

# **EXHIBIT G**

**DOCKET NO. 35869**

**PETITION OF CHARTER FIBERLINK § PUBLIC UTILITY COMMISSION  
TX-CCO, LLC FOR ARBITRATION OF §  
AN INTERCONNECTION AGREEMENT § OF TEXAS  
WITH CENTURYTEL OF LAKE DALLAS, §  
INC. PURSUANT TO SECTION 252 OF §  
THE FEDERAL COMMUNICATIONS §  
ACT OF 1934, AS AMENDED, AND §  
APPLICABLE STATE LAWS §**

**ARBITRATION AWARD**

**Table of Contents**

**I. JURISDICTION ..... 1**

**II. PROCEDURAL HISTORY ..... 3**

**III. RELEVANT STATE AND FEDERAL PROCEEDINGS ..... 3**

**Relevant Commission Decisions ..... 3**

**Relevant FCC Decisions ..... 4**

**Relevant Court Decisions ..... 6**

**IV. DISCUSSION OF MAJOR ISSUES ..... 7**

**Network Interface Device (NID) ..... 7**

**Liability Issues ..... 9**

**Assignment ..... 10**

**Termination ..... 10**

**Limitations Period ..... 10**

**V. CONCLUSION ..... 11**

**ATTACHMENT: AWARD MATRIX**

**DOCKET NO. 35869**

<b>PETITION OF CHARTER FIBERLINK</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>TX-CCO, LLC FOR ARBITRATION OF</b>	<b>§</b>	
<b>AN INTERCONNECTION AGREEMENT</b>	<b>§</b>	<b>OF TEXAS</b>
<b>WITH CENTURYTEL OF LAKE DALLAS,</b>	<b>§</b>	
<b>INC. PURSUANT TO SECTION 252 OF</b>	<b>§</b>	
<b>THE FEDERAL COMMUNICATIONS</b>	<b>§</b>	
<b>ACT OF 1934, AS AMENDED, AND</b>	<b>§</b>	
<b>APPLICABLE STATE LAWS</b>	<b>§</b>	

**ARBITRATION AWARD**

This Arbitration Award (Award) establishes the terms and conditions for the successor Interconnection Agreement (ICA) between Charter Fiberlink TX-CCO, LLC (Charter) and CenturyTel Lake Dallas, Inc. (CenturyTel). CenturyTel is an incumbent local exchange carrier (ILEC) and Charter is a certificated facilities-based competitive local exchange carrier (CLEC). The parties have resolved many, but not all, of the issues in their successor ICA. In this Award the Arbitrators address the parties' unresolved issues.

Charter and CenturyTel requested arbitration in this proceeding pursuant to § 252 of the Federal Telecommunications Act of 1996 (FTA)<sup>1</sup> and shall incorporate the decisions approved in this Award into their ICA, including the decisions in the attached Award matrix.

**I. JURISDICTION**

The Federal Communications Act of 1934 (FCA)<sup>2</sup> as amended by the FTA authorizes state commissions to arbitrate open issues between an ILEC and a requesting telecommunications carrier.<sup>3</sup> The FTA also invests state commissions with authority to approve or reject ICAs adopted by negotiation or arbitration.<sup>4</sup> The FTA's authorization to

---

<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.) (FTA).

<sup>2</sup> Federal Communications Act of 1934, 47 U.S.C. § 151 *et seq.*

<sup>3</sup> 47 U.S.C. § 252(b).

<sup>4</sup> 47 U.S.C. § 252(e).

approve or reject these ICAs carries with it the authority to interpret and enforce the provisions of agreements that state commissions have approved.<sup>5</sup> The Public Utility Commission of Texas (Commission) is a state commission responsible for arbitrating ICAs approved pursuant to the FTA.

## II. PROCEDURAL HISTORY

On July 11, 2008, Charter filed a petition asking the Commission to arbitrate the unresolved issues in its ICA with CenturyTel. CenturyTel filed its response to Charter's petition on August 8, 2008. In accordance with the Procedural Schedule issued in Order No. 2 on August 8, 2008, the parties filed their Joint Decision Point List (Joint DPL) on August 15, 2008, direct testimony on October 3, 2008 and rebuttal testimony on October 17, 2008. The hearing on the merits was conducted on November 3 - 4, 2008. Initial post-hearing briefs were filed on December 3, 2008 and reply briefs were filed on December 22, 2008. Charter filed a correction to its reply brief on February 3, 2009. The Arbitrators issued the Proposal for Award on June 17, 2009. On July 1, 2009, both parties filed Exceptions to the Proposal for Award.

## III. RELEVANT STATE AND FEDERAL DECISIONS

### Relevant Commission Decisions

#### 1. *Texas 271 Agreement "T2A"*

After a series of "collaborative work sessions" between SBC Texas and CLECs, the Commission approved the Texas 271 Agreement (T2A) on October 13, 1999. As a condition of receiving approval pursuant to FTA § 271 to provide long-distance services within the state,

---

<sup>5</sup> *Southwestern Bell Tel. Co. v. Public Util. Commission of Texas*, 208 F.3d 475, 479-480 (5th Cir. 2000); see also, *Verizon Maryland, Inc. v. Global Naps, Inc.*, 377 F.3d 355, 364-365 (4th Cir. 2004); *Michigan Bell Tel. Co. v. Strand*, 305 F.3d 580, 583 (6th Cir. 2002); *MCI Telecommunications Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 337-338 (7th Cir. 2000); *Iowa Utils. Bd v. FCC*, 120 F.3d 753, 804 (8th Cir. 1997), *aff'd in part, rev'd in part on other grounds*; *AT&T Corp. v. Iowa Utils. Bd*, 525 U.S. 366 (1999); *Southwestern Bell Tel. Co. v. Brooks Fiber Communications of Okla., Inc.*, 235 F.3d 493, 496-497 (10th Cir. 2000); *BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Servs., Inc.*, 317 F.3d 1270, 1277-1278 (11th Cir. 2003).

SBC Texas agreed to offer this standard ICA to all CLECs for a period of four years.<sup>6</sup> Among other things, the T2A established prices, terms, and conditions for resale, interconnection, and the use of unbundled network elements (UNEs). The T2A retains the rates from the Mega-Arbitration except for the collocation rates developed in a separate proceeding, Docket No. 21333.<sup>7</sup> Pursuant to FTA § 252(i), the majority of the CLECs in Texas subsequently opted into the T2A.

## **2. Docket No. 28821**

In Docket No. 28821, the Commission addressed multiple points of interconnection, direct end-office trunking, entrance facilities, combining traffic, two-way trunks, tandem switching rates, bill and keep thresholds, compensation for FX traffic, and the definition of end-user and end-user customer. This docket also affirmed the Commission's authority to arbitrate a self-executing performance remedy plan.<sup>8</sup>

## **3. Docket No. 31577**

In Docket No. 31577, the Commission addressed audit rights, whether Sprint should be required to warrant itself as a telecommunications carrier, whether service provided under wholesale arrangements to a last-mile provider constitute transit traffic, and the applicability of Local Service Request (LSR) charge when porting numbers.<sup>9</sup>

---

<sup>6</sup> Certain sections of the T2A expired October 13, 2001; others expired October 13, 2003.

<sup>7</sup> *Proceeding to Establish Permanent Rates for Southwestern Bell Telephone Company's Revised Physical and Virtual Collocation Tariffs*, Docket No. 21333, Order Approving Revised Arbitration Award (June 7, 2001).

<sup>8</sup> *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Docket No. 28821, Order Approving Interconnection Agreement Amendment and Establishing Implementation Procedures (September 27, 2006).

<sup>9</sup> *Petition of Sprint Communications Company, L.P. for Compulsory Arbitration Under the FTA to Establish Terms and Conditions for Interconnection Terms with Consolidated Communications of Fort Bend Company and Consolidated Communications Company of Texas*, Docket No. 31577, Arbitration Award, (December 19, 2006).

## Relevant FCC Decisions

### **1. Local Competition Order**

In the *Local Competition Order*,<sup>10</sup> the Federal Communications Commission (FCC) implemented FTA §§ 251 and 252. The FCC identified UNEs that ILECs must make available to competitors and established minimum requirements for nondiscriminatory interconnection and collocation arrangements.

### **2. UNE Remand Order**

In late 1999, the FCC issued the *UNE Remand Order* in response to the Supreme Court's January 1999 decision,<sup>11</sup> which directed the FCC to reevaluate the unbundling obligations established by FTA § 251.<sup>12</sup> The Court required the FCC to revisit its application of the "necessary" and "impair" standards in FTA § 251(d)(2).<sup>13</sup> In applying the "necessary" and "impair" standard to individual network elements, the FCC made certain critical determinations. Among them, the FCC modified the definition of the loop network element to include all features, functions, and capabilities of the transmission facilities between an ILEC's central office and the loop demarcation point at the customer premises.<sup>14</sup>

### **3. Triennial Review Order**

In the *Triennial Review Order*, the FCC determined the elements ILECs must offer on an unbundled basis. The FCC required unbundled access to: mass-market loops, certain subloops,

---

<sup>10</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-96, 95-185, First Report and Order, FCC 96-325 (Aug. 8, 1996) (*Local Competition Order*).

<sup>11</sup> *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999).

<sup>12</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (Nov. 5, 1999) (*UNE Remand Order*).

<sup>13</sup> *UNE Remand Order* at para. 1.

<sup>14</sup> *UNE Remand Order* at n. 301 (revised definition retains the definition from the *Local Competition Order*, but replaces the phrase "network interface device" with "demarcation point," and makes explicit that dark fiber and loop conditioning are among the "features, functions, and capabilities" of the loop).

network interface devices (NIDs), switching for mass market, and OSS functions.<sup>15</sup> The FCC did not require unbundled access to: enterprise-market loops, switching for enterprise market, or packet switching.<sup>16</sup> Under certain conditions, the FCC required unbundled access to: transport, signaling networks, and call-related databases.<sup>17</sup> In addition, the FCC redefined the dedicated transport network element as those “transmission facilities that connect incumbent LEC switches or wire centers.”<sup>18</sup> The FCC found that facilities outside of the ILEC’s local network should not be considered part of the dedicated transport network element subject to unbundling.<sup>19</sup> Accordingly, the FCC observed that “[o]ur determination here effectively eliminates ‘entrance facilities’ as UNEs . . . .”<sup>20</sup> The FCC also noted that section 271(c)(2)(B) established an independent obligation for ILECs to provide access to loops, switching, transport, and signaling, regardless of any unbundling analysis under section 251.<sup>21</sup> The D.C. Circuit vacated and/or remanded portions of the *Triennial Review Order* in *USTA II*.<sup>22</sup>

#### 4. *Interim UNE Order*

The FCC’s *Interim UNE Order*<sup>23</sup> required ILECs, on an interim basis, to continue providing unbundled access to switching, enterprise-market loops, and dedicated transport under the same rates, terms, and conditions that applied under existing ICAs as of June 15, 2004.<sup>24</sup> The FCC recognized that “by freezing in place carriers’ obligations as they stood on June 15, 2004, we are in many ways preserving contract terms that *predate* the vacated rules.”<sup>25</sup> These rates,

---

<sup>15</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competitive Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-388, 96-98, 98-147, Order, FCC 03-36 at para. 7 (Aug. 21, 2003) (*Triennial Review Order* or *TRO*).

<sup>16</sup> *Triennial Review Order* at para. 7.

<sup>17</sup> *Triennial Review Order* at para. 7.

<sup>18</sup> *Triennial Review Order* at para. 7.

<sup>19</sup> *Triennial Review Order* at para. 366.

<sup>20</sup> *Triennial Review Order* at para. 366 n.1116.

<sup>21</sup> *Triennial Review Order* at para. 7.

<sup>22</sup> *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

<sup>23</sup> *Unbundled Access to Network Elements*, WC Docket No. 04-313, Order and Notice of Proposed Rulemaking, FCC 04-179 (Aug. 20, 2004) (*Interim UNE Order*).

<sup>24</sup> *Interim UNE Order* at para. 29.

<sup>25</sup> *Interim UNE Order* at para. 23.

terms, and conditions were to apply until the effective date of the FCC's final unbundling rules on March 13, 2005 (six months after Federal Register publication of the *Interim UNE Order*), except to the extent superseded by: (1) negotiated agreements, (2) an intervening FCC order, or (3) a state commission order raising the rates for UNEs.<sup>26</sup> After the initial six months, in the absence of the FCC subjecting particular UNEs to unbundling, those elements were still to be made available to serve existing customers for a subsequent six-month period, but at higher rates.<sup>27</sup>

### **5. *Triennial Review Remand Order***

On February 4, 2005, the FCC issued the *Triennial Review Remand Order* in response to the remand of the *Triennial Review Order* from the D.C. Circuit Court of Appeals.<sup>28</sup> The *Triennial Review Remand Order* addressed the unbundling of network elements, including dedicated interoffice transport, high-capacity loops, and mass-market local circuit switching. *In the Matter of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, Order on Remand, 20 FCC Record 2533 (February 4, 2005). The *Triennial Review Remand Order* also addressed the conversion of special access circuits to UNEs and the implementation of the unbundling determinations.

### **6. *LNP Clarification Order***

On April 13, 2004, the FCC issued the *LNP Clarification Order* that granted a waiver to the rule that limits the time over which a carrier may recover its carrier-specific costs of implementing local number portability (LNP).<sup>29</sup>

---

<sup>26</sup> *Interim UNE Order* at para. 23.

<sup>27</sup> *Interim UNE Order* at para. 23.

<sup>28</sup> *United States Telecom Association v. FCC*, 290 F3d 415 (D.C. Cir. 2002)(*USTA I*).

<sup>29</sup> *In the Matter of Tel. Number Portability, BellSouth Corp. Petition for Declaratory ruling and/or Waiver, Order*, CC Docket No. 95-116, FCC 04-91, 19 FCC Rcd 6800 (Rel. Apr 13, 2004) ("LNP Clarification Order").

