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CenturyTel believes the existing provisions of Article III, sections 4, and 12, do not adequately protect CenturyTel as Charter could “simply say no to any proposed amendment,” and an enhancement may not be related to a change of law. CenturyTel believes this proposed provision is necessary to preserve its right to recover such costs.

Proposed Contract Language

CenturyTel proposes to add section 15.2 of Art. X, Access to Operations Support Systems (OSS). Charter intentionally omits this section.

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. **CLEC will be responsible for paying such OSS charges under this Agreement only if and to the extent determined by the Commission.

Discussion

The Panel views this issue as a question whether or not CenturyTel does have a right to recover costs associated future upgrades or enhancements to CenturyTel’s OSS in a separate charge. The Panel considers pertinent statutes, rules, and orders and in particular the following information. The FCC has defined OSS as an unbundled network element as follows:

§ 51.319 Specific unbundling requirements.

(g) *Operations support systems.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to operations support systems on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part. Operations support system functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC’s databases and information. An incumbent LEC, as part of its duty to provide access to the pre-ordering function,

shall provide the requesting telecommunications carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent LEC.

FCC rules in pertinent parts related to the pricing of UNEs are as follows:

Subpart F—Pricing of Elements

§ 51.501 Scope.

(a) The rules in this subpart apply to the pricing of network elements, interconnection, and methods of obtaining access to unbundled elements, including physical collocation and virtual collocation.

(b) As used in this subpart, the term “element” includes network elements, interconnection, and methods of obtaining interconnection and access to unbundled elements. ...

§ 51.503 General pricing standard.

(a) An incumbent LEC shall offer elements to requesting telecommunications carriers at rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

(b) An incumbent LEC’s rates for each element it offers shall comply with the rate structure rules set forth in §§ 51.507 and 51.509, and shall be established, at the election of the state commission—

§ 51.505 Forward-looking economic cost.

(a) In general. The forward-looking economic cost of an element equals the sum of:

- (1) The total element long-run incremental cost of the element, as described in paragraph (b); and
- (2) A reasonable allocation of forward- looking common costs, as described in paragraph (c).

§ 51.507 General rate structure standard.

(a) Element rates shall be structured consistently with the manner in which the costs of providing the elements are incurred.....

(e) Nonrecurring charges shall be allocated efficiently among requesting telecommunications carriers, and shall not permit an incumbent LEC to recover more than the total forward-looking economic cost of providing the applicable element.

The Panel also turns to the following prior Commission determination related to non-recurring charges associated with OSS functions in the Final Decision, *Investigation Into*

Ameritech Wisconsin's Unbundled Network Elements, No. 6720-TI-161 (Wis. PSC. March 22, 2002):

Nonrecurring costs are one-time costs for activities required to initiate or provide telecommunications services and UNEs. Such activities are accomplished through Ameritech's Operation Support Systems (OSS).

...

...Ameritech argued that NRCs [Non-recurring Charges] must be based on the systems that Ameritech has actually put in place with the degree of mechanization they plan to make in the near future. Ameritech further argued that forward-looking costs should be based on its systems or it will be denied recovery of costs it will actually incur. It argued that anything else is fantasizing about some imaginary, most efficient provider.

However, the Commission recognizes that CLECs do not have a choice to look to another provider to order loops, which were constructed and placed into service under decades of monopoly regulation. Ameritech lacks sufficient market incentive to control costs in the provision of UNEs to CLECs. If Ameritech designs and constructs inefficient or suboptimal systems and is allowed to pass on these costs to CLECs, it increases CLECs' cost of doing business. In addition, if Ameritech's own retail ordering and provisioning systems are designed to cost less to operate, it would give Ameritech an automatic price advantage over its competitors. However, the Commission balances this concern with the equal concern that if CLECs do not pay reasonable costs for NRCs, it will give CLECs an advantage over Ameritech and other facilities-based providers that perform their own activities associated with NRC.

Id., at 166-167.

...

One Time Computer Expense. Ameritech argued that additional costs should be added to NRCs to amortize past one time computer set up costs. The CLECs argued that these costs were already included in the mark-up for joint and common costs. The Commission accepts the CLECs' position that these costs are already included in the mark-up for joint and common costs.

Computer costs are included in the accounts that developed the joint and common costs. Developing mechanized systems for OSS is an ongoing process which is already recorded in these accounts. Ameritech has been and will continue to develop mechanized OSS systems. The Commission concludes it is reasonable to assume one-time computer expenses are included in the mark-up for joint and common costs.

Id., at 183.

