint further argues that a party cannot be compelled to agree to or undergo mandatory arbitration under Oregon law.¹²

CenturyTel argues that the contract should provide for mandatory arbitration when the Commission lacks or declines jurisdiction.¹³ CenturyTel believes that the use of mandatory arbitration results in cost savings, timely dispute resolution, and the ability to choose an arbitrator with subject matter expertise.¹⁴ CenturyTel further contends that Sprint has already agreed to similar dispute resolution provisions with a

⁹ I believe the Commission's dispute resolution process will be more expedient and efficient if there is a service affecting issue, especially given the provision for an expedited procedure under certain circumstances in OAR 860-016-0050(10).

¹⁰ See Sprint Opening Brief at 7.

¹¹ *Id.*, citing *Starpower Communications LLC Petition for Preemption of Jurisdiction of the VA. State Corp. Comm'n Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, 15 FCC Rcd 11277 (2000).

¹² Sprint Opening Brief at 8, citing *Sanderson v. Allstate Ins. Co.*, 164 Or App 58, 989 P2d 486 (1999).

¹³ See Opening Brief of CenturyTel of Oregon, Inc. at 5 (July 16, 2008) ("CenturyTel Opening Brief").

¹⁴ See *id.* at 6.

different carrier in Arkansas, although the provisions used “may” instead of CenturyTel’s proposed “shall.”¹⁵ Finally, CenturyTel argues that arbitration avoids any gaps in the FCC’s jurisdiction (for example, the FCC is not the appropriate forum for resolution of a collection action).¹⁶

Sprint is incorrect that a party cannot be compelled to agree to or undergo mandatory arbitration under Oregon law. Since 1989, the Oregon legislature has expressed a preference for arbitration and mediation over litigation.¹⁷ The legislature passed the Uniform Arbitration Act in 2003, which provides that mandatory arbitration provisions are valid and enforceable¹⁸ and includes a provision for the enforcement of such clauses.¹⁹

The case cited by Sprint in support of its position—*Sanderson v. Allstate Ins. Co.*—does not stand for the proposition that a party cannot be compelled to agree to or undergo mandatory arbitration as a matter of course in Oregon. Rather, the court in *Sanderson* found that the right to a jury trial is inviolate in Oregon; thus, arbitration cannot be compelled when it would infringe on a party’s right to a jury trial. In this case, Sprint has not argued that it has a right to a jury trial when seeking enforcement of an interconnection agreement, nor provided any support for such a proposition. Moreover, CenturyTel is likely correct that federal law, not Oregon law, would be controlling regarding the permissibility of mandatory arbitration clauses in interconnection agreements.

CenturyTel’s argument that Sprint has previously agreed to similar arbitration provisions in Arkansas in a contract with a different carrier, and therefore should not be heard to object in this proceeding, is not well taken. There is a significant substantive difference between the Arkansas provisions, which use “may,” and CenturyTel’s proposal, which uses “shall.” The use of “may” indicates a permissive provision, not a mandatory one. The use of “shall” renders the arbitration provision mandatory, which is exactly what Sprint is objecting to in this proceeding.

I find that commercial arbitration has many benefits and is a reasonable alternative to litigation if the Commission declines or lacks jurisdiction. Arbitration is also consistent with the Oregon legislature’s stated preference for alternative dispute resolution. I cannot ignore, however, Sprint’s preference to maintain its ability to seek

¹⁵ CenturyTel repeatedly makes this point in testimony and briefs. See CenturyTel Opening Brief at 6. But the language actually proposed by CenturyTel in the DPL says “may” rather than “shall” in section 20.3.2. DPL at 4-5. CenturyTel clarifies any discrepancies by stating that the provisions as discussed in witness Miller’s testimony should be controlling. I therefore assume that CenturyTel’s proposed language for section 20.3.2 is set forth at CenturyTel/3, Miller/131.

¹⁶ See CenturyTel Opening Brief at 7-8.

¹⁷ ORS § 36.100.

¹⁸ ORS § 36.620(1).

¹⁹ ORS § 36.625.

resolution of a dispute arising under an interconnection agreement before the FCC if this Commission fails to act. Section 252(e)(5) of the Act states:

If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the [FCC] shall issue an order preempting the State commission's jurisdiction of that proceeding . . . and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.²⁰

The FCC has interpreted this section to apply when a state declines to resolve a dispute arising under an interconnection agreement.²¹

Accordingly, I find that the language proposed by CenturyTel in section 20.3.2 should be included in the ICA, but amended to indicate that the parties may seek resolution of a dispute before the FCC if this Commission fails to act, and to require commercial arbitration when both the Commission and the FCC lack or decline jurisdiction, or when the parties mutually agree.

Finally, the parties generally agree on the language in section 20.5, but CenturyTel proposes adding the following sentence: "The Parties shall equally split the fees of the arbitration and the arbitrator."²² It is unclear whether Sprint objects to this language because it is not discussed in Sprint's briefs, and Sprint's testimony on this issue is somewhat contradictory.²³ I think it is reasonable for each party to be responsible for one-half of any arbitration or arbitrator fees and therefore adopt the language proposed by CenturyTel.

B. Issue 2 – Indemnification – Article III, Section 30.1

Sprint and CenturyTel have agreed upon most of the terms to be included in section 30 of the ICA. The only dispute is whether Sprint should be required to indemnify CenturyTel against claims arising out of content transmitted by Sprint's end users, including Sprint's wholesale customers. CenturyTel proposes that the following language be included in section 30.1, which addresses indemnification against third-party claims:

(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

²⁰ 47 USC § 252(e)(5).

²¹ *Starpower*, 15 FCC Rcd at 11278-11280.

²² DPL at 5-6.

²³ *Compare* Sprint/1, Burt/12 *with* Sprint/4, Burt/6.

by the Indemnifying Party's End Users, and, with respect to Sprint as Indemnifying Party, content transmitted by any Sprint Third Party Provider[.]²⁴

Sprint argues that it does not have control over the content transmitted by its end users and therefore should not be held liable to CenturyTel for that content.²⁵ Sprint admits that its tariffs and wholesale contracts may contain similar indemnity provisions, but argues that this situation is significantly different.²⁶ Specifically, Sprint points out that its tariffs and contracts hold the party with control over the content—the end user—liable for that content, but CenturyTel's proposal would hold Sprint liable for content over which it has no control.²⁷ Sprint asserts that CenturyTel would not be left without a remedy because it could pursue a claim against the end user with control over the content.²⁸ Sprint also notes that the only services to be provided under the ICA are interconnection and limited related services.²⁹

CenturyTel responds that Sprint provides no rational basis for rejecting CenturyTel's proposed language.³⁰ CenturyTel states that its proposed provision establishes mutual indemnification obligations, with the exception of the language regarding Sprint's wholesale customers.³¹ CenturyTel contends that its proposed language is reasonable because Sprint, unlike CenturyTel, has a contractual relationship with its wholesale customers and is better able to protect itself by negotiating similar indemnification provisions with its wholesale customers.³² The only way for CenturyTel to protect itself is through the proposed indemnification provision in the ICA with Sprint. Finally, CenturyTel notes that Sprint has agreed to similar provisions in other interconnection agreements.³³

Sprint is correct that its past agreement to similar provisions with other carriers is not dispositive in this case, and that the indemnification provisions in its tariffs and wholesale contracts are different because they hold the party who controls the content liable for the content. But the more salient point is the fact that Sprint can protect itself by including similar indemnification provisions in its tariffs and customer contracts, while CenturyTel's only protection lies in its ICA with Sprint. I therefore find that CenturyTel's proposed section 30.1(ix) is reasonable and should be included in the parties' ICA.³⁴

²⁴ DPL at 7-8.

²⁵ See Sprint Opening Brief at 8.

²⁶ See *id.*

²⁷ See *id.* at 9-10.

²⁸ See *id.* at 10.

²⁹ See *id.* at 8.

³⁰ See CenturyTel Opening Brief at 9.

³¹ See *id.*

³² See *id.* at 11-12.

³³ See *id.* at 10.