## Relevant Court Decisions

### 1. *USTA I*

In *USTA I* the D.C. Circuit considered the *Line Sharing Order*<sup>30</sup> and the *Local Competition Order* and remanded both to the FCC for further review. The D.C. Circuit disagreed with the FCC's impairment standard for determination of UNEs under the *Local Competition Order*, holding that the FCC did not differentiate between cost disparities between new entrants and incumbents.<sup>31</sup> The D.C. Circuit also objected to broad unbundling standards in markets that did not track relevant market characteristics and capture significant variation between markets.<sup>32</sup> The D.C. Circuit also reversed the FCC's unbundling of the high-frequency portion of the loop under the *Line Sharing Order*, finding that the FCC had failed to adequately consider intermodal competition from cable providers.<sup>33</sup>

### 2. *USTA II*

In *USTA II*,<sup>34</sup> the follow-up case to *USTA I*, the D.C. Circuit addressed the *Triennial Review Order* and remanded a majority of that order to the FCC for further consideration. In large part, the D.C. Circuit found that the FCC lacked authority to subdelegate to the states the nationwide impairment determination. Thus, among other findings, the D.C. Circuit vacated the FCC's decision to order unbundling of mass-market switches and its impairment findings with respect to dedicated transport elements.<sup>35</sup> The D.C. Circuit also remanded for further consideration the issue of whether entrance facilities are "network elements."<sup>36</sup>

---

<sup>30</sup> *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 98-147, Third Report and Order, FCC 99-355 (Dec. 9, 1999).

<sup>31</sup> *USTA I* at 428.

<sup>32</sup> *USTA I* at 423.

<sup>33</sup> *USTA I* at 429.

<sup>34</sup> *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*).

<sup>35</sup> *USTA II* at 571, 574.

<sup>36</sup> *USTA II* at 586.

#### IV. DISCUSSION OF MAJOR ISSUES

This proceeding addresses the issues in the Joint DPL admitted as Joint Exhibit 1. The Arbitrators' detailed decisions with respect to each of the DPL issues are attached to this Order, and incorporated herein. The Arbitrators note that a number of the issues that the parties submitted for arbitration in the instant docket had been addressed by the Commission in previous arbitrations.<sup>37</sup> At the first prehearing conference in this docket, the parties were instructed by the Arbitrators to revisit all outstanding issues submitted for arbitration since many of the issues had already been arbitrated in other dockets. The parties were told that previous Commission decisions do set precedent and would be applied in this instant docket unless the parties could provide convincing evidence as to why the Commission's previous decisions should not apply. Below, the Arbitrators provide an expanded discussion of their decisions on the major issues presented at hearing and in briefing.<sup>38</sup>

##### Network Interface Device (NID)

The Arbitrators conclude that in the *Local Competition Order*, the FCC deemed NIDs to be a UNE.<sup>39</sup> In that order, the FCC stated that the new entrant bears the costs of connecting its NID to the ILEC's NID and that the FCC does not require an ILEC to permit a new entrant to connect its loops directly to the ILEC's NID. The FCC also recognized the fact that the ILEC's competitors may benefit by directly connecting their loops to the ILEC's NID, thereby avoiding the cost of deploying NIDs. The FCC reiterated its position on connection to the ILEC's NID in the *UNE Remand Order* when it addressed the network elements that are to be unbundled. The FCC stated that an ILEC must offer unbundled access to a NID on a nationwide basis. In this Order, the FCC went on to define the NID "to include any means of interconnection to the

---

<sup>37</sup> DPL issues nos. 3, 4a, 8, 11, 14, 21, 22, 23, 29, and 31.

<sup>38</sup> The parties briefed, but did not provide testimony or argument at the hearing, on the following legal issues: Joint DPL Issue Nos. 5 regarding assignment, 10 regarding application of law, 12 regarding arbitration, 15 regarding indemnity, warranty disclaimer, and limitation of damages, and 27 regarding limitation of liability for directory listings. Parties' Joint Letter to the Arbitrators, October 3, 2008.

<sup>39</sup> *Local Competition Order* at Para. 392.

customer premises wiring to the incumbent LECs distribution plant, such as a cross connect device used for that purpose.”<sup>40</sup>

47 U.S.C. § 251(c)(3) requires ILECs to provide nondiscriminatory access to UNEs to any requesting telecommunications carrier for the provision of telecommunications service. However, 47 U.S.C. § 251(f)(1)(A) provides that “[s]ubsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).” Section 251 (f)(1)(B) describes the process required for the State Commission to terminate a carriers rural exemption waiver provided by § 251(f)(1)(A).

The Arbitrators have determined that Charter has not petitioned the Public Utility Commission of Texas (Commission) to determine whether to terminate CenturyTel’s rural exemption pursuant to 47 U.S.C. § 251(f)(1)(A). Until the Commission makes such a determination, CenturyTel is not required to provide access to UNEs. Therefore, if CenturyTel makes available its NID for Charter’s use, it does not have to be made available at Total Element Long Run Incremental Cost (TELRIC), as otherwise required for UNEs provided pursuant to § 252(d)(1).

The Arbitrators find that the FCC’s definition of the term “NID” coupled with the FCC’s classification of the NID as a UNE, provides that any type of access to CenturyTel’s NID by Charter constitutes usage of that NID and dictates that CenturyTel be compensated for such usage. Furthermore, the Arbitrators do not agree with Charter’s argument that it is exempt from being assessed a charge for usage of CenturyTel’s NID because it utilizes the NID only occasionally and when it does so, it uses only the customer side of the NID. The FCC does not provide any exceptions to or limit its classification of the NID as a UNE for carriers that use only the customer side of the NID or for carriers that use the ILEC’s NID only occasionally. The Arbitrators further find that because the Commission has not terminated CenturyTel’s rural exemption waiver pursuant to 47 U.S.C. § 251(f)(1)(B), then CenturyTel is not required to provide access to its NIDs at TELRIC. The rate that is charged by CenturyTel to Charter for use

---

<sup>40</sup> *UNE Remand Order* at Para 233.

of the NID would be the same as if this were an item contained in a Commercial Agreement. The Arbitrators expectation is that the price charged by CenturyTel for use of its NID would be just, reasonable, and nondiscriminatory.

### Liability Issues

The parties have been unable to resolve several interrelated liability issues regarding indemnification, disclaimer of warranties, and damage caps. The Arbitrators find that the parties have not presented a compelling reason to deviate from several basic approaches to these matters taken in ICAs approved by the Commission in previous dockets. First, the Commission has ruled that a party should not be indemnified for its own misconduct. In keeping with this principle, the Arbitrators adopt language that does not indemnify a party from claims that arise from the indemnified party's negligence, gross negligence, or intentional or willful misconduct. This language is similar to the indemnity language contained in the ICAs approved in Docket Nos. 28821, 35402 and 32453.<sup>41</sup> Second, the Commission has approved damage limitation provisions in previous ICAs that cap damages at the amounts charged for the pertinent products or services involved in the claim. These limits would not apply to willful or gross misconduct.<sup>42</sup> The Arbitrators, therefore, adopt contract language that limits the parties to direct damages not to exceed monthly charges and pertinent expenses, except for instances of gross negligence or intentional or willful misconduct.

Charter excepted to the Proposed Arbitration Award adopting language capping actual damages. Charter indicated that it would not be "good public policy" to artificially limit actual

---

<sup>41</sup> *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Docket No. 28821 INTERCONNECTION AGREEMENT-TEXAS between Southwestern Bell Telephone, L.P. d/b/a SBC TEXAS and CLEC, Section 7.3.1.1, p.15-16 (August 25, 2005); *Petition of Comcast Phone of Texas ,LLC for Arbitration of an Interconnection Agreement with United Telephone Company of Texas, Inc. D/B/A/ Embarq and Central Telephone Company of Texas , Inc D/B/A Embarq Pursuant to Section 252 of the Federal Communications Act of 1934, as Amended and Applicable State Laws*, Docket No. 35402, INTERCONNECTION AND COLLOCATION AGREEMENT FOR THE STATE OF TEXAS Comcast Phone of Texas, LLC, and United Telephone Company of Texas, Inc. d/b/a Embarq Central Telephone Company of Texas, Inc. d/b/a Embarq, Section 11.1, p.26 (October 21, 2008); *Petition of United telephone Company of Texas, Inc. D/B/A Sprint for Arbitration with Cedar Valley Communications, Inc. pursuant to Section 252(B)(1) Of the Federal Telecommunications Act of 1996*, Docket No. 32453, INTERCONNECTION, COLLOCATION AND RESALE AGREEMENT FOR THE STATE OF TEXAS Cedar Valley Communications, Inc. and United Telephone Company of Texas, d/b/a Embarq, Section 11.1, p. 27 (July 17, 2006).

<sup>42</sup> *Id.* Docket No. 28821, Section 7.2.1, p.15.

damages. The Arbitrators note that Texas law allows for parties to adopt contractual provisions that limit actual damages.<sup>43</sup> Further, the inclusion of damage limitation provisions in tariffs has been considered by the Commission to be reasonable and in the public interest.<sup>44</sup> Thus Charter's own tariffs and customer agreements contain damage limitation provisions.<sup>45</sup> The Arbitrators, therefore, believe that Charter's exception is not warranted.

Finally, the Arbitrators find that both parties intend to disclaim all warranties except those expressly provided for in the ICA; therefore, the particular excluded warranties listed in the disclosure provision are superfluous. The Arbitrators therefore adopt ICA language that excludes warranties other than those expressly agreed to by the parties in their ICA.

Charter excepted to the Proposed Arbitration Award regarding this matter. Charter contends that the Arbitrator's decision "eradicates the well-established principles of contract law in Texas" and cites the Restatement (Second) of Torts, § 323 for the principle that there is a common-law duty applicable to every contract to perform with reasonable care. Charter contends that including warranties of "reasonable care", "workmanlike effort", "results", "lack of negligence", or "accuracy or completeness of responses" in the list of disclaimed warranties will eliminate this common-law duty. The Arbitrators note, however, that the Parties have agreed to disclaim all warranties and duties, except those that are established by statute or are specifically preserved in the Agreement. To the extent that the duties of reasonable care cited by Charter exist and are applicable in Texas, Charter has agreed to disclaim them. The Arbitrators, therefore, do not believe that Charter's exception is well-founded.

---

<sup>43</sup> See e.g., *Mireles v. Tejas Appraisal and Inspection Co.* 2007 WL 1826074 (Tex. App.—San Antonio, 2007); *Head v. U.S. Inspect DFW, Inc.*, 159 S.W. 3d 731 (Tex. App.—Ft. Worth, 2005); and *Arthur's Garage, Inc. v. Racial-Chubb Security Systems, Inc.*, 997 S.W. 2d 803 (Tex. App.—Dallas, 1999).

<sup>44</sup> *Application of Central Power and Light Company for Approval of Tariff Amendment; Application of Southwestern Bell Telephone Company for Approval of Tariff Amendment*, Docket Nos. 3198 and 3234, 7 Tex. P.U.C. Bull (1981) (Central Power). See generally, *Southwestern Electric Power Company v. Grant*, 73 S.W.2d 211 (Tex. 2002) (tariff limitation on liability for personal injury upheld).

<sup>45</sup> See e.g., *Charter Internet Residential Customer Agreement, Section 6.2; Charter Commercial Terms of Service, Sections 6, subsections (k), (l) and (m); Charter Fiberlink TX-CCO, LLC Interstate Access Services Tariff No. 4, Section 4.4; and Charter Fiberlink TX-CCO, LLC Local and Intrastate Interexchange Services Tariff, Sections 3.1.2, 3.1.3 and 5.4.*

### Assignment

The Arbitrators adopt CenturyTel's proposed language regarding assignments of the ICA. Charter proposed limiting a party's ability to assign the ICA to its subsidiaries or affiliates to instances when that party is selling all or substantially all of its assets. The Arbitrators do not believe there is a good reason to limit assignments of the ICA as proposed by Charter and note that the ICAs approved in Docket No. 28821<sup>46</sup> do not provide such a limitation upon their assignment.

### Termination

Charter proposed language regarding termination of the ICA that would require a Commission proceeding prior to termination. The Arbitrators believe that prior authorization for termination is unwarranted because such an approach is inconsistent with the termination provisions contained in the ICAs approved in Docket No. 28821. In particular, it is inconsistent with the approved ICA from the Docket adopted by Charter for interconnection with SBC in Texas.<sup>47</sup> The Arbitrators are unaware of, and Charter has not cited, any ICA approved in Texas that would require a Commission proceeding prior to termination as advocated by Charter. And there have been no changes in the law; either State or federal, that the Arbitrators are aware of, or that the parties cited, that would warrant a different approach to the termination issue. Further, the Arbitrators note that there is ample opportunity for a party to contest a termination before it occurs under current Commission rules and procedures and believe it is unnecessary to require prior Commission approval in all instances.

The Arbitrators therefore adopt language proposed by CenturyTel, but modified to extend the default cure period to 45 days. The Arbitrators' language is consistent with that in the ICAs approved in Docket No.28821.<sup>48</sup>

---

<sup>46</sup> Docket No. 28821, *supra*, Section 5.1, p. 11.

<sup>47</sup> *Id.* Section 2.0, p. 7.

<sup>48</sup> *Id.* Section 2.5, p. 7.

### Limitations Period

Charter proposed language for a two-year limitations period for billing disputes with a limitations period that begins upon the occurrence that gives rise to the dispute. In contrast, CenturyTel proposes a requirement that the billed party be required to provide written notice of the dispute and, if informal resolution is not successful within 180 days, file a petition for formal dispute resolution within one year of the written notice.

The Federal Communications Act provides for a general statutory limitations period of two years for disputes between carriers. 47 U.S.C. § 415 (2008). Similarly the ICAs approved in Docket No. 28821<sup>49</sup> contain simple two-year limitations periods. The Arbitrators therefore adopt Charter's proposal for a basic two-year statutory limitation period.