³⁴ DPL at 7-8.

C. Issue 4 – Direct Interconnection – 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

Issue 4 involves a dispute over the appropriate direct interconnection terms to include in the parties' ICA.³⁵ Sprint argues that it may only be required to establish one Point of Interconnection (POI) per Local Access Transport Area (LATA) at any technically feasible point.³⁶ Sprint believes that technical feasibility is the only limit on its right to establish only one POI per LATA.³⁷ Sprint contends that CenturyTel cannot force Sprint to establish direct end office trunks (DEOTs) because such a requirement is equivalent to requiring multiple POIs per LATA.³⁸ Sprint further asserts that there is no exception to the one-POI-per-LATA rule for incumbent local exchange carriers that are not also Bell Operating Companies (BOCs), nor has CenturyTel received an exemption as a rural provider. Sprint therefore concludes that the LATA concept applies to CenturyTel.³⁹

CenturyTel argues that the LATA concept does not apply because that concept was based on the extensive, ubiquitous networks of the BOCs.⁴⁰ CenturyTel notes that it is a smaller independent local exchange carrier (LEC) and its network is geographically limited.⁴¹ As a result, there is no single point in any Oregon LATA "where CenturyTel has facilities linking all of the CenturyTel end offices in the LATA."⁴² To meet Sprint's request, CenturyTel contends that it would be required to construct network facilities for Sprint's sole benefit.⁴³ CenturyTel thus concludes that Sprint is requesting interconnection that is superior to that which CenturyTel provides to its own traffic, which is contrary to 47 USC section 251(c)(2)(C).⁴⁴ CenturyTel further argues that its proposed provisions regarding POIs should apply to both direct and indirect interconnection.⁴⁵ Finally, CenturyTel asserts that some of its proposed provisions (for example, the requirement to establish DEOTs) are required to prevent service degradation.⁴⁶

³⁵ *Id.* at 10-13.

³⁶ *See* Sprint Opening Brief at 10.

³⁷ *See id.* at 14.

³⁸ *See id.* at 11, 14.

³⁹ *See id.* at 15.

⁴⁰ *See* CenturyTel Opening Brief at 15-16.

⁴¹ *See id.* at 15, 20. CenturyTel does not argue that the rural exemption provisions of the Act apply.

⁴² *Id.* at 20.

⁴³ *Id.* ("Such a single point could *only* be created if CenturyTel were to build or purchase new trunking routes. CenturyTel has not built or purchased such routes for its own local calling needs or those of any other carrier.") (emphasis in original).

⁴⁴ *See id.*

⁴⁵ *See id.* at 14-15.

⁴⁶ *See id.* at 23.

Section 251(c)(2) of the Act requires that each incumbent local exchange carrier has the duty to provide:

[I]nterconnection 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

CenturyTel's argument seems to be that it is not technically feasible to interconnect at only one POI per LATA because CenturyTel does not have the existing facilities to accommodate the interconnection. CenturyTel argues that such a result is contrary to both sections 251(c)(2)(B) and 251(c)(2)(C) of the Act. Sprint argues that this case does not involve whether interconnection at one POI per LATA is technically feasible.⁴⁸ Sprint further asserts that section 251(c)(2)(C) applies to the quality of interconnection, not the facilities required to interconnect.

As interpreted by the courts and the FCC, section 251(c)(2) allows competitive LECs (in this case, Sprint) to choose where to interconnect on the incumbent LEC's network (in this case, CenturyTel), including the option to establish only one POI per LATA. Section 251(c)(2) limits the competitive LEC's choices, however, to POIs that are technically feasible. In addition, an incumbent LEC is not required to provide interconnection that is superior in quality to that it provides to itself, affiliates, or other carriers. Sprint's proposed resolution is to structure the ICA to allow Sprint to choose to interconnect at one POI per LATA if it is technically feasible, without regard to the other provisions of section 251(c)(2). CenturyTel's proposed resolution is to structure the ICA to never allow Sprint to choose its POI, but rather to require mutual agreement and multiple POIs under certain specific circumstances. In some respects, both parties' proposals go beyond what is required or permitted by section 251(c)(2).

Both Sprint and CenturyTel have legitimate concerns. Sprint is concerned that CenturyTel will unnecessarily require multiple POIs, thereby creating a barrier to entry. CenturyTel is concerned that allowing Sprint to choose only one POI per LATA potentially requires CenturyTel to build new facilities and may cause service degradation.

⁴⁷ 47 USC § 251(c)(2).

⁴⁸ *See, e.g.*, Sprint/4, Burt/14 (“I do not think the issue in dispute between the Parties is related to technical feasibility as that issue pertains to local interconnection. The issue relates to the number of POIs Sprint must establish, not whether a chosen POI is technically feasible.”).

To address both parties' concerns, I find that the language set forth below should be included in the parties ICA.⁴⁹ This language is intended to allow Sprint to propose a POI at any point on CenturyTel's network, and to allow CenturyTel to address any technical feasibility issues at the time a POI is proposed.⁵⁰ I note that this language is not intended to preclude multiple POIs if required by technical and operational constraints, and is not intended to require CenturyTel to provide interconnection service to Sprint that is superior to the service it provides to itself or other carriers.

- 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. Requirements for a Local POI are set forth in Section 3.3.2 of this Article. For direct interconnection, Sprint will establish a minimum of one POI per LATA at any technically feasible point on CenturyTel's network.
- 2.2.3 Intentionally left blank.
- 2.2.4 Subject to Section 3.3.2, each party is responsible for the facilities on its side of the POI(s) and may use any 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).
- 2.3.2.1 Fiber Meet Interconnection between CenturyTel and Sprint can occur at any 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 Intentionally left blank.
- 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.
- 3.3.2.2.1 Intentionally left blank.⁵¹

⁴⁹ I also find that, given my resolution of Issue 7, these provisions should apply to direct interconnection only and not both direct and indirect interconnection as CenturyTel's proposes.

⁵⁰ There is some confusion over whether Sprint believes that its POI can be outside of CenturyTel's network. Sprint's position on this is unclear. To clarify, for direct interconnection, Sprint's POI must be on CenturyTel's network, as provided by section 251(c)(2)(B).

⁵¹ The parties indicate disagreement over section 3.3.2.2.1, but did not discuss this section in testimony or briefs.

3.4.2.1.1 Intentionally left blank.

Sections 3.3.2.1 and 3.3.2.2 are further discussed below under Issue 7.

D. Issue 5 – Interconnection Facility Costs – 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, and 3.2.5.5; Article VII, Section I.C

Issue 5 involves whether the parties should share the costs of the interconnection facilities between their networks based on their respective percentages of originated traffic.⁵² Sprint argues that both parties are responsible for the costs of the facilities used for direct interconnection and should share the costs proportionally based on each carrier's usage. Sprint further argues that these costs are separate from the reciprocal compensation arrangement to which the parties have already agreed.⁵³ Asserting that payment responsibility is not limited by distance, Sprint offered to compromise by establishing a point of presence in the LATA where CenturyTel can exchange traffic rather than requiring CenturyTel to pay for a proportional share of interconnection facilities used to deliver traffic all the way to Sprint's switch, which is in California.⁵⁴ Sprint contends that its position is consistent with FCC regulations governing interconnection.⁵⁵

CenturyTel argues that Sprint is seeking double recovery because the reciprocal compensation arrangements agreed to by the parties include the costs of transport for the purposes of direct interconnection.⁵⁶ CenturyTel contends that Sprint is required to pay for the facilities required to bring its traffic to Sprint's POI on CenturyTel's network.⁵⁷ CenturyTel would be responsible for the facilities on its side of the POI. Like Sprint, CenturyTel contends that its position is consistent with applicable FCC regulations.⁵⁸ CenturyTel also argues that Sprint is again seeking interconnection that is "superior" to that which it provides to itself or other carriers.⁵⁹

CenturyTel's arguments confuse the "transport" component of reciprocal compensation with the facilities used to interconnect and transport traffic. Reciprocal compensation applies to the parties' transport and termination of one another's traffic. It does not apply to the facilities used for that transport and termination. FCC regulations provide:

The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall

⁵² See Sprint Opening Brief at 16-17.

⁵³ See *id.* at 17.

⁵⁴ See *id.* at 17-18.

⁵⁵ See *id.* at 22.

⁵⁶ See Reply Brief of CenturyTel of Oregon, Inc. at 21-22 (July 23, 2008) ("CenturyTel Reply Brief").

See also CenturyTel Opening Brief at 26.

⁵⁷ See CenturyTel Opening Brief at 27-28.

⁵⁸ See CenturyTel Reply Brief at 18-19.

⁵⁹ See *id.* at 21.

recover only the costs of the proportion of that trunk capacity used by the interconnecting carrier to send traffic that will terminate on the providing carrier's network.⁶⁰

I find that Sprint is correct that the parties should share the costs of interconnection facilities proportionally based on usage. I disagree, however, that CenturyTel is responsible for a proportional share of interconnection facilities beyond its exchange boundary. CenturyTel should only be responsible for the proportional share for interconnection facilities between CenturyTel's network and its exchange boundary. Sprint must pay 100 percent of the cost of interconnection facilities from CenturyTel's exchange boundary to Sprint's point of presence or switch.

Accordingly, I adopt CenturyTel's proposed language for Article II, section 2.59.⁶¹ The appropriate language for Article IV, section 2.2.2 is set forth above. Sprint's proposed language for Article IV, sections 3.2.2, 3.2.5.1, 3.2.5.2, 3.2.5.3, and 3.2.5.5 is adopted, as well as Sprint's proposed language for Article VII, section I.C.⁶²

E. Issue 6 – Rates for Direct Interconnection Facilities – Article IV, Sections 2.3.1.1 and 3.2.5.4; Article VII, Sections I.C and I.D

This issue concerns the rates that CenturyTel will charge Sprint for direct interconnection facilities. Sprint argues that FCC rules and relevant precedent require CenturyTel to provide interconnection facilities at rates reflecting CenturyTel's Total Element Long-Run Incremental Cost (TELRIC).⁶³ CenturyTel contends that the facilities at issue are "entrance facilities" and it is therefore appropriate to use the entrance facility rates from CenturyTel's intrastate access tariff.⁶⁴ CenturyTel argues that the FCC found that incumbent LECs are no longer required to provide entrance facilities at TELRIC rates.⁶⁵

CenturyTel is correct that the FCC found that incumbent LECs are no longer required to provide entrance facilities at TELRIC rates if the competitive LEC is not using the facilities to interconnect with the incumbent LEC's network. But the FCC made it clear that incumbent LECs must continue to provide entrance facilities at TELRIC rates if those facilities are required to interconnect with the incumbent's network:

We note in addition that our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange

⁶⁰ 47 CFR § 51.709(b).

⁶¹ DPL at 13-14.

⁶² *Id.* at 14-17.

⁶³ *See* Sprint Opening Brief at 22-23.

⁶⁴ *See* CenturyTel Opening Brief at 33-37.

⁶⁵ *See id.*

service and exchange access service. Thus, competitive LECs will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network.⁶⁶

In this case, Sprint will be obtaining facilities that are required to interconnect with the incumbent LEC's network. Thus, CenturyTel should provide these interconnection facilities at TELRIC rates. This result is consistent with two recent decisions by the federal circuit courts.⁶⁷ I therefore adopt Sprint's proposed language for Article IV, sections 2.3.1.1 and 3.2.5.4, and Article VII, sections I.C and I.D.⁶⁸

F. Issue 7 – Indirect Interconnection – Article IV, Sections 3.3.1.1, 3.3.2.2, 3.3.2.2.1, 3.3.2.4, 3.3.2.4.1-3.3.2.4.2, 3.3.2.5, 3.3.2.5.1-3.3.2.5.5, and 3.3.2.6

Issue 7 involves whether the ICA should include provisions that limit indirect interconnection.⁶⁹ Sprint argues that CenturyTel has an ongoing duty to interconnect either directly or indirectly under section 251(a) of the Act, and therefore it is inappropriate for the ICA to require direct interconnection once certain triggers are met.⁷⁰ Sprint reads section 251(a) as preventing CenturyTel from requiring direct interconnection under any circumstances: "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."⁷¹ Sprint further argues that its position is consistent with federal circuit court decisions.⁷²

CenturyTel contends that indirect interconnection should be used only when volume is low, and CenturyTel should not be required to provide indirect interconnection indefinitely.⁷³ CenturyTel reads section 251(a) as requiring an incumbent LEC to make one of these options available, but CenturyTel argues that section 251(a) does not require the incumbent LEC to provide a competitive LEC its choice of direct or indirect interconnection without qualification.⁷⁴ CenturyTel proposes

⁶⁶ *In the Matter of Unbundled Access to Network Elements*, WC Docket No. 04-313, *Order on Remand*, 20 FCC Rcd 2533 at ¶ 140 (2005). The FCC established TELRIC as the appropriate methodology for determining forward-looking, cost-based rates. 47 CFR § 51.505.

⁶⁷ *Illinois Bell Tel. Co. v. Box*, 526 F3d 1069, 1071-72 (7th Cir 2008); *Southwestern Bell Tel. v. Missouri Pub. Serv. Comm'n*, 530 F3d 676, 683-84(8th Cir 2008).

⁶⁸ DPL at 17. The citations in the DPL for Article VII are to sections I.D and I.E, but these do not correspond to the appropriate sections in the draft ICA attached to CenturyTel's response to Sprint's petition for arbitration. In addition, the Article VII included in CenturyTel's draft ICA is not the same as the Article VII attached to Sprint's draft ICA. For clarity, in this instance, I am using the section numbers from the draft ICA attached to CenturyTel's response to Sprint's petition, and not the numbers in the DPL or in Sprint's draft ICA.

⁶⁹ *Id.* at 17-22.

⁷⁰ See Sprint Opening Brief at 26.

⁷¹ *Id.*

⁷² See Reply Brief of Sprint Communications Co. L.P. at 23-25 (July 24, 2008) ("Sprint Reply Brief").

⁷³ See CenturyTel Opening Brief at 38

⁷⁴ See *id.*

that once traffic levels reach a DS1 level, Sprint must directly interconnect or establish other “mutually beneficial arrangements.”⁷⁵ CenturyTel contends that its proposal is reasonable because it allows Sprint the opportunity to establish its business before incurring the expense of direct interconnection. CenturyTel further contends that indirect interconnection relies on a tandem operator and limits the ability of the terminating carrier to receive the proper traffic identification information necessary to bill for the traffic.⁷⁶ According to CenturyTel, Sprint’s proposal would require CenturyTel to provide a superior form of interconnection because it creates an obligation for CenturyTel to provide transport beyond its network.⁷⁷ CenturyTel states that its position is consistent with the FCC’s *Atlas* decision.⁷⁸

I find that CenturyTel’s position is inconsistent with applicable precedent. In both *WWC License, LLC v. Public Serv. Comm’n* and *Atlas Tel. Co. v. Oklahoma Corp. Comm’n*, the federal circuit courts refused to interpret the various provisions of the Act to impose a duty on competitive LECs to connect directly rather than indirectly.⁷⁹ For example, in *WCC* the Eighth Circuit Court of Appeals found:

[T]he statutory provision that imposes the duty to interconnect networks expressly permits direct or indirect connections. Nothing in the Act suggests that Congress intended a carrier’s duties to be altered based on the carrier’s election to connect indirectly rather than directly.

We note also that the structure of the Act suggests that we should reject a direct connection requirement as a condition on local dialing parity. In *Atlas*, incumbents who wanted to force direct connections argued that the general duty to interconnect directly or indirectly was superceded by a specific provision, § 251(c)(2)(B), that imposes upon an incumbent carrier a duty to permit a requesting carrier to interconnect directly with the incumbent’s local exchange network “at any technically feasible point within the carrier’s network.” The Tenth Circuit examined the structure of the Act to reject this argument. It noted that the subsection (c) duty applied only to incumbent carriers and only if a competitor requested a direct connection. Since the section (c) duty did not apply to competitors, the Tenth Circuit was unwilling to impose on competitors a duty to connect directly rather than indirectly[.]⁸⁰

⁷⁵ See *id.*

⁷⁶ See *id.* at 41.