### Tariffs

In its Exceptions to the Proposal for Award, Charter disagreed with the Arbitrators' decision to accept language from the Docket No. 28821 Mega Arbitration, as appropriate for defining the term "tariff" and "incorporating by reference" the terms and conditions of certain tariffs into an interconnection agreement. Charter posits that the Arbitrators' decision ignores record evidence, adopts "overly broad language" that would result in very real consequences and would likely lead to more disputes.<sup>50</sup> Charter cited to proceedings in other states and at the FCC as a valid demonstration that Century Telephone would abuse "overly-broad" language to its favor.<sup>51</sup>

The Arbitrators are not aware of any post-interconnection dispute regarding tariffs and their incorporation by reference that has been brought before this Commission that has necessitated a review of the language adopted in the Docket No. 28821. As such, the Arbitrators do not find the record evidence brought forth by Charter to be persuasive to support a change to the existing language approved in previous arbitrations by this Commission. The Arbitrators

---

<sup>49</sup> *Id.* Section 11.1.1, p. 22.

<sup>50</sup> Charter Fiberlink TX-CCO, LLC Exceptions to the Proposal for Award at 18-19.

<sup>51</sup> *Id.*

find Charter's argument unconvincing that its proposed language is "better" than the language approved by the Commission in previous arbitrations.

### **Local Service Request (LSR) Service Order Charge**

Charter contends that under the FCC's rules, CenturyTel cannot assess any charges, including service order charges, on Charter to process a LNP request. Charter cites 47 C.F.R. § 52.23, which states that carriers may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the FCC, certain charges over a five-year period.

CenturyTel asserts that the service order charges are not a carrier-specific cost that is directly related to providing long-term number portability but is rather an administrative cost that should be assessed to the "cost-causer." CenturyTel cites the FCC's LNP Clarification Order. In that Order, the FCC states that standard fees assessed by BellSouth are administrative fees not subject to the number portability recovery mechanism. CenturyTel also cites Docket No. 31577 in which this Commission approved LSR charges for number portability service orders.

The Arbitrators agree with CenturyTel's argument presented in its exceptions that the service order charges are not a carrier-specific cost that is directly related to providing long-term number portability but is rather an administrative cost that should be assessed to the "cost-causer." Furthermore, the Arbitrators agree with the Commission's previous decision in Docket No. 31577, that each party is entitled to impose a "just and reasonable" charge to the other party for porting a customer to that party so long as that charge is based on the actual, forward-looking cost of performing the function and is nondiscriminatory. The Commission also upheld the Arbitrators decision in that docket that states the "cost-causer" should bear the costs of LSRs.<sup>52</sup>

---

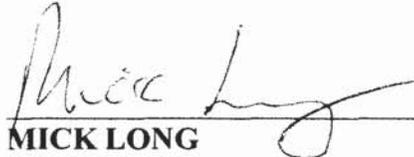
<sup>52</sup> *Petition of Sprint Communications Company, L.P. for Compulsory Arbitration Under the FTA to Establish Terms and Conditions for Interconnection Terms with Consolidated Communications of Fort Bend Company and Consolidated Communications Company of Texas*, Docket No. 31577, Arbitration Award, (December 19, 2006).

**V. CONCLUSION**

The Arbitrators conclude that the decisions outlined in the Award and the Award matrix, as well as the conditions imposed on the parties by these decisions, meet the requirements of FTA §§ 251 and 252 and any applicable regulations prescribed by the FCC pursuant to FTA §§ 251 and 252.

SIGNED AT AUSTIN, TEXAS the 22<sup>nd</sup> day of July 2009.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
\_\_\_\_\_  
**MICK LONG**  
**ARBITRATOR**

  
\_\_\_\_\_  
**LIZ KAYSER**  
**ARBITRATOR**

**Staff Arbitration Team Member:**  
John Costello

Award Matrix  
Docket No. 35869

<u>Issue No.</u>	<u>Charter Fiberlink (Charter) and CenturyTel of Lake Dallas (CenturyTel) Statement of Issues</u>	<u>Attachment &amp; Sections</u>	<u>Commission Decision</u>
1.	<b>RESOLVED</b>		<b>RESOLVED</b>
2.	Both Parties' Issue Statement: How should the Agreement define the term Network Interface Device or "NID"?	Art. II, § 2.103	<p>The Arbitrators find that in the FCC's Triennial Review Order (TRO), ¶ 343, the FCC stated "[f]urthermore, because the incumbent LEC's network demarcation point may be located at the NID, before the NID or beyond the NID, which is always located at the customer's premises, it is appropriate to discuss the NID together with the "inside wire" subloop. The FCC recognized that these terms are related.</p> <p>The Arbitrators agree with CenturyTel's argument that the terms NID, Inside Wire, and Point of Demarcation are all related. The Arbitrators find that the contract language proposed by CenturyTel provides a description of the relationship between these terms, which in turn should lessen the disputes between the parties.</p> <p>The Arbitrators adopt the contract language proposed by CenturyTel:</p> <p style="padding-left: 40px;">2.103 Network Interface Device (NID)</p> <p>A means of interconnecting Inside Wiring to CenturyTel's distribution plant, such as a cross-connect device used for that purpose. The NID houses the protector, the point from which the Point of Demarcation is determined between the loop (inclusive of the NID) and the End User Customer's Inside Wire pursuant to 47 CFR 68.105.</p>
3.	Both Parties' Issue Statement: There are two separate issues presented in Issue 3: (a) How should the Agreement define the term "Tariff"? (b) How should specific Tariffs be incorporated into the Agreement?	Art. II, § 2.140 and Art. I, § 3	<p>The parties presented no new arguments as to the reasonableness of changing the existing Commission decision applicable to tariffs and their incorporation into an interconnection agreement (ICA) as decided by the Commission in Docket No. 28821. The parties merely provided rhetorical references to potential abuses and inconsistent treatment if specific details regarding rates, terms, and conditions of a "tariff" or "tariff reference" are not identified within the body of the ICA.</p> <p>The Arbitrators conclude that the following contract language from the Arbitration Award of Docket No. 28821 should be incorporated into the Agreement. <i>See Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement</i>, Docket No. 28821, Track I Arbitration Award at 8–10 (February 23, 2005):</p>

			<p>2.3.1 To the extent a tariff provision or rate is incorporated or otherwise applies between the Parties due to the provisions of this Agreement, it is understood that said tariff provision or rate applies only in the jurisdiction in which such tariff provision or rate is filed, and applies to the CLEC and only to where CenturyTel of Lake Dallas operates within that jurisdiction. Further, it is understood that any changes to said tariff provision or rate are also automatically incorporated herein or otherwise hereunder, effective hereunder on the date any such change is effective.</p> <p>2.3.2 Wherever any Commission ordered tariff provision or rate is incorporated, cited or quoted herein, it is understood that said incorporation or reference applies only to the entity within the state whose Commission ordered that tariff.</p> <p>2.3.3 CenturyTel will provide CLEC notice of any tariff or filing which concerns the subject matter of this Agreement at the time an Informational or Administrative Notice is transmitted to the Public Utility Commission of Texas which is filed within ninety (90) days (forty-five (45) days for price changes) of the expected effective date of the tariff or filing.</p> <p>2.3.4 In the event that CenturyTel is required by any governmental authority to file a tariff or make another similar filing in connection with the performance of any action that would otherwise be governed by the Agreement, CenturyTel will provide CLEC notice of the same as set forth in Section 2.3.3 above.</p> <p>2.3.5 If any tariff referred to in Section 2.3.4 becomes ineffective by operation of law, through deregulation or otherwise, the terms and conditions of such tariffs, as of the date on which the tariffs became ineffective, will be deemed incorporated if not inconsistent with this Agreement.</p>
<p>4. 4(a)</p>	<p>Termination of Agreement (Sub-Issues 4(a) and 4(b))</p> <p>Charter Issue Statement: Should the Agreement include terms that allow one Party to terminate the Agreement without any oversight, review, or approval of such action, by the Commission?</p> <p>CenturyTel Issue Statement: Should a Party be allowed to suspend performance under or terminate the Agreement when the other Party is in default, and the defaulting Party refuses to cure such default within thirty (30) days after receiving notice of such default? How</p>	<p>Art. III, §2.6</p>	<p>The Arbitrators adopt the language proposed by CenturyTel modified as indicated below. The Arbitrators find that this language is consistent with the termination provisions contained in the ICAs approved in Docket No.28821 and in particular consistent with the approved ICA from that Docket adopted by Charter for interconnection with SBC in Texas. See. <i>Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement</i>, Docket No. 28821 INTERCONNECTION AGREEMENT-TEXAS between Southwestern Bell Telephone, L.P. d/b/a SBC TEXAS and CLEC, Section 2.0, p. 7 (ICA between SBC TEXAS and CLEC Coalition). (August 25, 2005.) In contrast the Arbitrators are unaware of, and Charter has not cited, any ICA approved in Texas that would require a Commission proceeding prior to termination as advocated by Charter.</p>

	<p>should "default" be defined in the Agreement?</p>	<p>The Arbitrators note that there is ample provision for a party to contest a termination before it occurs under current Commission rules and procedures and believes it is unnecessary to require prior Commission approval in all instances.</p> <p>The Commission modifies the language proposed by CenturyTel to extend the default cure period to 45 days as provided in the ICAs approved in Docket 28821. The Commission adopts CenturyTel's proposed contract language as modified below:</p> <p>Art. III, §2.6 Suspension or Termination Upon Default.</p> <p>Either Party may suspend or terminate this Agreement, in whole or in part, in the event of a Default (defined below) by the other Party; provided, however, that the non-defaulting Party notifies the defaulting Party in writing of the Default and the defaulting Party does not cure the Default within <del>thirty</del>(30) forty-five (45) calendar days of receipt of written notice thereof. Following CenturyTel's notice to **CLEC of its Default, CenturyTel shall not be required to process new service orders until the Default is timely cured.</p> <p>"Default" is defined to include:</p> <ul style="list-style-type: none"> <li>(a) A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or</li> <li>(b) The revocation by the Commission of a Party's Certificate of Operating Authority or Service Provider Certificate of Operation Authority, or</li> <li>(c) A Party's violation of any material term or condition of the Agreement; or</li> <li>(d) A Party's refusal or failure in any material respect properly to perform its obligations under this Agreement, including but not limited to its refusal or failure to pay undisputed charges (pursuant to Section 9) within <del>thirty</del>(30) forty-five (45) calendar days after the bill date.</li> </ul>
<p>4(b)</p>	<p>Both Parties' Issue Statement: What terms should govern the right of a Party to terminate this Agreement upon the sale of a specific operating area?</p>	<p>Art. III, §2.7</p> <p>The Arbitrators find that Charter's proposal to require a third party purchasing a service area from CenturyTel to assume the ICA is an unwarranted restriction on CenturyTel's ability to contract for the sale of its service areas and that there are adequate existing provisions in law to ensure the transition to, and renegotiation of, an appropriate ICA in the event of such a sale.</p> <p>The Arbitrators also note that the ICAs approved in Docket Nos. 35402 and 32453 allow for the termination of the ICA upon the sale of service areas without the purchaser assuming the existing ICA. See <i>Petition of Comcast Phone of Texas, LLC for Arbitration of an Interconnection Agreement with United Telephone Company of Texas, Inc. D/B/A/ Embarq and Central Telephone Company of Texas, Inc D/B/A Embarq Pursuant to Section 252 of the Federal Communications Act of 1934, as Amended and</i></p>

<p><i>Applicable State Laws, Docket No. 35402, INTERCONNECTION AND COLLOCATION AGREEMENT FOR THE STATE OF TEXAS</i> Comcast Phone of Texas, LLC, and United Telephone Company of Texas, Inc. d/b/a Embarq Central Telephone Company of Texas, Inc. d/b/a Embarq, Section 5, p.21 (October 21, 2008); <i>Petition of United Telephone Company of Texas, Inc. D/B/A Sprint for Arbitration with Cedar Valley Communications, Inc. pursuant to Section 252(B)(1) of the Federal Telecommunications Act of 1996, Docket No. 32453, INTERCONNECTION, COLLOCATION AND RESALE AGREEMENT FOR THE STATE OF TEXAS</i> Cedar Valley Communications, Inc. and United Telephone Company of Texas, d/b/a Embarq, Section5, p. 22 (ICA between SBC Texas and CLEC Coalition)(July 17, 2006).</p>		
<p>The Commission adopts CenturyTel's proposed contract language:  2.7 Termination Upon Sale.</p> <p>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 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. The Parties agree to abide by any applicable Commission Order regarding such sale or transfer.</p>		
<p>The Arbitrators find that Charter has failed to make a persuasive case for limiting the Parties' ability to assign (without consent) the ICA to its subsidiaries or affiliates to instances when that party is selling all or substantially all of its assets. Freedom to assign contracts is generally favored under the law and the Arbitrators note that the ICAs approved in Docket No. 28821 do not require prior consent for the assignment of the ICA in any instance. See <i>Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement</i>, Docket No. 28821 INTERCONNECTION AGREEMENT-TEXAS between Southwestern Bell Telephone, L.P. d/b/a SBC TEXAS and CLEC, Section 5.0, p. 11 (ICA between SBC TEXAS and CLEC Coalition) (August 25, 2005). The Arbitrators conclude that it is reasonable to allow the assignment of the ICA by a party to its subsidiary or affiliate without prior consent and the Arbitrators note that under CenturyTel's proposed language the effectiveness of the assignment is conditioned on the other Party's being reasonably satisfied that the assignee is "able to fulfill the assignor's obligations".</p>	<p>Art. III, §5</p>	<p>Charter Issue Statement: Should the Agreement allow either Party to assign the Agreement to a third-party in connection with a sale, without having to first obtain the other Party's consent?</p> <p>CenturyTel Issue Statement: Should a Party's right to assign its rights and obligations under the Agreement, <i>without consent</i>, to a subsidiary or Affiliate be restricted to only those assignments made in conjunction with the sale of all or substantially all of the Party's assets?</p>

			<p>The Arbitrators adopt CenturyTel's proposed language:</p> <p>5. ASSIGNMENT</p> <p>Any assignment, in whole or in part, by either Party of any right, obligation, duty or interest arising under the Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, shall be null and void, except that either Party may assign, to the extent consistent with Applicable Law, all of its rights, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a subsidiary or Affiliate of that Party without consent, upon ninety (90) calendar days' written notification. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party, and the other Party being reasonably satisfied that the assignee is able to fulfill the assignor's obligations hereunder. Any attempt to make an assignment or delegation in violation of this section shall constitute a default of this Agreement.</p>
6.	<b>RESOLVED</b>		<b>RESOLVED</b>
7.	<b>RESOLVED</b>		<b>RESOLVED</b>
8.	<p>There are two separate issues presented in Issue 8:</p> <p>(a) Charter Issue Statement: Should the bill payment terms related to interest on overpaid amounts be equitable?</p> <p>(a) CenturyTel Issue Statement: Should the <i>billed Party</i> be entitled to receive interest from the billing Party on amounts paid to the billing Party in error and which are later returned to the billed Party?</p> <p>(b) Charter Issue Statement: Should the bill dispute provisions ensure that neither Party can improperly terminate the Agreement in a manner that could impair service to the public?</p>	9.4, 9.5	<p><b>DPL Issue 8(a):</b></p> <p>The Arbitrators find that 9.4.1 in Article III: General Terms and Conditions, addresses <i>Disputed Amounts Withheld From Payment</i>. The undisputed language that has been proposed by the Parties in this section, states that "... the billed Party may withhold payment of such Disputed Amounts only if it gives written notice to the billing Party of the amounts it disputes...." This section goes on to say that "[d]isputed billing claims shall be submitted no later than the Bill Due Date." 9.4.1 allows Charter to withhold payment of disputed amounts so long as written notice of those disputes are filed no later than the bill due date.</p> <p>The Arbitrators find the arguments to support Charter's proposed contract language in 9.4.2, unconvincing. In 9.4.1, Charter is given the option of withholding any disputed amount from its bills so long as it submits a written notice to the billing Party of such disputed amount prior to the bill due date. If Charter chooses not to take advantage of this provision to withhold disputed amounts, then it should not be allowed to receive interest on the disputed amounts at a later date.</p> <p>Therefore, the Arbitrators adopt the contract language proposed by CenturyTel for 9.4.2.</p>

<p>(b) CenturyTel Issue Statement: Should the billing Party be permitted to suspend or discontinue accepting orders from the billed Party under certain conditions when the billed Party fails or refuses to pay "undisputed" charges?</p>	<p>9.4.2 <u>Billing Disputes Related to Paid Amounts</u> If any portion of an amount paid to a Party under this Agreement is subject to a bona fide dispute between the Parties ("Disputed Paid Amount"), the billed Party may provide written notice to the billing Party of the Disputed Paid Amount, and seek a refund of such amount already paid, at any time prior to the date that is one (1) year after the date of the invoice containing the disputed amount that has been paid by the billed Party ("Notice Period"). If the billed Party fails to provide written notice of a Disputed Paid Amount within the Notice Period, the billed party waives its rights to dispute its obligation to pay such amount, and to seek refund of such amount.</p> <p><b>DPL Issue 8(b):</b></p> <p>The Commission decided in Docket No. 28821, Track I, the appropriate provisions that should govern the suspension/termination of service for non-payment. The arguments presented by each of the Parties in the instant docket do not persuade the Arbitrators to deviate from the Commission's previous decision in Docket No. 28821, Track I. See <i>Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement</i>, Docket No. 28821, Track I Arbitration Award at 30-35, (February 23, 2005). Because of the magnitude of modifications that would be required of either Party's proposed contract language in order to reflect the previous Commission decision regarding suspension/termination of service for non-payment, the Arbitrators have developed the following contract language for 9.5, <i>Effect of Non-Payment</i>.</p> <p>The Arbitrators have also determined that a more reasonable timeframe for payment of the first and second notices of non-payment is fifteen (15) calendar days for each notice. Furthermore, to provide a higher level of protection for the Resale End User, in addition to CenturyTel sending a thirty (30) days notice to Resale End Users informing them of the need to designate a new provider, CenturyTel shall send the Commission a list of all Resale End Users that are being notified.</p> <p>The Arbitrators also find that in order to avoid having a Non-Paying Party shift customers from one platform to another (i.e. changing customers from UNE to resale) to avoid paying certain charges, CenturyTel shall disconnect the Billed Account Number (BAN) and not just the individual service that is past-due.</p> <p>The Arbitrators adopt the following language regarding the suspension of processing orders and disconnection for non-payment of undisputed charges:</p>
	<p>9.5 Effect of Non-Payment</p>

9.5.1 If the billed Party does not remit payment of all undisputed charges including but not limited to any Late Payment Charges or miscellaneous charges ("Unpaid Charges") on a bill by the Bill Due Date, CenturyTel will notify the Non-paying Party in writing that in order to avoid disruption or disconnection of the relevant or related services provided under this Agreement, the Non-paying Party must remit all Unpaid Charges to CenturyTel within fifteen (15) Calendar Days following receipt of CenturyTel's notice of Unpaid Charges.

9.5.2 If the Non-Paying Party desires to dispute any additional portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than ten (10) business days following receipt of CenturyTel's notice of Unpaid Charges:

9.5.3.1 Notify CenturyTel in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed ("Disputed Amounts") and the specific details listed in 9.4.1 of this Agreement, together with the reasons for its dispute; and

9.5.3.2 pay all undisputed Unpaid Charges to CenturyTel.

9.5.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 20 of this Agreement.

9.5.5 After expiration of the written notice furnished pursuant to Section 9.4.1 hereof, if Non-paying Party continues to fail to comply with Section 9.5.1 through 9.5.3.2, inclusive, or make payment(s) in accordance with the terms of any mutually agreed payment arrangement, CenturyTel shall, in addition to exercising any other rights or remedies it may have under Applicable Law, furnish a second written demand to Non-paying Party for payment within fifteen (15) calendar days of any of the obligations enumerated in Section 9.5.2. On the day that CenturyTel provides such written demand to the Non-paying Party, CenturyTel may also exercise any or all of the following options:

9.5.5.1 Suspend acceptance of any application, request or order from the Non-Paying party for new or additional Interconnection, Resale Services, network elements, Collocation, functions, facilities, products or services under this agreement; and/or

9.5.5.2 Suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement.

9.5.6 If the Non-Paying Party fails to pay CenturyTel on or before the date specified in

Award Matrix  
Docket No. 35869

	<p><u>the demand letter provided under Section 10.4 of this Agreement, CenturyTel may provide that the undisputed amount of Unpaid Charges exceeds five percent (5%) of the aggregate amount billed by CenturyTel to the Non-Paying Party for the immediately preceding month under this Agreement, in addition to exercising any other rights or remedies it may have under Applicable Law.</u></p> <p><u>9.5.6.1 Cancel any pending application, request or order for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement; and</u></p> <p><u>9.5.6.2 Disconnect any Resale Services, Network Elements and/or Collocation furnished under this Agreement. Disconnection of services shall occur for all services provided from CenturyTel for the Non-Paying Party's Billed Account Number (BAN).</u></p> <p><u>9.5.7 Within five (5) calendar days following any such disconnection, CenturyTel will notify each Resale End User that because of Non-Paying Party's failure to pay CenturyTel, the End User's local service will continue for an additional thirty (30) calendar days and that the End User has thirty (30) calendar days from the disconnection date to select a new Local Service Provider. CenturyTel will notify the Commission of the names of all Resale End Users who received a notice under Section 9.5.7.</u></p> <p><u>9.5.8. If any Resale End User fails to select a new Local Service Provider within thirty (30) calendar days of the disconnection, CenturyTel may terminate the Resale End User's service.</u></p> <p><u>9.5.9. CenturyTel will notify the Commission of the names of all Resale End Users whose local service was terminated pursuant to Section 9.5.8.</u></p> <p><u>9.5.10. Non-Paying Party shall be responsible for all charges for any service furnished by CenturyTel to any End User pursuant to Section 9.5.7.</u></p> <p><u>9.5.11. Nothing in this Agreement shall be interpreted to obligate CenturyTel to continue to provide local service to any Resale End User beyond the thirty (30) calendar day selection period. Nothing herein shall be interpreted to limit any and all disconnection rights CenturyTel has with regard to such Resale End Users under Applicable Law.</u></p>
9.	<p><b>RESOLVED</b></p>
10.	<p>Both Parties' Issue Statement: When should certain changes in law be given retroactive effect?</p>
12.3	<p>The parties have agreed that in the event there is a change in law which affects the ICA they will renegotiate the affected provisions and in the absence of agreement arbitrate the disputed issues before the Commission. In addition, CenturyTel proposes</p>

**RESOLVED**

establishing a retroactive date for application of the change of law if one is not specified in the law. Charter would not provide a retroactive effective date in the ICA. The Arbitrators do not believe that a compelling case has been made for the inclusion of a retroactive effective date in the ICA. None of the ICAs approved in Docket Nos. 28821, 35402 or 32453 contain a retroactive effective day for change of law amendments.

*Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Docket No. 28821 INTERCONNECTION AGREEMENT-TEXAS between Southwestern Bell Telephone, L.P. d/b/a SBC TEXAS and CLEC, Section 3, p.8 (ICA between SBC TEXAS and CLEC Coalition) (August 25, 2005); *Petition of Comcast Phone of Texas, LLC for Arbitration of an Interconnection Agreement with United Telephone Company of Texas, Inc. D/B/A/ Embarq and Central Telephone Company of Texas, Inc D/B/A Embarq Pursuant to Section 252 of the Federal Communications Act of 1934, as Amended and Applicable State Laws*, Docket 35402, INTERCONNECTION AND COLLOCATION AGREEMENT FOR THE STATE OF TEXAS Comcast Phone of Texas, LLC, and United Telephone Company of Texas, Inc. d/b/a Embarq Central Telephone Company of Texas, Inc. d/b/a Embarq, Section 4.2, p.19 (October 21, 2008); *Petition of United Telephone Company of Texas, Inc. D/B/A Sprint for Arbitration with Cedar Valley Communications, Inc. pursuant to Section 252(B)(1) of the Federal Telecommunications Act of 1996*, Docket No. 32453, INTERCONNECTION, COLLOCATION AND RESALE AGREEMENT FOR THE STATE OF TEXAS Cedar Valley Communications, Inc. and United Telephone Company of Texas, d/b/a Embarq, Section 4.2, p. 20 (July 17, 2006).

The Arbitrators believe this issue should be left for negotiation by the parties and if need be direction by the Commission. Similarly, the Arbitrators do not believe that a provision addressing true-up needs to be included in the ICA, but instead is best addressed in any necessary renegotiation by the Parties.

The Arbitrators therefore adopt, with modification, Charter's proposed contract language as follows:

12.3 Retroactive Application of Change in Law.

If the Parties amend the terms and conditions of this Agreement to add, remove, or modify terms of the Agreement following a change in Applicable Law, pursuant to this Section 12, such amended terms and conditions shall apply retroactively to the effective date for the change specified by Applicable Law, if so ordered by the FCC, court of competent jurisdiction, or the Commission ("Relevant Authority") if not specified by Applicable Law, or as agreed to by the Parties. ~~Further, to the extent a true-up of any billing or payment for existing services and/or facilities is required by the change in Applicable Law, the Parties shall include in the change in law amendment appropriate~~

	<p><del>true-up terms and conditions, if so ordered by the Relevant Authority.</del></p>	
<p>11.</p>	<p>Charter Issue Statement: Should CenturyTel be allowed to incorporate its Service Guide as a means of imposing certain process requirements upon Charter, even though Charter has no role in developing the process and procedural terms in the Service Guide?</p> <p>CenturyTel Issue Statement: Should certain business and operational processes and procedures set forth in CenturyTel's "Service Guide" be incorporated by reference into the Agreement?</p>	<p>41</p> <p>The Arbitrators find that Charter's arguments are not persuasive. In Docket No. 28821, the Commission found that it is in the best interest of both CLECs and the ILEC that there is a uniform method of ordering, provisioning, reporting trouble cases, maintenance, etc. for wholesale services. See <i>Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement</i>, Docket No. 28821, <i>Interconnection Agreement between SBC and CLEC Joint Petitioners, Attachment 27: OSS</i>, Section 3.8, (8/11/2005). The Commission determined that these processes, forms, and lists should be available for access by all CLECs and that the most accessible location for this information would be in a CLEC Guide/Handbook on the ILEC's website.</p> <p>The Arbitrators agree with CenturyTel that having uniform procedures for ordering, provisioning, maintenance, trouble reporting, and repair for wholesale services available on its web site in the Service Guide would be most beneficial to all CLECs. Having this information available in the Service Guide would also ensure that all CLECs receive parity treatment for these processes. In addition, requiring CenturyTel to negotiate a different method with each CLEC is unreasonable. Furthermore, the Arbitrators find that it is appropriate to incorporate in the Parties' ICA references to certain business and operational processes and procedures set forth in the "Service Guide".</p> <p>The Arbitrators adopt the contract language proposed by CenturyTel:</p>
<p>11. (cont'd)</p>	<p>(Cont'd) See Parties' issue statements immediately above.</p>	<p>53</p> <p><b>41. STANDARD PRACTICES</b></p> <p>41.1 The Parties acknowledge that CenturyTel shall be adopting some industry standard practices and/or establishing its own standard practices to various requirements hereunder applicable to the CLEC industry which may be added in the CenturyTel Service Guide, which is further described in Section 53. Charter agrees that CenturyTel may implement such practices to satisfy any CenturyTel obligations under this Agreement. Where a dispute arises between the Parties with respect to a conflict between the CenturyTel Service Guide and this Agreement, the terms of this Agreement shall prevail.</p> <p>The Arbitrators find that Charter's argument that CenturyTel's proposed language would effectively permit it to unilaterally modify the contractual obligations of either party and would defeat the purpose of entering into the Agreement is unfounded. The Arbitrators find that CenturyTel's proposed Section 53 effectively addresses any</p>

concerns regarding conflict between the Parties' Agreement and the Guide.