⁷⁷ See *id.* at 39-40.

⁷⁸ See *id.*, citing *In the Matter of Total Telecommunications Servs., Inc. and Atlas Tel. Co., Inc. v. AT&T Corp.*, Memorandum Opinion and Order, FCC 01-84, released March 13, 2001.

⁷⁹ *WWC License, LLC v. Public Serv. Comm’n*, 459 F3d 880 (8th Cir 2006); *Atlas Tel. Co. v. Oklahoma Corp. Comm’n*, 400 F3d 1256, 1268 (10th Cir 2005).

⁸⁰ *WWC*, 459 F3d at 892-893 (citations omitted).

In addition, the Tenth Circuit Court of Appeals recognized the distinction between requiring direct interconnection to only occur on the incumbent LEC's network and requiring that the exchange of traffic occur solely on the incumbent LEC's network.⁸¹

Accordingly, I find that CenturyTel's proposed sections 3.3.1.1, 3.3.2.1, 3.3.2.2, 3.3.2.2.1, 3.3.2.4, 3.3.2.4.1-3.3.2.4.2, 3.3.2.5, 3.3.2.5.1-3.3.2.5.5, and 3.3.2.6 (all in Article IV) should be excluded from the ICA. The parties should include the language for Article IV, section 3.3.2.2, set forth under Issue 4 above.

G. Issue 8 – Third-Party Providers – Article IV, Sections 3.3.1.3 and 4.6.4.2

This issue concerns ICA language that would require Sprint to compensate CenturyTel when CenturyTel is acting as a transit provider and is required to compensate other parties for termination of Sprint-originated traffic, including traffic originated by a Sprint wholesale customer.⁸² Both parties agree that an originating carrier must compensate a terminating carrier. Both parties also agree that CenturyTel is not obligated to pay terminating charges for traffic that it transits. The parties disagree about whether the ICA should include language that requires Sprint to indemnify CenturyTel against claims by a third-party carrier asserting that CenturyTel is liable for such charges.

Sprint claims that the payment of compensation for traffic termination is between the carrier that originates the traffic and the terminating carrier.⁸³ Sprint argues that CenturyTel should not “place itself in the position of being an intermediate broker for such terminations charges.”⁸⁴ Sprint contends that CenturyTel would have no incentive to challenge the rates or the accuracy of bills because CenturyTel could simply seek payment from Sprint under the indemnification provision.⁸⁵

CenturyTel argues that Sprint should be required to enter into traffic exchange agreements with third-party carriers for traffic that transits CenturyTel's network to reach a third-party carrier. If Sprint does not enter into such agreements, then Sprint should be required to indemnify CenturyTel for any actions or complaints brought by third-party carriers against CenturyTel for the non-payment of termination charges.⁸⁶ Rather than choosing to be “an intermediate broker,” CenturyTel argues that it is trying to avoid being “in the middle of the intercarrier compensation dispute that would arise from Sprint's failure [to pay the third-party carrier].”⁸⁷

I agree with CenturyTel that it is reasonable for the ICA to include provisions that would protect CenturyTel from any adverse economic consequences if Sprint fails to compensate a terminating carrier for traffic that Sprint originates and

⁸¹ *Atlas*, 400 F3d at 1264, n 6.

⁸² DPL at 22-23.

⁸³ *See* Sprint Opening Brief at 29.

⁸⁴ *Id.*

⁸⁵ *See id.*

⁸⁶ *See* CenturyTel Opening Brief at 44.

⁸⁷ *Id.*, quoting CenturyTel/14, Miller/10.

CenturyTel transits. It is also reasonable for the ICA to include a reciprocal provision that protects Sprint when a third party seeks payment for terminating charges from Sprint for traffic originated by CenturyTel. CenturyTel's proposed formulation of Article IV, section 4.6.4.2, creates a reciprocal indemnification provision and is therefore adopted.⁸⁸ Section 3.3.1.3, however, creates confusion by mentioning only Sprint as the indemnifying party. In addition, 3.3.1.3 does not appear to add anything to the agreement that is not covered by other sections.⁸⁹ I therefore find that the parties should delete section 3.3.1.3.

H. Issue 10 – Virtual NXX – Sections 2.135 and 4.2.2.2

The Commission has historically prohibited the use of virtual NXX (VNXX) arrangements in Oregon, although an exception was recently created that allows assignment of VNXX numbers to Internet Service Providers (ISPs) under certain conditions.⁹⁰ Both Sprint and CenturyTel agree that Sprint does not use VNXX arrangements in Oregon and does not serve, or plan to serve, ISPs.⁹¹ Despite this fact, CenturyTel proposes including a definition of VNXX traffic in the ICA (section 2.135), as well as a provision outlining the current state of Oregon law regarding VNXX (section 4.2.2.2).⁹²

Sprint argues that CenturyTel's proposed provisions regarding VNXX traffic are unnecessary because Sprint does not use such arrangements and there is no reason to simply recite the law in the ICA.⁹³ CenturyTel contends that its proposed provision is appropriate, particularly because other CLECs that do use VNXX arrangements may want to opt into this ICA in the future.⁹⁴ CenturyTel notes that its position is consistent with "at least two other interconnection agreements between Sprint and incumbent LECs that have been approved by the Commission."⁹⁵

I agree with Sprint that there is no reason to include a recitation of the current status of Oregon law regarding VNXX in the ICA when Sprint does not use

⁸⁸ DPL at 22-23.

⁸⁹ Specifically, section 3.3.1.3's requirement that the parties enter into agreements with third-party providers as necessary is covered by sections 3.3.1.2 and 4.6.4.2 of Article IV. The indemnification portion of section 3.3.1.3 is covered by the indemnification provisions in section 4.6.4.2.

⁹⁰ Order No. 07-098.

⁹¹ See CenturyTel Opening Brief at 49; Sprint Opening Brief at 32.

⁹² DPL at 27-28.

⁹³ See Sprint Opening Brief at 32.

⁹⁴ See CenturyTel Opening Brief at 50-51.

⁹⁵ See *id.* at 51. This argument is not well taken. Both of the agreements cited by CenturyTel were negotiated, not arbitrated, agreements. In addition, terms agreed to by Sprint in other agreements with other carriers are generally irrelevant.

and does not intend to use VNXX arrangements in Oregon. CenturyTel's proposed sections 2.135 and 4.2.2.2 should not be included in the parties' ICA.⁹⁶

I. Issue 13 – Rates for Transit Service – Article VII, Section I.B and I.C

Issue 13 involves the rates CenturyTel should be permitted to charge Sprint for transit services. Sprint argues that CenturyTel is required to provide transit services as part of its duty to provide indirect interconnection under section 251(a)(1) of the Act.⁹⁷ Sprint states that the duty to provide indirect interconnection would have little meaning without the concomitant duty to provide transit services.⁹⁸ Sprint further contends that CenturyTel must provide transit service at TELRIC rates because charging rates that are not based on forward-looking economic cost would hinder competition.⁹⁹

CenturyTel argues that there is no requirement that CenturyTel provide transit services.¹⁰⁰ CenturyTel states that the FCC has not determined whether transit services are necessary for interconnection, nor has the FCC determined that transit services must be provided at TELRIC rates.¹⁰¹ CenturyTel therefore concludes that its intrastate switched access tariff rates are appropriate for tandem switching, tandem transport, and transport termination.¹⁰² CenturyTel notes that it is a member of the Oregon Exchange Carrier Association (OECA) pool for switched access rates. OECA files its traffic sensitive rates with this Commission annually.¹⁰³ The filing is reviewed by Commission Staff and approved by the Commission.¹⁰⁴

In the *Verizon Arbitration Order*, the FCC stated:

While Verizon as an incumbent LEC is required to provide interconnection at forward-looking cost under the Commission's rules implementing section 251(c)(2), the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under this provision of the statute, nor do we find clear Commission precedent or rules declaring such a duty. In the absence of such a precedent or rule, we decline, on delegated authority, to determine for the first time that Verizon has a section

⁹⁶ Sprint states that "a distinction should be made between what is termed virtual NXX traffic for dial-up ISP traffic and FX-like or virtual number traffic both of which are commonly used today and are effectively the same thing as virtual NXX." See Sprint Reply Brief at 30. It is unclear what, if anything, Sprint is requesting. As discussed above, VNXX traffic is prohibited in Oregon, with a limited exception for some ISP traffic. FX traffic is also prohibited in Oregon, although FX arrangements existing at the time of the prohibition are "grandfathered" and permitted to continue. Order No. 83-869.