The Arbitrators adopt CenturyTel's proposed language with the following modifications:

**53. CENTURYTEL SERVICE GUIDE**

53.1 The CenturyTel Service Guide ("Guide") is a handbook that contains CenturyTel's operating procedures for service ordering, provisioning, billing, maintenance, trouble reporting and repair for wholesale services. In addition to setting forth operational procedures to facilitate the implementation of this Agreement, the Guide serves as a conduit for the conveyance of day-to-day information that \*\*CLEC will need to operate under this Agreement (e.g., repository for CenturyTel's contact and escalation lists available to \*\*CLEC). \*\*CLEC agrees that, where the terms of this Agreement specifically reference the Guide, \*\*CLEC will abide by the Guide with respect to such specifically-referenced matters. \*\*CLEC ~~may~~ shall receive email notification of any changes made to the Guide so long as \*\*CLEC subscribes to such electronic notification procedure, which subscription is at no cost to \*\*CLEC. If CLEC does not subscribe to electronic notification, then notification of such changes shall be mailed to CLEC. All notifications, whether sent to CLEC electronically or mailed to the CLEC, shall include detailed explanation of all changes made to the Guide. CenturyTel shall notify CLEC of all changes not less than 30 days prior to the effective date of the change.

53.2 The Guide is intended to supplement the terms of this Agreement where specifically referenced in the Agreement; however, the Guide shall not be construed as contradicting or modifying the terms of this Agreement, nor shall it be construed as imposing a substantive term unrelated to operational procedure (e.g., payment terms) upon \*\*CLEC that is not otherwise contained in this Agreement. Where a dispute arises between the Parties with respect to a conflict between the Guide and this Agreement, the terms of this Agreement shall prevail. If Charter believes that a change to the Guide materially and adversely impacts its business, the implementation of such change, upon Charter's written request, will be delayed as it relates to Charter for no longer than sixty (60) days to provide the Parties with an opportunity to discuss a resolution to the alleged adverse impact, including but not limited to other potential modifications to the Guide. If the Parties are unable to resolve the dispute regarding the change to the Guide, the Parties will resolve the dispute pursuant to the Dispute Resolution procedures set forth in Section 20.3.

53.3 The Parties acknowledge that, under their prior interconnection agreement, they have or have had disputes pertaining to the applicability and effect of certain provisions in the Guide ("prior Guide disputes"). Section 53.2 is intended to prevent such disputes on a

Award Matrix  
Docket No. 35869

<p>11. (cont'd)</p>			<p>going-forward basis under this Agreement. Nevertheless, neither this Section 53 nor any of the concessions reflected therein shall be considered an admission by either Party with respect to any prior Guide dispute, and neither Party will attempt to use Section 53.2 for that purpose. To that end, each Party expressly reserves its rights with respect to any position taken in any prior Guide dispute, and nothing in this Agreement shall be deemed or construed to limit or prejudice any position a Party has taken or may take before the Commission, the FCC, or a court of applicable jurisdiction regarding any prior Guide dispute.</p>
<p>(Cont'd) Both Parties' Issue Statement: Should the CenturyTel Service Guide be incorporated for establishing bill dispute processes?</p>		<p>9.4.1</p>	<p>The Arbitrators agree with Charter's argument that the billing dispute process should be included in the Parties' Agreement and not contained in the Guide. However, the Arbitrators find that the written information required (i.e. service(s) for which the disputed charge was assessed, amount of the disputed charge(s), bill date, account number, etc) when submitting a billing dispute should be consistent for all CLECs. Therefore the Arbitrators find the billing dispute process shall be included in the Parties' Agreement and any references to the Guide in this section of the Agreement, shall only be for purposes of instructing CLECs as to what written information should be provided when submitting a billing dispute. To further clarify what information should be provided by a CLEC to CenturyTel when submitting a billing dispute, the Arbitrators recommend that CenturyTel develop a form to include in the Guide, that that CLECs submit for billing disputes.</p> <p>The Arbitrators adopt CenturyTel's contract language with the following modifications:</p> <p>9.4.1 Disputed Amounts Withheld From Payment.</p> <p>If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party may withhold payment of such Disputed Amounts only if it gives written notice to the billing Party of the amounts it disputes and includes in such notice the specific details and reasons for disputing each item. Such written notice shall be provided using the appropriate form located in the Service Guide located on the CenturyTel's Website <del>submitted in accordance with the guidelines for submitting billing disputes set forth in CenturyTel's CLEC Service Guide.</del> Disputed billing claims shall be submitted no later than the Bill Due Date. Failure by the billed Party to file any such claim on or prior to the Bill Due Date means that the total</p>

			<p>charges billed are due and payable to the billing Party on the due date. The billed Party shall pay all undisputed amounts no later than the Bill Due Date. The billed Party may not withhold payment of amounts past the due date pending a later filing of a dispute, but must pay all amounts due for which it has not provided a written notice of dispute on or prior to the Bill Due Date. If the billed Party disputes charges after the Bill Due Date and has not paid such charges, such charges shall be subject to late payment charges. If the billed Party disputes any charges and any portion of the dispute is resolved in favor of the billed Party, the Parties shall cooperate to ensure that the billing Party shall credit the invoice of the billed Party for that portion of the Disputed Amount resolved in favor of the billed Party, together with any late payment charges assessed with respect thereto no later than the second Bill Due Date after the resolution of the billing dispute. Nothing in this Section 9.4.1 shall constitute a waiver, or negation, of a Party's right to seek recovery of amounts already paid pursuant to Section 9.4.2 below.</p>
<p>11. (cont'd)</p>	<p>(Cont'd) Both Parties' Issue Statement: Should the CenturyTel Service Guide be incorporated for providing escalation lists?</p>	<p>16.</p>	<p>The Arbitrators find that it is in the best interest of the CLECs for CenturyTel to have an updated escalation list available. Moreover, the Arbitrators find that the most efficient way for CenturyTel to keep its escalation list updated and available to all CLECs would be to include the list in its Service Guide. Based upon the same rationale above for DPL No. 11, § 41, the Arbitrators find that reference to the Service Guide that provides an escalation list should be included in the Parties' ICA.</p> <p>Therefore, the Arbitrators adopt CenturyTel's proposed contract language:</p> <p>16. CONTACTS BETWEEN THE PARTIES</p> <p>Each Party shall update its own contact information and escalation list and shall provide such information to the other Party for purposes of inquiries regarding the implementation of this Agreement. Each Party shall accept all inquiries from the other Party and provide a timely response. CenturyTel will provide and maintain its contact and escalation list in its CenturyTel Service Guide ("Guide") as amended and updated from time to time. The Guide is provided to **CLEC on CenturyTel's Website, and any updates also will be provided on the Website in the event such information changes. Information contained in the Guide will include a single contact telephone number for CenturyTel's CLEC Service Center (via an 800#) that **CLEC may call for all ordering and status inquiries and other day-to-day inquiries between 8 a.m. and 5 p.m., Monday through Friday (except holidays). In addition, the Guide will provide **CLEC with contact information for the personnel and/or organizations within CenturyTel capable of assisting **CLEC with inquiries regarding the ordering, provisioning and billing of interconnection services. Included in this information will be the contact information for a person or persons to whom **CLEC can escalate issues dealing with the implementation of the Agreement</p>

Award Matrix  
Docket No. 35869

			and/or for assistance in resolving disputes arising under the Agreement.
11. (cont'd)	(Cont'd) Both Parties' Issue Statement: Should the CenturyTel Service Guide be incorporated for: reporting and resolving circuit troubles or repairs?	Art. VIII, 2.4	Based upon the same rationale above for DPL No. 11, § 41, the Arbitrators find that reference to the Service Guide that provides the process for reporting and resolving circuit troubles or repairs should be included in the Parties' ICA.  The Arbitrators adopt CenturyTel's proposed contract language:  Article VIII (Maintenance), § 2.4:  2.4 **CLEC agrees to follow the process and procedures for reporting and resolving circuit trouble or repairs as set forth in the CenturyTel Service Guide, or as otherwise agreed to by the Parties. Before contacting CenturyTel's Trouble Maintenance Center (CTMC), **CLEC must first conduct trouble isolation to ensure that the trouble does not originate from **CLEC's own equipment or network or the equipment of **CLEC's customer.
11. (cont'd)	(Cont'd) Both Parties' Issue Statement: Should the CenturyTel Service Guide be incorporated for: submitting LNP requests?	Art. IX § 1.2.2	Based upon the same rationale above for DPL No. 11, § 41, the Arbitrators find that reference to the Service Guide that provides the process for submitting LNP requests should be included in the Parties' ICA.  The Arbitrators adopt CenturyTel's proposed contract language:  Article IX (Additional Services), § 1.2.2:  1.2.2 A Party requesting a number to be ported must send the other providing Party a Local Service Request (LSR). If **CLEC requests that CenturyTel port a number, the Parties shall follow the "Local Number Portability Ordering Process" set forth in CenturyTel Service Guide, which will comply with applicable FCC rules, regulations and orders.
11. (cont'd)	(Cont'd) Both Parties' Issue Statement: Should the CenturyTel Service Guide be incorporated for: "service ordering, provisioning, billing and maintenance processes and procedures"?	Art. X § 6.3	Based upon the same rationale above for DPL No. 11, § 41, the Arbitrators find that reference to the Service Guide that provides the process for service ordering, provisioning, billing and maintenance processes and procedures should be included in the Parties' ICA.  The Arbitrators adopt CenturyTel's proposed contract language:

Award Matrix  
Docket No. 35869

	<p>Article X (OSS), § 6.3: 6.3 Except as specifically provided otherwise in this Agreement, service ordering, provisioning, billing and maintenance processes and procedures shall be governed by the CenturyTel Service Guide. The service order charges set forth pursuant to this Agreement, if any, shall apply to all orders placed via OSS or pre-OSS services, except as specifically provided otherwise in this Agreement.</p>		
12.	<p>20.3 The Arbitrators agree with Charter's arguments that disputes arising out of this Agreement should be resolved and litigated before the Commission, the FCC, or a court of competent jurisdiction. Furthermore, only when both Parties mutually agree should the dispute be submitted to binding commercial arbitration. The Parties' ICA should not contain language that permits one party to force binding arbitration on another.</p> <p>The Arbitrators adopt Charter's proposed contract language:</p> <p>20.2 Informal Resolution of Disputes. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The location, format, frequency, duration and conclusion of these discussions shall be left to the discretion of the representatives. Upon mutual agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and 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 any action between the Parties without the concurrence of all Parties. Documents identified in or 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, and be admitted in evidence, in the arbitration or lawsuit.</p> <p>20.3 Formal Dispute Resolution. If the negotiations referenced in Section 20.2 above fail to produce an agreeable resolution within thirty (30) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC or a court of competent jurisdiction. In addition, upon mutual agreement of the Parties such disputes may also be submitted to binding commercial arbitration before a mutually agreed upon arbitrator.</p>	<p>Charter Issue Statement: Should the Agreement allow one Party to force the other Party into commercial arbitration under certain circumstances?</p> <p>CenturyTel Issue Statement: If neither the FCC nor the Commission accepts jurisdiction over a dispute between the Parties arising out of the Agreement, should the Agreement permit a Party to submit such dispute to binding commercial arbitration before a mutually agreed upon arbitrator?</p>	Art III §9.4, and §20.4,
13.		Charter Issue Statement: Should the Parties agree to a reasonable limitation as to the	The Federal Communications Act provides generally that actions by and against carriers must be instituted within two years from the time the cause of action accrues. 47

<p>period of time by which claims arising under the Agreement can be brought?</p> <p>CenturyTel Issue Statement: There are two issues presented in this Issue 13:</p> <p>(a) If the Parties are unable to resolve a "billing dispute" through established billing dispute procedures, should the billed Party be required to file a petition for formal dispute resolution within one (1) year of providing written notice of such dispute, or otherwise waive the dispute?</p> <p>(b) To the extent a "Claim" arises under the Agreement, should a Party be precluded from bringing such "Claim" against the other Party more than twenty-four (24) months from the date of the occurrence giving rise to the "Claim"?</p>	<p>U.S.C. § 415 (2008). Consistent with this provision, the ICAs approved in Docket No. 28821 contained a general two-year statute of limitations for claims. See e.g. <i>Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement</i>, Docket No. 28821 INTERCONNECTION AGREEMENT-TEXAS between Southwestern Bell Telephone, L.P. d/b/a SBC TEXAS and CLEC, Section 11.1.1, p. 22 (August 25, 2005). The Arbitrators find that CenturyTel has presented no compelling basis to deviate from this general standard.</p> <p>The Arbitrators adopt Charter's proposed contract language:</p> <p>Art III § 9.4 Disputed Amounts. The following shall apply where a Party disputes, in good faith, any portion of an amount billed under this Agreement ("Disputed Amounts"). Both **CLEC and CenturyTel agree to expedite the investigation of any Disputed Amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested by the other Party, and work in good faith in an effort to resolve and settle the dispute through informal means prior to initiating formal dispute resolution."</p> <p>Art III §20.4 Except as otherwise specifically provided in this Agreement, no Claims will be brought for disputes arising from this Agreement more than twenty-four (24) months from the date of the occurrence which gives rise to the dispute. Notwithstanding the foregoing, Claims for indemnification will be governed by the applicable statutory limitation period."</p> <p>ART. II, § 2.26.1 CLAIMS The term Claims means any pending or threatened claim, action, proceeding or suit."</p>	<p>U.S.C. § 415 (2008). Consistent with this provision, the ICAs approved in Docket No. 28821 contained a general two-year statute of limitations for claims. See e.g. <i>Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement</i>, Docket No. 28821 INTERCONNECTION AGREEMENT-TEXAS between Southwestern Bell Telephone, L.P. d/b/a SBC TEXAS and CLEC, Section 11.1.1, p. 22 (August 25, 2005). The Arbitrators find that CenturyTel has presented no compelling basis to deviate from this general standard.</p>
<p>14.</p> <p>Charter Issue Statement: Should CenturyTel be allowed to assess charges upon Charter for as yet unidentified and undefined, potential "expenses" that CenturyTel may incur at some point in the future?</p> <p>CenturyTel Issue Statement: There are two issues presented in this Issue 14: (a) If Charter requests that CenturyTel provide a service</p>	<p>22, and Art. I, § 3</p> <p>The Arbitrators do not agree with Charter's argument that CenturyTel is attempting to assess charges upon Charter for unidentified "expenses" but rather finds that CenturyTel is seeking to recover "reasonable and necessary costs" or costs that are to be determined (TBD) for a service or facility that is offered under the Parties' Agreement, but for which no pricing has been established. In Docket No. 28821, the Commission determined for services or facilities for which the Parties have not negotiated and/or the State Commission has not reviewed or approved a specific rate should be shown in the Appendix Pricing section of the Parties' Agreement as Individual Case Basis (ICB). See <i>Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement</i>, Docket No. 28821, Arbitration Award at 34 (June 20, 2005). Moreover,</p>	<p>U.S.C. § 415 (2008). Consistent with this provision, the ICAs approved in Docket No. 28821 contained a general two-year statute of limitations for claims. See e.g. <i>Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement</i>, Docket No. 28821 INTERCONNECTION AGREEMENT-TEXAS between Southwestern Bell Telephone, L.P. d/b/a SBC TEXAS and CLEC, Section 11.1.1, p. 22 (August 25, 2005). The Arbitrators find that CenturyTel has presented no compelling basis to deviate from this general standard.</p>

Award Matrix  
Docket No. 35869

	<p>or perform an act not otherwise provided for under the Agreement, and Charter pre-approves the quoted costs of CenturyTel's performance, should the Agreement include a provision requiring Charter to pay such costs as pre-approved by Charter?</p> <p>(b) If a service or facility is offered under the Agreement but does not have a corresponding charge set forth in the Pricing Article, should such service or facility be subject to "TBD" pricing pursuant to Article III, Section 46?</p>	<p>the ICB pricing should reflect an engineering estimate of the actual costs of time and materials required to perform such modifications.</p> <p>The Arbitrators find that CenturyTel's proposed language conforms to the previous decision made by the Commission and should be adopted:</p> <p>22. EXPENSES</p> <p>22.1 In performing under this Agreement, if **CLEC makes a request not already provided for in this Agreement, CenturyTel may be required to make expenditures or otherwise incur costs that are not otherwise reimbursed under this Agreement. In such event, CenturyTel is entitled to reimbursement from **CLEC for all such reasonable and necessary costs to the extent pre-approved by **CLEC. For all such costs and expenses, CenturyTel shall receive through nonrecurring charges ("NRCs") the actual costs and expenses incurred, including labor costs and expenses, overhead and fixed charges, and may include a reasonable contribution to CenturyTel's common costs. If **CLEC makes a request that involves expenditures or costs not otherwise covered under this Agreement, CenturyTel will provide a quote to **CLEC in a timely manner and **CLEC must agree in writing to accept the quoted charges prior to CenturyTel's initiation of work.</p> <p>Article I, § 3:</p> <p>Notwithstanding any other provision of this Agreement, neither Party will assess a charge, fee, rate or any other assessment (collectively, for purposes of this provision, "charge") upon the other Party except where such charge is specifically authorized and identified in this Agreement, and is (i) specifically identified and set forth in the Pricing Article, or (ii) specifically identified in the Pricing Article as a "TBD" charge. Where this Agreement references a Tariff rate or provides that a specific service or facility shall be provided pursuant to a Tariff, the Tariff rates associated with such specifically referenced service or facility shall be deemed a charge that has been specifically authorized under this provision. If a service or facility otherwise offered under the Agreement does not have a corresponding charge specifically set forth in the Pricing Article, or is not specifically identified in the Pricing Article as being subject to "TBD" pricing, such service and/or facility is not available to **CLEC under this Agreement.</p>
15.	Indemnity, Warranties, and Limitation of liability Issues (Sub-Issues 15(a), 15(b), and 15(c))	
15(a)	Charter Issue Statement: Should Charter be required to indemnify CenturyTel even where CenturyTel's actions are deemed to be negligent.	Art. III §30.1  The Arbitrators view the provision of indemnity for a party's own misconduct to be an extraordinary assignment of risk and a disincentive for proper conduct. Accordingly ICAs approved by the Commission in prior Docket Nos. 28821, 35402 and 32453 exclude

grossly negligent, or constituting intentional or willful misconduct; or if CenturyTel otherwise contributes to the harm that is the subject of the cause of action?

CenturyTel Issue Statement:  
Issue 15(a) consists of two sub- parts):

Part (1):

Should indemnification obligations be triggered by agreed-upon threshold issues or instead become the basis for protracted disputes between the Parties?

Part (2):

Should the items of damage and cost for which the Indemnifying Party is responsible be identified where the claimant is that Party's customer?

indemnification for one's own improper conduct. *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Docket No. 28821 INTERCONNECTION AGREEMENT-TEXAS between Southwestern Bell Telephone, L.P. d/b/a SBC TEXAS and CLEC, Sections 7.3.1 & 7.3.1.1, p.16-17 (ICA between SBC TEXAS and CLEC Coalition) (August 25, 2005); *Petition of Comcast Phone of Texas, LLC for Arbitration of an Interconnection Agreement with United Telephone Company of Texas, Inc. D/B/A/ Embarq and Central Telephone Company of Texas, Inc D/B/A Embarq Pursuant to Section 252 of the Federal Communications Act of 1934, as Amended and Applicable State Laws*, Docket No. 35402, INTERCONNECTION AND COLLOCATION AGREEMENT FOR THE STATE OF TEXAS Comcast Phone of Texas, LLC, and United Telephone Company of Texas, Inc. d/b/a Embarq Central Telephone Company of Texas, Inc. d/b/a Embarq, Section 11.1, p.26 (October 21, 2008); *Petition of United Telephone Company of Texas, Inc. D/B/A Sprint for Arbitration with Cedar Valley Communications, Inc. pursuant to Section 252(B)(1) of the Federal Telecommunications Act of 1996*, Docket No. 32453, INTERCONNECTION, COLLOCATION AND RESALE AGREEMENT FOR THE STATE OF TEXAS Cedar Valley Communications, Inc. and United Telephone Company of Texas, d/b/a Embarq, Section 11.1, p. 27 (July 17, 2006).

The Arbitrators adopt Charter's proposed contract language:

Art. III §30.1 Indemnification Against Third-Party Claims.

Each Party (the "Indemnifying Party") agrees to indemnify, defend, and hold harmless the other Party (the "Indemnified Party") and the other Party's Subsidiaries, predecessors, successors, Affiliates, and assigns, and all current and former officers, directors, members, shareholders, agents, contractors and employees of all such persons and entities (collectively, with Indemnified Party, the "Indemnitee Group"), from any and all Claims, except to the extent that such Claims arise from the Indemnified Party's negligence, gross negligence, or intentional or willful misconduct. For purposes of this Section 30, "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)), (a) based on allegations that, if true, would establish (i) the Indemnifying Party's breach of this Agreement; (ii) the Indemnifying Party's 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 private or personal

matters; or (vi) the Indemnifying Party's wrongful use or unauthorized disclosure of data; or (b) that arises out of (i) any act or omission of the Indemnifying Party or its subcontractors or agents relating to the Indemnifying Party's performance or obligations under this Agreement; (ii) any act or omission of the Indemnifying Party's customer(s) or End User(s); (iii) 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; (iv) the Indemnifying Party's design, testing, manufacturing, marketing, promotion, advertisement, distribution, lease or sale of services and/or products to its customers, or such customers' use, possession, or operation of those services and/or products; or (v) personal injury to or any unemployment compensation claim by one or more of the Indemnifying Party's employees, notwithstanding any protections the Indemnifying Party might otherwise have under applicable workers' compensation or unemployment insurance law, which protections the Indemnifying Party waives, as to the Indemnified Party and other persons and entities to be indemnified under this Section 30.1 (other than applicable employee claimant(s)), for purposes of this Section 30.1. "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.

Notwithstanding anything to the contrary in this Section 30.1, a Party may not seek indemnification with respect to any Claim by that Party's customer(s) or End User(s), but rather shall be the Indemnifying Party with respect to all Claims by its customer(s) and End User(s).

The Indemnifying Party agrees to release, indemnify, defend, and hold harmless the Indemnitee Group and any third-party provider or operator of facilities involved in the provision of products, services or facilities under this Agreement from all Claims suffered, made, instituted, or asserted by the Indemnifying Party's End User Customer(s) arising from or relating to any products, services or facilities provided by or through the Indemnified Party or such third-party provider or operator, except to the extent that any such Claims were caused by the Indemnified Party's or other third-party provider's or operator's negligence, gross negligence, or intentional or willful misconduct. The Indemnifying Party further agrees to release, indemnify, defend, and hold harmless the Indemnitee Group from all Claims, suffered, made, instituted, or asserted by any third party against an Indemnified Party arising from or in any way related to actual or alleged 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

Award Matrix  
Docket No. 35869

15(b)	<p>the Indemnifying Party's End User Customer(s).</p>	<p>Parties agree to disclaim all warranties, whether express or implied (except those expressly provided in the agreement or required by law). They also specifically enumerate certain warranties by name that are disclaimed but indicate that their disclaimer of all warranties is not limited by that list. The Parties' controversy over which warrantees should be included in the enumeration is not determinative of which warrantees are excluded under the ICA. The Arbitrators therefore determine that the inclusion of the warranties proposed by CenturyTel accurately reflect the agreement of the Parties.</p>	<p>Art. III §30.2</p>	<p>The Arbitrators adopt CenturyTel's proposed contract language for Issue 15(b):</p> <p>Art III §30.2 "Disclaimer of Warranties.</p> <p>EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY STATUTE, EACH PARTY ON BEHALF OF ITSELF AND ITS AFFILIATES AND SUPPLIERS DISCLAIMS ALL WARRANTIES AND DUTIES, WHETHER EXPRESS OR IMPLIED, AS TO THE SERVICES, PRODUCTS AND ANY OTHER INFORMATION OR MATERIALS EXCHANGED BY THE PARTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, REASONABLE CARE, WORKMANLIKE EFFORT, RESULTS, LACK OF NEGLIGENCE, OR ACCURACY OR COMPLETENESS OF RESPONSES. EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY STATUTE, THERE IS NO WARRANTY OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION, AUTHORITY, OR NON-INFRINGEMENT WITH RESPECT TO THE SERVICES, PRODUCTS, AND ANY OTHER INFORMATION OR MATERIALS EXCHANGED BY THE PARTIES UNDER THIS AGREEMENT.</p>
15(c)	<p>Charter Issue Statement: Should the Parties disclaim implied warranties related to the provision of "information and services" that may arise under the Uniform Computer Information Transactions Act (UCITA)?</p> <p>CenturyTel Issue Statement: Should the disclaimer of warranties be limited to product-based language or extend to the information and services that are the subject of the Parties' Agreement?</p>	<p>Art. III</p> <p>§§30.3, and 30.4</p>	<p>In Docket No. 28821, the Commission approved ICAs that restrict damages to the amounts charged (or those that would be charged) for the pertinent products or services and prohibit consequential damages except for cases of willful or gross conduct. See e.g. <i>Arbitration of Non-Costing Issues for Successor Interconnection Agreement to the Texas 271 Agreement</i>, Docket No. 28821 INTERCONNECTION AGREEMENT-TEXAS between Southwestern Bell Telephone, L.P. d/b/a SBC TEXAS and CLEC.</p>	<p>Charter Issue Statement: Should the Agreement limit direct damages to an amount equal to "monthly charges" assessed between the Parties; and otherwise limit liability in an equitable manner?</p>

CenturyTel Issue Statement:

Should the Agreement limit damages in a manner that is consistent with telecommunications industry practice and Charter's own customer agreements and tariffs?

Sections 7.1.2 & 7.2 p.15-16 (ICA between SBC TEXAS and CLEC Coalition) (August 25, 2005) Accordingly, the Arbitrators adopt the language proposed by CenturyTel restricting direct damages to the monthly charges for the services or facilities for which the claim arose; but also adopts the language proposed by Charter excluding cases of gross negligence as well as intentional or willful misconduct from the limitations.

The Arbitrators adopt CenturyTel's proposed contract language modified as follows to incorporate certain Charter proposed language:

30.3 Limitation of Liability; Disclaimer of Consequential Damages; Exceptions.

30.3.1 Except as provided in Section 30.3.3, each Party's liability to the other, whether in contract, tort or otherwise, shall be limited to direct damages, which shall not exceed the monthly charges, plus any related costs/expenses the other Party may recover, including those under Section 22.1 above, and plus any costs/expenses for which the Parties specify reimbursement in this Agreement for the services or facilities for which the claim of liability arose. Except as provided in Section 30.3.3, each Party's liability to the other during any Contract Year resulting from any and all causes will not exceed the total of any amounts charged to \*\*CLEC by CenturyTel under this Agreement during the Contract Year in which such cause accrues or arises. For purposes of this Section 30.3.1, the first Contract Year commences on the first day this Agreement becomes effective, and each subsequent Contract Year commences on the day following the anniversary of that date.

30.3.2 EXCEPT AS PROVIDED IN SECTION 30.3.3, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT.

Should either Party provide advice, make recommendations, or supply other analysis related to the services or facilities described in this Agreement, this limitation of liability shall apply to the provision of such advice, recommendations, and analysis.

Award Matrix  
Docket No. 35869

30.3.3	Section 30.3.1 and Section 30.3.2 do not apply to the following:
30.3.3.1	Indemnification under Section 30.1;
30.3.3.2	Breach of any obligation of confidentiality referenced in this Agreement;
30.3.3.3	Violation of security procedures;
30.3.3.4	Any breach by **CLEC of any provision relating to **CLEC's access to or use of Operations Support Systems;
30.3.3.5	Failure to properly safeguard, or any misuse of, customer data;
30.3.3.6	Statutory damages;
30.3.3.7	Liability for <u>gross negligence</u> , and intentional or willful misconduct;
30.3.3.8	Liability arising under any applicable Tariff;
30.3.3.9	Liability arising under any indemnification provision contained in this Agreement or any separate agreement or the applicable provisions of the CenturyTel of Lake Dallas Inc. General Exchange Tariff on file with the Public Utility Commission of Texas related to provisioning of 911/E911 services;
30.3.3.10	Each Party's obligations under Section 27, Intellectual Property, of this Article III;
30.3.3.11	Section 30.4.2 and/or Section 30.4.3 of this Article III;
30.3.3.12	Section 45, Taxes, of this Article III, and/or
30.3.3.13	Liability arising under any indemnification provision contained in <u>this Agreement</u> , a separate agreement or the applicable provisions of the CenturyTel of Lake Dallas Inc. Wholesale Services Tariff on file with the Public Utility Commission of Texas related to provisioning of Directory Listing or Directory Assistance Services.
30.4	Liability of Each Party.