⁹⁷ See Sprint Opening Brief at 33.

⁹⁸ See *id.*

⁹⁹ See *id.* at 33-34.

¹⁰⁰ See CenturyTel Opening Brief at 53.

¹⁰¹ See *id.*

¹⁰² See *id.*

¹⁰³ CenturyTel Reply Brief at 32, n36.

¹⁰⁴ *Id.*

251(c)(2) duty to provide transit service at TELRIC rates. Furthermore, any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC.¹⁰⁵

Although the *Verizon Arbitration Order* was issued in 2002, the FCC has not clarified an incumbent LEC's duty to provide transit service or the appropriate rates for such service.

In Order No. 07-098, this Commission concluded that Qwest could charge the applicable tariff rate for transiting VNXX-routed, ISP-bound traffic. The Commission found that it was inappropriate to require TELRIC rates when the traffic was interstate/interexchange traffic. Although the conclusion in Order No. 07-098 is inapplicable in this case because the traffic at issue here is not interstate/interexchange traffic, the Commission did note: "Pursuant to the Act, the FCC has determined that CLECs should pay TELRIC prices for interconnection and unbundled elements 'for the transmission and routing of telephone exchange service and exchange access.'"¹⁰⁶

Although the precedent cited above does not provide a clear resolution to this issue, I find particularly relevant the FCC's statement that any duty "under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC." As discussed above, the FCC has clarified that direct interconnection facilities must be provided at TELRIC rates, but there has been no such clarification about the services necessary for indirect interconnection. This Commission relied on the *Local Competition Order* in concluding that competitive LECs should pay TELRIC prices for interconnection and unbundled network elements for the transmission and routing of telephone exchange service and exchange access. But that order was issued by the FCC in 1996, and the FCC's statement in the *Verizon Arbitration Order* (adopted in 2002) seems to contradict the conclusion that TELRIC is the appropriate rate for transit services. I therefore find that CenturyTel's proposed language for Article VII, section I.B and I.C should be adopted.¹⁰⁷

¹⁰⁵ *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 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., and for Expedited Arbitration; In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 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. and for Arbitration; In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.*, CC Docket No. 00-218; CC Docket No. 00-249; CC Docket No. 00-251, FCC 02-1731, 17 FCC Rcd 27039, ¶ 117 (July 17, 2002) (footnotes omitted) ("*Verizon Arbitration Order*").

¹⁰⁶ Order No. 07-098 at 6, citing 47 U.S.C. §§251(c)(2)(A), 251(c)(3), and 251(d)(1); *First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 at ¶ 29 (August 8, 1996) ("*Local Competition Order*"), aff'd in part and rev'd in part, *Iowa Utils. Bd. v. FCC*, 525 U.S. 1133 (1999).

¹⁰⁷ DPL at 29-30.

**J. Issue 14 – Rates for Processing Orders and Number Portability –
Article VII, Section II**

The parties present four issues under Issue 14: (1) the appropriate rates for certain non-recurring charges (NRCs); (2) whether CenturyTel should be permitted to charge a “CLEC account establishment” NRC; (3) whether service order charges should apply to local number portability (LNP) orders; and (4) whether a subsequent service order charge is permissible under the agreed-upon language in Article IV, section 1.2.4, of the ICA.

1. Rates for Non-recurring Charges

The parties seem to agree that the rates charged for NRCs must be consistent with section 252(d)(1) of the Act,¹⁰⁸ which provides:

(d) Pricing standards

(1) Interconnection and network element charges

Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251 of this title, and the just and reasonable rate 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.

As mentioned above, the FCC has adopted TELRIC as an appropriate methodology for determining rates under 252(d)(1).¹⁰⁹

Sprint argues that the rates for NRCs under the agreement must be consistent with the federal TELRIC methodology.¹¹⁰ Sprint states that the information provided by CenturyTel in support of its proposed rates was not provided in a timely manner and did not include sufficient detail or data, therefore Sprint was unable to thoroughly review CenturyTel’s methodology.¹¹¹ Sprint contends that the rates in issue should be set at zero until CenturyTel files an appropriate cost study for Commission approval.¹¹² Sprint agrees to “true-up” the rates once the Commission approves CenturyTel’s cost study and proposed rates.¹¹³

¹⁰⁸ See Sprint Opening Brief at 37; CenturyTel Opening Brief at 60-61.

¹⁰⁹ 47 CFR § 51.505.

¹¹⁰ See Sprint Reply Brief at 32-34.

¹¹¹ See Sprint Opening Brief at 37-42.

¹¹² See *id.* at 46.

¹¹³ See *id.*

CenturyTel proposes the following NRCs:

| | |
|---|-------------------------|
| CLEC ¹¹⁴ Account Establishment | \$254.68 |
| Customer Record Search | \$ 8.58 |
| Service Order Charge – Simple | \$ 13.76 |
| Service Order Charge – Complex | \$ 64.48 |
| Service Order Charge – Subsequent | \$ 13.76 ¹¹⁵ |

CenturyTel argues that it has provided ample support for its proposed rates.¹¹⁶ CenturyTel states that the “cost study” it provided to support the rates is consistent with the federal TELRIC methodology.¹¹⁷ CenturyTel notes that the rates it proposes were determined specifically for this ICA and the rates in its other current Oregon ICAs are higher than those proposed here.¹¹⁸

Under federal rules, CenturyTel, as the incumbent LEC, must prove that its rates for network elements do not exceed the forward-looking economic cost per unit of providing the element.¹¹⁹ I agree with Sprint that CenturyTel provided insufficient information to support its cost study. I disagree, however, that the rates should be set at zero until CenturyTel’s files, and the Commission approves, new rates based on an appropriate cost study. I find that the ICA should include the rates proposed by CenturyTel for customer record searches and service order charges (simple, complex, and subsequent) as “interim” rates. CenturyTel must file a more detailed cost study. Once the Commission approves new rates to be included in the ICA, the interim rates will be subject to “true-up.” The CLEC account establishment charge is discussed below.

2. CLEC Account Establishment Charge

Sprint argues that CenturyTel should not be permitted to charge a NRC to establish an account with Sprint. Sprint states that it already does business with CenturyTel and does not understand the necessity of the proposed charge. Sprint also asserts that any such charge should be reciprocal because Sprint will also be setting up an account for CenturyTel. According to Sprint, if the charge is reciprocal, it should simply be eliminated because it makes no sense for the parties to bill each other the same, one-time amount.¹²⁰

CenturyTel argues that the CLEC account establishment charge is necessary to cover the cost of implementing the terms of the ICA, including reviewing

¹¹⁴ CLEC is an acronym for competitive local exchange carrier.

¹¹⁵ DPL at 30. It appears that CenturyTel has deleted its NRC for expedited service orders.

¹¹⁶ See CenturyTel Opening Brief at 60-62.

¹¹⁷ See *id.*

¹¹⁸ CenturyTel/16, Hankins/4. Based upon a review of CenturyTel’s active interconnection agreements in Oregon, this Commission was unable to confirm witness Hankins’ assertion about the rates in CenturyTel’s other Oregon agreements.

¹¹⁹ 47 CFR § 51.505(e).

¹²⁰ See Sprint Opening Brief at 40.

the agreement, introductory calls, setting up accounts, and establishing bill codes.¹²¹ CenturyTel argues that it would not incur these costs unless Sprint was ordering services under the ICA, and therefore Sprint should be responsible for the costs as the “cost-causer.”¹²²

I agree with CenturyTel and find that a CLEC account establishment charge is appropriate. CenturyTel proposed three different rates for this NRC: (1) \$159.58 in the disputed points list filed with its response to Sprint’s petition for arbitration on April 4, 2008; (2) \$159.47 in the draft ICA filed with its response to Sprint’s petition; and (3) \$254.68 in its testimony and briefs. As discussed above, CenturyTel’s cost study supporting its proposed NRCs is inadequate. The parties’ ICA should include an interim rate of \$159.47 for the CLEC account establishment charge, subject to true-up.

3. Service Order Charges for LNP

Sprint argues that no service order charges should apply to number portability orders. Sprint contends that such charges are anticompetitive because the vast majority of LNP costs, even when the LNP NRCs are reciprocal, will fall on the new entrant (in this case, Sprint). Sprint further argues that CenturyTel’s manual processes are inefficient. Finally, Sprint compares number porting to disconnection and contends that permitting service order charges for LNP would result in double recovery because some or all of the costs are already recovered over the life of a customer account.¹²³

CenturyTel responds that it incurs costs every time it completes a service order and should be compensated for these costs by the cost-causer, Sprint.¹²⁴ Although CenturyTel admits that the FCC has required that certain LNP costs be included in end user surcharges, CenturyTel contends that the charges it proposes in this ICA cannot be recovered through such a surcharge because the charges are not “carrier-specific costs directly related to providing long-term number portability.”¹²⁵ Rather, according to CenturyTel, the costs are associated solely with a number porting request from Sprint, will not be incurred absent a request from Sprint, and are therefore for the sole benefit of Sprint.¹²⁶

Because CenturyTel’s proposed service order charges are standard charges that apply to all Sprint service orders, including number porting orders, and because the costs arise solely as a result of Sprint porting request, I find that the charges are permissible under FCC rules and may be included in the ICA. As discussed above, the rates for service order charges proposed by CenturyTel are adopted as interim rates subject to true-up after Commission approval of CenturyTel’s cost study.

¹²¹ CenturyTel/9, Hankins/11.

¹²² See CenturyTel Opening Brief at 62, n 65.

¹²³ See Sprint Opening Brief at 42.

¹²⁴ See CenturyTel Opening Brief at 57.

¹²⁵ *Id.* at 58, quoting 47 CFR § 52.33(a).

¹²⁶ See *id.* at 57.

4. "Subsequent Service Order" Charges

Citing Article VI, section 1.2.4, of the ICA, Sprint argues that the parties have already agreed that there will be no charges for subsequent service orders.¹²⁷ CenturyTel responds that section 1.2.4 applies only to subsequent service order charges for LNP and not to other types of service orders.¹²⁸

It is clear from the ICA that Article VI, section 1.2.4, is intended only to apply to subsequent service order charges for LNP. I therefore reject Sprint's proposal to delete the subsequent service order charge.

K. Issue 15 – Assignment of the Agreement – Article III, Section 2.7

Issue 15 involves whether CenturyTel should be permitted to terminate the ICA for a specific operating area upon the sale or transfer of the area by CenturyTel.¹²⁹ Sprint opposes such a provision in areas where it is providing service at the time of the sale or transfer because it would impede Sprint's ability to ensure continued service to its end users.¹³⁰ Sprint also notes that the lack of an ICA could interfere with its ability to obtain numbers from the North America Numbering Plan Administrator.¹³¹ Finally, Sprint argues that it is common in merger transactions for the acquiring party to be responsible for the contracts of the acquired party, including interconnection agreements.¹³²

CenturyTel argues that the right to terminate the agreement upon sale is necessary to protect the value of its assets.¹³³ CenturyTel contends that the 90-day notice period before termination gives Sprint adequate time to enter into a new interconnection agreement or an interim agreement under the 47 CFR section 51.715.¹³⁴ CenturyTel further argues that requiring assignment of the ICA with Sprint could lead to conflicts with any existing interconnection agreements the acquirer has with Sprint, and may require the acquirer to assume responsibilities that it is incapable of performing.¹³⁵

I am not persuaded that the requirement that the ICA be assigned will adversely affect the value of CenturyTel's assets. I agree with Sprint that it is common for an acquirer to assume the acquired company's responsibilities under existing contracts. In addition, the 90-day notice period is not sufficient to allow Sprint to negotiate a new interconnection agreement with the acquirer. Accordingly, I adopt Sprint's proposed language for Article III, section 2.7.¹³⁶

¹²⁷ See Sprint Opening Brief at 43.

¹²⁸ See CenturyTel Opening Brief at 60.

¹²⁹ DPL at 30-31.

¹³⁰ See Sprint Opening Brief at 46-47.

¹³¹ See *id.* at 47.

¹³² See *id.* at 48.

¹³³ See CenturyTel Opening Brief at 63-64.

¹³⁴ See *id.* at 65-66.

¹³⁵ See *id.* at 63-64.

¹³⁶ DPL at 30-31.

**L. Issue 16 – Billing When Sprint Uses Indirect Interconnection –
Article IV, Sections 3.3.1.4 and 4.5.2.2; Article VII, Section I.C¹³⁷**

Issue 16 involves whether Sprint should be required to provide Percentage Local Usage (PLU) factors to CenturyTel for the exchange of traffic delivered over an indirect interconnection where a third party provides transit service.¹³⁸ Sprint argues that it should not be responsible for providing a PLU factor. Sprint contends that CenturyTel should be able to bill for traffic delivered over indirect interconnection using SS7 records or “otherwise do what is under its control to ensure it can identify and bill traffic terminated to it through a third party before shifting that burden to another carrier.”¹³⁹ Sprint proposes to provide all SS7 signaling information and other billing information where available, and will conform to industry standard billing practices.¹⁴⁰ Sprint contends that because it already provides calling party number information in its signaling, it should not be required to provide a PLU factor.¹⁴¹

CenturyTel contends that providing an auditable PLU factor is appropriate when 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.”¹⁴² According to CenturyTel, if indirect interconnection is used, and the tandem owner does not provide CenturyTel with adequate call detail records, then the PLU factor is the only available mechanism to segregate traffic over mixed use trunks.¹⁴³ CenturyTel states that its existing system cannot implement SS7-based billing for mixed use, multi-jurisdictional trunks, and it is unreasonable to require CenturyTel to purchase new equipment solely to accommodate Sprint’s desire to use indirect interconnection.¹⁴⁴

I find that CenturyTel’s proposal is reasonable. CenturyTel is a small company that does not currently have the ability to identify traffic using SS7 signaling alone. Sprint’s proposal increases the risk of traffic that is not identifiable and therefore not billable. Accordingly, I adopt CenturyTel’s proposed language for Article IV, sections 3.3.1.4 and 4.5.2.2, and Article VII, Section I.C.¹⁴⁵

¹³⁷ Again, like Issue 6 above, there is a discrepancy between the numbering for Article VII in the DPL, Sprint’s draft ICA, and CenturyTel’s draft ICA, although in this instance the DPL and CenturyTel’s draft ICA are consistent. In this instance, I use the numbering for Article VII set forth in the DPL and CenturyTel’s draft ICA.

¹³⁸ DPL at 31-33.

¹³⁹ Sprint Opening Brief at 51.

¹⁴⁰ *See id.*

¹⁴¹ *See id.*

¹⁴² CenturyTel Opening Brief at 67.

¹⁴³ *See id.* at 69.

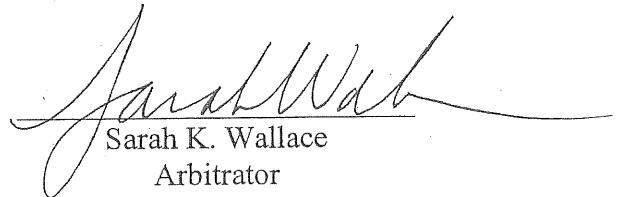
¹⁴⁴ *See id.* at 71.