In addition to the general limitation of liability in this Section 30, the following shall also limit each Party's liability under this Agreement.

30.4.1 Inapplicability of Tariff Liability. CenturyTel's general liability, as described in its local exchange or other Tariffs, does not extend to \*\*CLEC, \*\*CLEC's End User Customer(s), suppliers, agents, employees, or any other third parties. Liability of CenturyTel to \*\*CLEC resulting from any and all causes arising out of services, facilities or any other items relating to this Agreement shall be governed by the liability provisions contained in this Agreement and no other liability whatsoever shall attach to CenturyTel. Without limiting the generality of any other provision herein, CenturyTel shall not be liable for any loss, claims, liability or damages asserted by \*\*CLEC, \*\*CLEC's End User Customer(s), suppliers, agents, employees, or any other third parties arising out of or relating to CLEC's combination or commingling of its components with those components provided by CenturyTel to CLEC. \*\*CLEC's general liability, as described in its local exchange or other Tariffs, does not extend to CenturyTel, CenturyTel's End User Customer(s), suppliers, agents, employees, or any other third parties. Liability of \*\*CLEC to CenturyTel resulting from any and all causes arising out of services, facilities or any other items relating to this Agreement shall be governed by the liability provisions contained in this Agreement and no other liability whatsoever shall attach to \*\*CLEC.

30.4.2 \*\*CLEC Tariffs or Contracts. Nothing in this Agreement shall be deemed to create a third-party beneficiary relationship between CenturyTel and any of \*\*CLEC's End User Customers, suppliers, agents, employees, or any other third parties, except to the extent any such party is included within the applicable Indemnitee Group, for the purpose of indemnification as provided herein only. Nothing in this Agreement shall be deemed to create a third-party beneficiary relationship between \*\*CLEC and any of CenturyTel's End User Customers, suppliers, agents, employees, or any other third parties, except to the extent any such party is included within the applicable Indemnitee Group, for the purpose of indemnification as provided herein only.

30.4.3 No Liability for Errors. If \*\*CLEC uses the signaling networks and call-related databases identified herein, then CenturyTel is not liable for mistakes in CenturyTel's signaling networks (including but not limited to signaling links and Signaling Transfer Points (STPs) and call-related databases (including but not limited to the Line Information Database (LIDB), Toll Free Calling database, Local Number Portability database, Advanced Intelligent Network databases, Calling Name database (CNAM), 911/E911 databases, and OS/DA databases). \*\*CLEC shall indemnify, defend and hold harmless CenturyTel and CenturyTel's Indemnitee Group from any and all claims, demands, causes of action and liabilities whatsoever, including costs, expenses and reasonable attorneys' fees incurred on account thereof, by or to \*\*CLEC's End User Customer(s), suppliers,

		<p>agents, employees, or any other third parties based on any reason whatsoever arising out of or relating to any use of such signaling networks and call-related databases by or through CLEC. For purposes of this Section 30.4.3, mistakes shall not include matters arising exclusively out of the willful misconduct of CenturyTel or its employees or agents.</p>
<p>16.</p> <p>Charter Issue Statement: Should both Parties be allowed to modify, and upgrade, their networks; and should the other Party be responsible for assuming the costs of such network upgrades or modifications?</p> <p>CenturyTel Issue Statement: Should the Agreement contain a provision providing that CenturyTel is solely responsible for the costs and activities associated with accommodating changes to its network that are required due to Charter's modifications to its network?</p>	<p>47</p>	<p>The Arbitrators agree with the argument presented by CenturyTel that it must continue maintenance, network modifications, and certain upgrades to meet certain industry standards while a CLEC does not. Further, CenturyTel also has the obligation consistent with 47 U.S.C. § 251(c)(2) to provide interconnection that is at least equal in quality to that provided to itself or to any subsidiary, affiliate, or any other party and in a just, reasonable, and nondiscriminatory manner. To require CenturyTel to upgrade its network to accommodate any and all network upgrades made by CLECs that interconnect with CenturyTel is unreasonable. As stated above, the CLECs do not have the same network requirements as an ILEC nor are they required to meet certain industry requirements.</p> <p>CenturyTel has the duty under Section 251(a)(2) of the Act to avoid improper modifications to its network. Should Charter determine that the network modifications that CenturyTel has made to its network are improper, Charter has the option of dispute resolution by the Commission.</p> <p>The Arbitrators find that CenturyTel does not have the responsibility to upgrade its network to accommodate any network modifications that Charter may make to its network.</p> <p>The Arbitrators adopt CenturyTel's proposed contract language:</p>
	<p>47. TECHNOLOGY UPGRADES</p>	<p>Notwithstanding any other provision of this Agreement, CenturyTel shall have the right to deploy, upgrade, migrate and maintain its network at its discretion. Nothing in this Agreement shall limit CenturyTel's ability to modify its network through the incorporation of new equipment or software or otherwise. **CLEC shall be solely responsible for the cost and activities associated with accommodating such changes in its own network. Notwithstanding the foregoing, both Parties have the duty not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256 of the Act.</p>

Award Matrix  
Docket No. 35869

17.	<p>Charter Issue Statement: Should Charter be contractually bound by terms concerning liability for carrier change requests that exceed its obligations under existing law?</p> <p>CenturyTel Issue Statement: Should the Agreement contain terms setting forth the process to be followed if Charter submits an "unauthorized" request to CenturyTel to port an End User's telephone number, and should Charter be required to compensate CenturyTel for switching the unauthorized port back to the authorized carrier?</p>	Art. III §50	<p>The Arbitrators determine that the cost recovery and penalties for unauthorized subscriber change of carrier requests provided under 47 C.F.R. § 64.1140 et. seq. are adequate to protect the Parties from damages they would experience as a result of porting because of slamming. The ICAs approved in Docket No. 28821 specifically reference these federal regulations to fix liability for unauthorized changes; these ICAs do not provide for any additional remedies. <i>Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement</i>, Docket No. 28821 INTERCONNECTION AGREEMENT-TEXAS between Southwestern Bell Telephone, L.P. d/b/a SBC TEXAS and CLEC, Sections 20.1, p.32 (ICA between SBC TEXAS and CLEC Coalition) (August 25, 2005) The Arbitrators are not persuaded that there is a special need in this case for the additional remedy sought by CenturyTel.</p> <p>The Arbitrators adopt Charter's proposed contract language:</p> <p>50. Unauthorized Changes</p> <p>50.1 The Parties agree that each Party is required to comply with End User subscriber carrier change requests, as set forth in 47 C.F.R. § 64.1100, et. seq. ("Changes in Preferred Telecommunications Service Providers"), and any applicable rules or regulations promulgated by the Commission. As such, each Party will comply with such rules and regulations to ensure that End User subscribers are not changed without required authorizations.</p> <p>50.2 Any compensation that may be due either Party for the other Party's actions associated with unauthorized subscriber changes will be established by FCC regulations governing subscriber change procedures at 47 C.F.R. § 64.1100, et. Seq.</p>
18.	<p>Charter Issue Statement: Should Charter have access to the customer side of the Network Interface Device ("NID") without having to compensate CenturyTel for such access?</p> <p>CenturyTel Issue Statement: CenturyTel believes that there are two issues presented in Issue 18:</p>	3.3, 3.4, 3.5, and 3.5.1	<p>In the Local Competition Order, the FCC deemed a NID to be an unbundled element. ¶392 states "[w]e require the incumbent LECs to offer unbundled access to the network interface device (NID), as a network element, as described below" and "... we conclude that a requesting carrier is entitled to connect its loops, via its own NID, to the incumbent LECs NID". ¶393 and ¶394 go on to state that the new entrant bears the costs of connecting its NID to the incumbent LEC's NID and that the FCC does not require an incumbent LEC to permit a new entrant to connect its loops directly to the incumbent LECs NID. In ¶396, the FCC acknowledges the fact that competitors may benefit by directly connecting their loops to the incumbent LEC's NID, by avoiding the cost of deploying NIDs.</p>

(a) Should Article IX, Section 3.4 clarify that the End User controls Inside Wire except in those multi-tenant properties where CenturyTel owns and maintains such Inside Wire?

(b) Is Charter required to submit an order to and pay CenturyTel for accessing CenturyTel's NID when Charter connects its loop to the End User's Inside Wiring through the customer access side of the CenturyTel NID?

The FCC reiterated the issue of the NID in the UNE Remand Order when addressing network elements that are to be unbundled; it states that ILECs must offer unbundled access to the NID. As an unbundled network element (UNE), the cost established for the NID would be at TELRIC pricing.

The Arbitrators find that the NID is an unbundled element that should be offered by ILECs at TELRIC pricing. However, pursuant to the FTA § 251(f), rural telephone companies are given an exemption from providing interconnection, services, or network elements unless the Commission has terminated such exemption. CenturyTel is a rural carrier with such a rural exemption. This exemption has not been terminated by the Commission. Therefore, until and unless the Commission receives a request from a party to terminate CenturyTel's rural exemption, then CenturyTel is not required to provide access to UNEs at TELRIC pricing. Therefore, if Charter seeks access to any portion of the NID for any reason, it will have to pay CenturyTel the price that CenturyTel has proposed in the Parties' Agreement.

Furthermore, the Arbitrators have determined that Charter will have to submit an order to CenturyTel when it connects its loop to the End User's Inside Wiring through the customer access side of the CenturyTel NID. This process follows the requirements for a CLEC to obtain a UNE from an ILEC.

The Arbitrators adopt CenturyTel's proposed contract language:

3.3 Subject to the provisions of this Section 3.0 and its subsections, CenturyTel shall provide access to the NID under the following terms and conditions. Rates and charges applicable to NIDs are set forth in Article XI (Pricing), and such rates and charges shall apply to any Charter use of the CenturyTel NID. Charter's use of the NID is defined as any circumstance where a Charter provided wire is connected to End User Customer's Inside Wiring in any manner and such connection is housed within housed within any portion of the NID.

3.4 Except in those multi-unit tenant properties where CenturyTel owns and maintains control over inside wire within a building, maintenance and control of the End User Customer's Inside Wiring is under the control of the End User Customer. Conflicts between telephone service providers for access to the End User's Inside Wire must be resolved by the End User.

3.5 Charter may access the NID on CenturyTel's network side or the End User Customer's access side on a stand-alone basis to permit Charter to connect its own loop facilities to the premises wiring at any customer location. Charter may not access the NID

Award Matrix  
Docket No. 35869

			<p>except in accordance with these terms. Any repairs, upgrade and/or rearrangements to the NID requested or required by Charter will be performed by CenturyTel based on the Time and Material Charges set out in Article XI (Pricing). CenturyTel, at the request of Charter, will disconnect the CenturyTel Local Loop from the NID, at charges reflected in Article XI (Pricing). Charter may elect to disconnect CenturyTel's Local Loop from the NID on the End User Customer's access side of the NID, but Charter shall not perform any disconnect on the network side of the NID. Under no circumstances, however, shall Charter connect to use either side of the NID unless the CenturyTel network is first disconnected from the NID as set forth in this Article.</p> <p>3.5.1 Notwithstanding any other provision of this Agreement, when Charter is connecting a Charter provided loop to the End User Customer's Inside Wiring at the Charter provided interface device (i.e. terminal equipment) without also connecting within the End User Customer access side of the CenturyTel NID, Charter does not need to submit a request to CenturyTel and CenturyTel shall not charge Charter for access to the CenturyTel NID, unless any portion of such connection, including but not limited to the End User Customer's Inside Wire or the Charter provided loop, is housed within any portion of the NID. If any portion of such connection is housed within any portion of the NID, NID use charges shall apply. Removing the End User Customer's Inside Wire from the protector lugs and leaving the capped off customer wire within the NID is the only situation not considered use of the NID.</p>
19.	<b>RESOLVED</b>		<b>RESOLVED</b>
20.	<b>RESOLVED</b>		<b>RESOLVED</b>
21.	<p>Charter Issue Statement: Should CenturyTel be allowed to assess a charge for administrative costs for porting telephone numbers from its network to Charter's network?</p> <p>CenturyTel Issue Statement: When Charter submits an LSR requesting a number port, should Charter be contractually required to pay the service order charge(s) applicable to such LSR?</p>	1.2.3	<p>The Arbitrators find that in Docket No. 31577, the Commission determined that each party is entitled to impose a "just and reasonable" charge to the other party for porting a customer to that party so long as that charge is based on the actual, forward-looking cost of performing the function and is nondiscriminatory. The Arbitrators in that docket went on to say that the "cost-causer" should bear the costs of LSRs. (See <i>Petition of Sprint Communications, L.P. for Compulsory Arbitration Under the FTA to Establish Terms and Conditions for Interconnection Terms with Consolidated Communications of Fort Bend Company and Consolidated Communications Company of Texas</i>, Arbitration Award at 50, Dec. 19, 2006).</p> <p>The Arbitrators also note that the FCC has not prohibited service order charges from being assessed on LSR's submitted for porting requests. In the LNP Clarification Order, the FCC determined that the transaction charges being charged by BellSouth to various carriers were standard fees assessed for various services provided to carriers, which are unrelated to the provision of number portability and therefore are not</p>