¹⁴⁵ DPL at 31-33.

ARBITRATOR'S DECISION

1. Sprint Communications Co. L.P.'s motion to strike the last paragraph of page two of CenturyTel of Oregon, Inc.'s surreply brief is granted.
2. The interconnection agreement between Sprint Communications Company L.P. and CenturyTel of Oregon, Inc., must incorporate the contract language adopted in this decision.
3. CenturyTel of Oregon, Inc., is ordered to submit a detailed cost study in support of its proposed non-recurring charges as discussed under Issue 14 above. The cost study must be submitted in this docket within 60 days of the date of this decision.
4. As provided in OAR 860-016-0030, any person may file written comments within 10 days of the date this arbitration decision is served. The Commission will accept or reject this decision by October 6, 2008.

Dated this 2nd day of September, 2008, at Salem, Oregon.


Sarah K. Wallace
Arbitrator

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 |
|-----------|---|--------------------------|-----------------|---|---------------------|
| | | | | <p>20.2 Negotiations.</p> <p>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</p> | ORDER NO. 09-109 |

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 |
|-----------|---|---|-----------------|---|--|
| | | <p>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. <u>Notwithstanding the above provisions, if the dispute arises from a service affecting</u></p> | | <p>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.</p> <p>20.3 <u>Formal Dispute Resolution</u></p> <p>20.3.1 <i>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</i></p> | <p style="text-align: right;">ORDER NO. 09-109</p> |
| | | | | | |

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 |
|-----------|---|---|-----------------|---|--|
| | | <p>issue, either Party may immediately seek any available remedy.</p> | | <p>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.</p> <p>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</p> | <p style="text-align: right;">ORDER NO. 09-109</p> |

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 |
|-----------|---|--------------------------|-----------------|--|---------------------|
| | | | | <p><i>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.</i></p> <p>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).</p> | ORDER NO. 09-109 |

**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 |
|-----------|--|--|---|---|--|
| 2. | <p>What are the appropriate terms for Indemnification?</p> <p>Section: Article III, Section 30.1</p> | <p>30.1 Indemnification Against Third-Party Claims.</p> <p>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, 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</p> | <p>30.1 Indemnification Against Third-Party Claims.</p> <p>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</p> | <p><i>The Parties shall equally split the fees of the arbitration and the arbitrator.</i></p> <p>30.1 Indemnification Against Third-Party Claims.</p> <p>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</p> | <p style="text-align: right;">ORDER NO. 09-109</p> |

**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 |
|-----------|---|---|-----------------|--|--|
| | | <p>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.</p> | | <p>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) <i>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</i></p> | <p style="text-align: right;">ORDER NO. 09-109</p> |

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 |
|-----------|---|--|-----------------|---|--|
| | <p>"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.</p> <p>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 Claim was provided or provisioned by the Indemnified Party, unless such Claim was</p> | <p>"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 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.</p> <p>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 Claim was provided or provisioned by the Indemnified Party, unless such Claim was</p> | | <p><i>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.</i></p> <p>"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.</p> <p>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</p> | <p style="text-align: right;">ORDER NO. 09-109</p> |

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

ORDER NO. 09-109

| Issue No. | Issue Description and Section Reference | Sprint Proposed Language | Sprint Position | CenturyTel Proposed Language | CenturyTel Position |
|-----------|---|--|-----------------|--|---------------------|
| | | <p>caused by the negligence or willful misconduct of the Indemnified Party.</p> <p>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.</p> | | <p>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.</p> <p>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.</p> | |

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| 3. | <p>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?</p> <p>Section: Article VII I.A.</p> | | <p>This issue has been resolved by the parties as follows:</p> <p>I. INTERCONNECTION PRICING</p> <p>A. Reciprocal Compensation (<u>Transport and Termination</u>)</p> <p>Transport and Termination for Local Traffic excluding Local Traffic that is also ISP-Bound Traffic TBD</p> <p>(If invoked pursuant to Article IV, Section 4.4.2)</p> <p>Local Traffic that is also ISP-Bound Traffic (pursuant to Article IV, Section 4.2.3) Bill and Keep</p> | <p>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.</p> | <p>This issue has been resolved by the parties. See language in column "Sprint Position."</p> |
| 4. | <p>What Direct Interconnection Terms should be included in the Interconnection Agreement?</p> | <p>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. <u>For direct</u></p> | | <p>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 <i>and also serves as</i></p> | <p>ORDER NO. 09-109</p> |

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| | <p>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</p> | <p><u>interconnection, Sprint will establish a minimum of one POI within the LATA at any technically feasible point on the ILEC's network.</u> Requirements for a Local POI are set forth in Section 3.3.2 of this Article</p> | | <p>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.</p> | |
| | | <p>Sprint proposes deleting 2.2.3</p> | | <p>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.</p> | |

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| | <p>2.2.4 <u>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).</u></p> <p>Sprint proposes deleting CenturyTel's additional language in 2.3.2.1.</p> <p>Sprint proposes deleting CenturyTel's 3.3.2.1 language. Sprint's 3.3.2.1 language is under Issue 9.</p> | | <p>2.2.4 Each Party is responsible for the facilities to its side of the POI(s) and <i>may utilize any</i> method of Interconnection described in this Section 2. Each Party is responsible for the appropriate sizing, operation, <i>maintenance and cost</i> of the transport facility to the POI(s).</p> <p>2.3.2.1 Fiber Meet Interconnection between CenturyTel and Sprint can occur at any <i>mutually agreeable and</i> technically feasible point(s) between a CenturyTel End Office and Sprint's premises within the local calling area. <i>Sprint shall request a Fiber Meet Point of Interconnection by submitting a Bona Fide Request (BFR).</i></p> <p>3.3.2.1 Unless the parties mutually agree otherwise, a <i>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</i></p> | <p style="text-align: right;">ORDER NO. 09-109</p> | |

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| | | <p>3.3.2.2 <u>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 LATIA pursuant to Sec. 2.0 of this Article IV.</u></p> <p>Sprint proposes deleting language in 3.3.2.2.1.</p> <p>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 <u>mutual agreement.</u></p> | | <p><i>of Interconnection requirements to each End Office within a CenturyTel's service area.</i></p> <p>3.3.2.2 <i>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.</i></p> <p>3.3.2.2.1 <i>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.</i></p> <p>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.</p> | ORDER NO. 09-109 |
| 5. | Should Sprint and CenturyTel share the | 2.59 Interconnection | | Article II | |

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| | <p>costs of the Interconnection Facility between their respective networks percentages of originated traffic?</p> <p>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 VIII. C.</p> | <p><u>Facility Interconnection Facility</u> is the dedicated transport facility used to connect the two Parties' networks. <u>For purposes of this Agreement the Interconnection Facility is the network facility that connects the POI to Sprint's Point of Presence in the LATIA.</u></p> <p>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. <u>For direct interconnection, Sprint will establish a minimum of one POI within the LATIA at any technically feasible point on the ILEC's network.</u> Requirements for a Local POI are set forth in Section 3.3.2 of this Article.</p> <p>3.2.2 Sprint proposes deleting the additional language added by CenturyTel.</p> | | <p>2.59 CenturyTel proposes deleting Sprint's additional language in 2.5.9.</p> <p>Article IV</p> <p>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 <i>and also serves as a demarcation point between the facilities that each Party is responsible to provide.</i> Requirements for a Local POI are set forth in Section 3.3.2 of this Article. <i>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.</i></p> <p>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</p> | <p style="text-align: right;">ORDER NO. 09-109</p> |

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| | | <p><u>3.2.5.1 Compensation 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</u></p> | | <p>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, <i>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.</i> 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.</p> <p>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.</p> | ORDER NO. 09-109 |

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| | | <p>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.</p> <p>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.</p> <p>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.</p> | | | ORDER NO. 09-109 |