Award Matrix  
Docket No. 35869

			<p>recoverable through an end-user (or other portability) charge. The FCC agreed with BellSouth that those fees for non-LNP related services do not satisfy the Commission's cost recovery standard for portability-related charges. (See <i>In the Matter of Tel. Number Portability, BellSouth Corp. Petition for Declaratory ruling and/or Waiver, Order</i>, CC Docket No. 95-116, FCC 04-91, 19 FCC Rcd 6800 (Rel. Apr 13, 2004) ("LNP Clarification Order").</p> <p>The Arbitrators adopt CenturyTel's proposed contract language:</p> <p>1.2.3 The Party receiving the LSR will bill the service order charges set forth in the Pricing Article XI for each LSR received. The Party receiving the LSR will bill an Initial Service Order Charge for each initial LSR submitted. A Subsequent Service Order Charge applies to any modification to an existing LSR.</p>
<p>22.</p>	<p>Both Parties' Issue Statement: Does CenturyTel have the right to monitor and audit Charter's access to its OSS?</p>	<p>8.3.1, 8.3.2, 8.3.3</p>	<p>As previously determined by the Commission in Texas 271 proceedings and incorporated into CLECs Agreements with other ILECs, the ILEC does have the right to monitor and audit a CLEC's access to its OSS.</p> <p>The Arbitrators find that CenturyTel's proposed contract language better reflects the Commission's policy. Therefore, the Arbitrators adopt CenturyTel's proposed contract language:</p> <p>8.3 Unless sooner terminated or suspended in accordance with the Agreement or this Article (including, but not limited to, Article III, Sections 2.0 and 9.0 of the Agreement and Section 11.1 below), **CLEC's access to CenturyTel OSS Information through CenturyTel OSS Services shall terminate upon the expiration or termination of the Agreement.</p> <p>8.3.1 CenturyTel shall have the right (but not the obligation) to audit **CLEC to ascertain whether **CLEC is complying with the requirements of Applicable Law and this Agreement with regard to **CLEC's access to, and use and disclosure of, CenturyTel OSS Information.</p> <p>8.3.2 Without in any way limiting any other rights CenturyTel may have under the Agreement or Applicable Law, CenturyTel shall have the right (but not the obligation) to monitor **CLEC's access to and use of CenturyTel OSS Information which is made available by CenturyTel to **CLEC pursuant to this Agreement, to ascertain whether **CLEC is complying with the requirements of Applicable Law and this Agreement, with regard to **CLEC's access to, and use and disclosure of, such CenturyTel OSS Information. The foregoing right shall include, but not be limited to, the right (but not</p>

Award Matrix  
Docket No. 35869

	<p>the obligation) to electronically monitor <b>**CLEC's</b> access to and use of CenturyTel OSS Information which is made available by CenturyTel to <b>**CLEC</b> through CenturyTel OSS Facilities.</p>		
<p>8.3.3</p>	<p>Information obtained by CenturyTel pursuant to this Section 8.0 shall be treated by CenturyTel as Confidential Information of <b>**CLEC</b> pursuant to Section 14.0, Article III of the Agreement; provided that, CenturyTel shall have the right (but not the obligation) to use and disclose information obtained by CenturyTel pursuant to this Article to enforce CenturyTel's rights under the Agreement or Applicable Law.</p>		
<p>23.</p>	<p>Charter Issue Statement: Should the Agreement preserve CenturyTel's rights to recover from Charter certain unspecified costs of providing access to "new, upgraded, or enhanced" OSS?</p> <p>CenturyTel Issue Statement: Should the Agreement preserve CenturyTel's rights to recover from Charter certain costs of providing access to "new, upgraded, or enhanced" OSS?</p>	<p>15.2</p> <p>As previously noted in DPL Issue No. 22, the Commission found that an ILEC should be able to recover costs associated with upgrading or augmenting its OSS system. The Arbitrators find that the contract language proffered by CenturyTel would enlist a process for it to recover the costs to upgrade or augment its OSS systems and would also provide an opportunity for Charter to provide input as to whether the costs are reasonable.</p> <p>The Arbitrators note that it has the expectation that the Parties will work together to determine what rates and terms would be reasonable for any upgrades or augmentation to its OSS systems, prior to CenturyTel submitting such request for approval to the Commission.</p> <p>The Arbitrators adopt CenturyTel's proposed contract language:</p> <p>15.2 CenturyTel is entitled to recover its unrecovered costs of providing access to new, upgraded or enhanced CenturyTel Operations Support Systems via the CenturyTel OSS Services, CenturyTel Pre-OSS Services, or CenturyTel OSS Facilities, or other means pursuant to rates or other charges ("OSS charges") determined by or otherwise approved by the Commission upon CenturyTel's submission in accordance with Applicable Law. Should CenturyTel incur the costs of providing access to new, upgraded or enhanced CenturyTel Operations Support Systems during the Term of this Agreement, <b>**CLEC</b> will be responsible for paying such OSS charges under this Agreement only if and to the extent determined by the Commission.</p>	
<p>24.</p>			<p><b>RESOLVED</b></p>
<p>25.</p>	<p>Both Parties' Issue Statement: What obligations does CenturyTel have with respect to the inclusion of Charter's company information in CenturyTel directories?</p>	<p>2.1.10</p>	<p><b>RESOLVED</b></p>

26.	<p>Both Parties' Issue Statement: What procedures should be used for the distribution of secondary directories?</p>	2.1.3.2	<b>RESOLVED</b>
27.	<p>Both Parties' Issue Statement: How should each Party's liability be limited with respect to information included, or not included, in Directories?</p>	7.1-7.3	<p>The Arbitrators addressed liability limitation issues in DPL Issue No. 15(c) by approving provisions that restrict damages to the amounts charged (or those that would be charged) for the pertinent products or services and prohibited consequential damages except for cases of willful or gross misconduct. This ruling was consistent with the ICAs approved in Docket 28821. The Arbitrators are not persuaded that deviating from this approach in the context of liability for directory listing is warranted. Accordingly the Arbitrators adopt the language proposed by CenturyTel restricting damages to the amounts paid by CenturyTel to the CLEC under the directory services article of the ICA; but also adopts the language proposed by Charter excluding cases of gross negligence as well as intention or willful misconduct from the limitations.</p> <p>In addition, the Arbitrators addressed indemnity provisions in DPL Issue No. 15(a) adopting general indemnity provisions that apply to both parties and preclude indemnity for a party's own misconduct. The Arbitrators determine that deviating from this approach in the context of directory listings is unwarranted.</p> <p>The Arbitrators adopt CenturyTel's proposed contract language modified as follows to incorporate certain Charter proposed language:</p> <p>7.1 CenturyTel's liability to **CLEC or any **CLEC End User Customer for any errors or omissions in Directories published by CenturyTel and/or Publisher (including, but not limited to, any error in any End User Customer or **CLEC listing), or for any default or breach of this Article, or for any other claim otherwise arising hereunder, shall be limited to amounts paid by **CLEC to CenturyTel under this Article. <del>Except with respect to</del> except to the extent that such errors or omissions, default, breach, or claims arise from CenturyTel's or its Publisher's gross negligence, or intentional or willful misconduct.</p> <p><del>caused by the gross negligence or intentional misconduct of CenturyTel, CenturyTel shall have no liability to **CLEC's or its End User Customers for any errors or omissions in any End User Customer or **CLEC listing published by CenturyTel, or for the publication of any End User Customer data where such End User Customer does not desire a published listing. **CLEC shall fully indemnify CenturyTel in accordance with the provisions of Section 7.2 below as to any errors or omissions in a **CLEC End User</del></p>

			<p><del>Customer listing for which CenturyTel is not liable under this section. **CLEC expressly represents that it is authorized to enter into this provision on behalf of itself and its End User Customers.</del></p> <p>7.2 <del>**CLEC</del> Each Party (the "Indemnifying Party") agrees to indemnify, defend, and hold harmless CenturyTel, 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, shareholders, agents, contractors and employees of all such person and entities <del>its directors, officers, employees, agents and their affiliates</del> (collectively, with Indemnified Party, the "Indemnitee Group"), the <del>"Indemnified Parties"</del> from any and all losses, claims, damages, <del>expenses</del>, suits, or other actions, or any liability whatsoever including, but not limited to, damages, liabilities, costs and attorneys' fees, made or asserted by any third party (including, but not limited to End User Customers) against the Indemnified Parties and arising <del>out of any error or omission for which CenturyTel is not liable pursuant to Section 7.1 above.</del> Under this Article, except to the extent that such Claims arise from the Indemnified Party's negligence, gross negligence, or intentional or willful misconduct.</p> <p>7.3 To the maximum extent permitted by the applicable law, in no event shall CenturyTel or <del>**CLEC</del> be liable for any special, incidental, indirect, or consequential damages whatsoever including, without limitation, damages for loss of profits or any other pecuniary loss arising out of or in connection with this Article, even if such Party has been advised of the possibility of such damages, except where such damages occur as the result of a breach of confidentiality, or relate to <del>a CenturyTel indemnity claim</del> an indemnity claim made against either Party that is covered by Section 7.2 above.</p>
<p>28.</p>	<p>Both Parties' Issue Statement: How should the Agreement define each Party's directory assistance obligations under Section 251(b)(3)?</p>	<p>8</p>	<p>The Arbitrators find that 47 C.F.R. 51.217 requires that "[a] LEC shall permit competing providers to have access to its directory assistance, including directory assistance services ... on a non-discriminatory basis..." 47 C.F.R. 51.217(a)(2) and 47 C.F.R. 51.217(a)(2)(i) state that nondiscriminatory access includes nondiscrimination between and among carriers in the rates, terms, and conditions of the access provided. The contract language proposed by Charter would require that CenturyTel accept, include, and maintain all its customer listings in CenturyTel's database at no charge to Charter. Charter's language fails to account for the rates, terms, and conditions that apply to CenturyTel itself by the third-party administrator of the directory assistance database.</p> <p>The Arbitrators find that CenturyTel's language complies with the requirements of 47 C.F.R. 51.217(a)(2). If at any time Charter would decide that it would like CenturyTel to assume direct responsibility for the administration and maintenance of Charter's directory listing requirements, then Charter may request a proposal for rates, terms, and conditions for such service from CenturyTel.</p>

			<p>The Arbitrators adopt CenturyTel's proposed contract language:</p> <p>8.0 DIRECTORY ASSISTANCE OBLIGATIONS</p> <p>Neither Party is a Directory Assistance (DA)-provider, but rather obtains DA services from a third-party vendor(s) that uses or maintains a national DA database(s) ("national database"). Nevertheless, as each Party has the obligation to ensure that its End User Customers' DA listings are made available to the other Party's End User Customers, the Parties agree as follows:</p> <p>8.1 Each Party will promptly, upon request by the other Party, provide the requesting Party with the name of its third-party DA-provider;</p> <p>8.2 Each Party will be responsible for contracting with or otherwise making its own arrangements for services with any such third-party DA-provider, including but not limited to arrangements to provide its own End User Customers' DA listings to such third-party DA-provider for inclusion in a national database accessible to the other Party.</p> <p>8.3 Neither Party shall be required to directly provide its End User Customers' DA listings to the other Party, nor shall either Party be required to accept directly from the other Party such other Party's End User Customers' DA listings, for the purpose of submitting the Parties' commingled, End User Customers' DA listings to any third-party DA-provider that maintains and/or uses a national database accessible to the other Party.</p>
<p>29.</p>	<p>Both Parties' Issue Statement: Should the Pricing Article include Service Order rates and terms?  (This issue is related to issue 21, above.)</p>	<p>Art. II, § 2.70</p>	<p>The issue in this DPL is whether the ILEC may charge a service order charge to recoup its administrative costs for processing an LSR. The Arbitrators find that, consistent with Commission policy in previous dockets (e.g. Docket No. 31577), it is appropriate for an ILEC to recover its administrative costs in the form of a service charge for LSRs and ASRs submitted by the CLECs.</p> <p>2.70 Initial Service Order</p> <p>The Arbitrators adopt CenturyTel's proposed contract language:</p> <p>An order submitted by **CLEC to CenturyTel initially ordering a port or other service required by this Agreement.</p>

			<p>The Arbitrators find that the following language shall be placed in Article XI, Pricing.</p> <p>Article XI (Pricing), § III(B):</p> <p>Initial Service Order Simple                   \$ 14.02 Complex               \$ 65.77</p> <p>Subsequent Service Order \$ 7.53</p> <p>Manual Ordering Charge \$ 12.17</p> <p>“Initial Service Order” (ISO) applies to every Local Service Request (LSR).</p> <p>A “Simple” ISO charge applies to every LSR submitted that contains 1 – 9 numbers.</p> <p>A “Complex” ISO charge applies to every LSR submitted that contains in excess of 10 or more numbers.</p> <p>“Subsequent Service Order” applies to any modification to an existing LSR.</p> <p>“Manual Ordering Charge” applies in addition to the ISO charge for every LSR that is submitted manually where an electronic interface for such LSR is available.</p>
30.	Both Parties' Issue Statement: Should Charter be required to forecast projected service order activity?	Art. III, § 11.0	<p>The Arbitrators agree with Charter that CenturyTel's proposed contract language requiring projected forecast of service order activity would be tantamount to providing CenturyTel competitively sensitive information about the number of subscribers that Charter expects to “win” from CenturyTel. Therefore, the Arbitrators decline to adopt CenturyTel's proposed language.</p> <p>The Arbitrators adopt Charter's proposed contract language:</p> <p>11. CAPACITY PLANNING AND FORECASTS</p> <p>Within twenty (20) Business Days from the Effective Date of this Agreement, or as soon</p>

Award Matrix  
Docket No. 35869

		<p>after the Effective Date as practicable, to the extent the Parties have not been interconnected pursuant to a prior interconnection agreement, the Parties agree to meet and develop joint planning and forecasting responsibilities which are applicable to interconnection arrangements. Such responsibilities for new interconnection arrangements, and for interconnection trunks or facilities ordered pursuant to a prior interconnection agreement, shall include but are not limited to the following:</p>	
<p>31.</p>	<p>Both Parties' Issue Statement: How should specific Tariffs be incorporated into the Agreement?  (This issue is related to Issue 3.)</p>	<p><b>Art. II,</b> Sections 2.79, 2.86, 2.89, 2.97, and 2.113</p> <p><b>Art. III,</b> Sections 30.3.3.9 and 30.3.3.13</p> <p><b>Art. V,</b> Sections 4.2.1.1, 4.2.1.3, and 4.2.2.3</p> <p><b>Art. XI, Sec.</b> I(C)</p> <p><b>Art. XII, Sec.</b> 2.1.2.2</p>	<p>See DPL Issue No. 3</p>