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| 6. | <p>What are the appropriate rates for direct Interconnection Facilities?</p> <p>Section: Article IV Section 2.3.1.1, 3.2.5.4, Article VII, Section I. D and I.E.</p> | <p>3.2.5.5 Notwithstanding any other provision of this Agreement or ILEC's tariff, if Sprint elects to order <u>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.</u></p> <p><u>C. Initial Factors:</u> <u>Initial Shared Facility Factor</u> <u>50%</u></p> | | <p>2.3.1.1 Where facilities exist, either Party may lease facilities from the other Party <i>pursuant to applicable tariffs</i>, may lease facilities from a third party or may construct or otherwise self-provision facilities.</p> <p>CenturyTel proposes deleting 3.2.5.4.</p> <p><i>Article VII</i></p> <p><i>E. Entrance Facility: See Access Tariff</i></p> | <p>ORDER NO. 09-109</p> |
| 7. | Should the Interconnection | <p>Sprint proposes deleting CenturyTel's language in</p> | | <p>3.3.1.1 <i>Indirect Network Connection in intended only</i></p> | |

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| | <p>Agreement contain provisions limiting Indirect Interconnection?</p> <p>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</p> | <p>sections 3.3.1.1 and 3.3.2.1</p> | | <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> | |
| | | <p><u>3.3.2.2 At Sprint's request a direct network connection</u> shall be established by connecting Sprint's network to CenturyTel's network at <u>any technically feasible</u> point on CenturyTel's</p> | | | |

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| | | <p>network within the LATA pursuant to Sec. 2.0 of this Article IV.</p> <p>Sprint proposes deleting the language in 3.3.2.2.1</p> <p>Sprint proposes deleting the additional language in 3.3.2.4, 3.3.2.5 and 3.3.2.6</p> | | <p>The connection can be established in any of the manners described in Section 2 of this Article</p> <p>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.</p> <p>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:</p> <p>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</p> <p>3.3.2.4.2 Either Party is assessed transiting costs by a third party and such charges</p> | ORDER NO. 09-109 |

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| | | | | <p><i>associated with a single traffic exchange route exceed \$200.00 for one month.</i></p> <p><i>3.3.2.5 A DS-1 trunk equivalency is deemed established in any the following instances:</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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-</i></p> | ORDER NO. 09-109 |

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| | | | | <p>way traffic between two single switches of each Party will exceed 200,000 minutes of use per month.</p> <p>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.</p> <p>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.</p> <p>3.3.2.6 The Parties may</p> | ORDER NO. 09-109 |

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| 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? | <p>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.</p> <p>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</p> | | <p>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.</p> <p>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.</p> <p>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</p> | ORDER NO. 09-109 |

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| | <p>Section: Article IV, Sections 3.3.1.3 and 4.6.4.2</p> | <p>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.</p> | | <p><i>the event one Party originates traffic that transits the second Party's 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 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.</i></p> | <p style="text-align: right;">ORDER NO. 09-108</p> <p>[This issue has been resolved by the parties. See language in</p> |
| 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 |

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| | <p>Agreement permit the Parties to combine traffic subject to reciprocal compensation charges and traffic subject to access charges on the interconnection trunks?</p> <p>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.</p> | | <p>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.</p> <p>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,</p> | | <p>column "Sprint Position."}]</p> |

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| | | | <p>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.</p> <p>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.)</p> <p>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</p> | | <p style="text-align: right;">ORDER NO. 09-109</p> |

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| | | | <p>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.</p> <p>Sprint's proposed section 4.5.1.3 will be deleted.</p> <p>CenturyTel's language in Article VII - I.C. will be included.</p> <p>Article VII - I. C. Initial Factors: Initial CenturyTel Originated local Traffic Factor - 50%</p> | | ORDER NO. 09-109 |

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| 10. | <p>What terms for virtual NXX should be included in the Interconnection Agreement?</p> <p>Section: Article II, section 2.135 Article IV, section 4.2.2.2</p> | <p>2.135 <u>Reserved for future use</u></p> <p>Sprint proposes deleting the language in 4.2.2.2, 4.2.2.3, 4.2.2.4 and 4.2.2.5</p> | | <p>2.135 <u>Virtual NXX Traffic (VNXX Traffic)</u></p> <p>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.</p> <p>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</p> | ORDER NO. 09-109 |

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| 11. | <p>What are the appropriate terms for reciprocal compensation under the bill and keep arrangement agreed to by the parties?</p> <p>Section: Article IV, section 4.4.3.1; Article VII, Section I. A and I. B.</p> | | <p>This issue has been resolved by the parties as follows:</p> <p><u>4.4.3 Transport and Termination Rate</u></p> <p>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.</p> | <p>ISP-bound traffic from the Oregon local calling areas where ISP calls originate to Sprint's media gateway.</p> <p>CenturyTel proposes that the language set forth in Sprint's section 4.2.2.5 be deleted.</p> | <p>This issue has been resolved by the parties. See language in column "Sprint Position."</p> |
| 12. | <p>Should the Performance Review terms include language for refunds and dispute resolution if appropriate remedies are not</p> | | <p>This issue has been resolved by the parties as follows: <u>Article III, 9.</u> <u>Disputed Amounts.</u> If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties,</p> | | <p>This issue has been resolved by the parties. See language in column "Sprint Position."</p> |

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| 13. | <p>agreed to when performance is not adequate?</p> <p>Section: Article VI, Section 5.0</p> | | <p>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.</p> <p>Article VI, Section 5.0:</p> <p>(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.</p> | | |
| 13. | <p>What are the appropriate rates for Transit service?</p> <p>Section: Article VII, Section I. B.</p> | <p>B. Transit Charge: - Price should be based on <u>TELRIC study</u></p> | <p>Transit service should be provided at cost-based rates.</p> | <p>B. Transiting Charge: <i>Tandem switching : Intrastate Switched access tariff rate</i> <i>Tandem Transport : Intrastate Switched access</i></p> | |

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| 14. | <p>What are the appropriate rates for services provided in the Agreement including rates applicable to the processing of orders and number portability?</p> <p>Section: Article VII, Section II</p> | <p>Sprint proposes deleting CenturyTel's CLEC Account Establishment charge.</p> <p><u>Customer Record Search - TELRIC Study Based</u></p> <p><u>Custom Handling:</u></p> <p><u>Service Order Expedite:</u></p> <p><u>All LSRs (In addition to Service Order Charge) - TELRIC Study Based</u></p> <p><u>"Service Order Charge" all for LSRs - (including Number Portability LSRs) TELRIC Study Based</u></p> | | <p><i>tariff rate</i></p> <p><i>Transport Termination : Intradate Switched access tariff rate</i></p> <p><i>CLEC Account Establishment - \$254.68</i></p> <p><i>Customer Record Search- \$8.58</i></p> <p><i>"Service Order Charge" Simple and Subsequent - \$13.76</i></p> <p><i>"Service Order Charge" Complex - \$64.48</i></p> | |
| 15. | <p>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</p> | <p>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</p> | | <p>CenturyTel proposes deleting Sprint's additional language in 2.7.</p> | ORDER NO. 09-109 |

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| | <p>permitted to terminate the Agreement in those areas?</p> <p>Section: Article III, Section 2.7</p> | <p>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.</p> | | | |
| 16. | <p>Do terms need to be included when Sprint utilizes indirect</p> | <p>Sprint proposes deleting 3.3.1.4</p> | | <p><i>3.3.1.4 To the extent a Party combines Local Traffic and Jointly-Provided Switched Access Traffic on a single</i></p> | |

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| | <p>interconnection, and CenturyTel is not provided detailed records, nor is CenturyTel able to identify and bill calls based upon their proper jurisdiction?</p> <p>Section: Article IV, Sections 3.3.1.4, 4.5.2.2; and Article VII, I.C.</p> | <p>Sprint proposes deleting 4.5.2.2</p> | | <p>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.</p> <p>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 LATIA basis using their originating IntraLATIA minutes of use.</p> | <p style="text-align: right;">ORDER NO. 09-109</p> |

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| | | Sprint proposes deletion of CenturyTel's language in Article VII. -- I.C. | | <p>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.</p> <p>Article VII C. Initial Factors: PLU: 100%</p> | |