Based on this information, the Panel determines that CenturyTel does not have an unqualified right to demand payment from Charter for recovery of costs for any upgrades or enhancements to its OSS. While the facts and circumstances associated with any particular upgrade should be taken into consideration, the initial assumption would seem to be that such costs are recovered in the joint and common mark-up that is applied in developing other UNE, interconnection, or non-recurring charges. Further supporting detail regarding all of CenturyTel's charges would be needed to determine whether cost recovery is handled in a different manner for CenturyTel than the Ameritech experience described above. Any new rates or reconsideration of rates established in this agreement would need to take into consideration factors Charter enumerated such as an examination of existing rate elements, potential additions or changes to rate elements, the determination of pricing standards, and appropriate costs consistent with applicable laws and regulations.

To the extent that CenturyTel argues that Charter could simply say no to any proposed amendment, CenturyTel may resort to dispute resolution process, which ultimately may bring a dispute to the Commission for determination. While CenturyTel expresses concern that Charter may argue that the lack of CenturyTel's sought after provision in the interconnection agreement may prohibit CenturyTel from assessing such a charge to Charter, this can be a legitimate argument based on the particular facts and circumstances involved. Charter should not be prohibited from making this argument.

Issue 30 Award

The Panel awards Charter's proposal to omit section 15.2 of Article X, Access to Operations Support Systems.

Issue 31: Resolved.

Issue 32: How should each Party's liability be limited with respect to information included, or not included, in Directories?

This issue involves indemnity between carriers and limitations on damages related to directory services.

Positions of the Parties

(a) Charter

Similar to Issue 15, Charter proposes the use of a comparative negligence approach to liabilities related to directory errors or omissions. Charter believes that neither party's indemnity obligation should be limited to the extent that the indemnified party has engaged in acts that are deemed negligent, or reckless, wanton or willful misconduct. The indemnified party may not demand indemnification to the extent that it was at fault. Charter believes damages should be measured by actual direct damages and does not believe damages should be limited to the amount paid by Charter to CenturyTel. Particular concern is raised regarding an error where a non-published number might be published.

(b) CenturyTel

CenturyTel believes Charter's approach is unreasonable as CenturyTel believes it would be subject to potentially unlimited liability for an error or omission relating to subscriber listings on the part of it or its publisher's ordinary negligence. CenturyTel believes liability for such an error should be limited to the amount paid by Charter to CenturyTel. CenturyTel characterizes its proposal as stipulated damages and believes the approach would provide reasonable limits on liability for directory listing errors or omissions to ensure customers are charged reasonable rates. CenturyTel believes Charter is responsible should a Charter customer request non-

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published status and the listing becomes included in the publication as Charter is contractually prohibited from providing to CenturyTel or a third party publisher the listings of any of its customers who do not wish to have published listings. CenturyTel ties Charter's insertion of the phrase "this agreement" in Article III, § 30.3.3.13 to the Panel's decision on this issue.

Charter and CenturyTel propose the following language for Article XII, Directory Services, sections 7.1, 7.2 and 7.3 and Article XI, Pricing, section V.

7.0 LIMITATION OF LIABILITY; INDEMNITY

- 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. CenturyTel shall have no liability to **CLEC's or it's 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 Customer listing. **CLEC expressly represents that it is authorized to enter into this provision on behalf of itself and its End User Customers.

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 actual damages , except to the extent that such errors or omissions, default, breach, or Claims arise from the CenturyTel's, or its Publisher's, negligence, reckless, wanton or willful misconduct. However, notwithstanding any other provision of this Agreement, CenturyTel's liability shall not be limited in any instance in which **CLEC accurately and timely conveys to CenturyTel or its Publisher that its End User Customers desire not to be published in a directory and CenturyTel, or its Publisher, causes the publication of such End User Customer data or listings. **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 Customer listing for which CenturyTel is not liable under this Section. CenturyTel shall fully indemnify **CLEC in accordance with the provisions of Section 7.2 below as to any errors or omissions in a **CLEC End User Customer listing for which CenturyTel is liable under this Section.

- 7.2 **CLEC agrees to indemnify, defend, and hold harmless CenturyTel, its directors, officers, employees, agents and their affiliates (collectively, the "Indemnified Parties") from all losses, claims, damages, expenses, 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 out of CenturyTel's performance under the

terms of this Article, from **CLEC's or any third party's use of the information provided, or from **CLEC's performance.

****CLEC agrees to indemnify, defend, and hold harmless CenturyTel, its directors, officers, employees, agents and their affiliates (collectively, the "Indemnified Parties") from all losses, claims, damages, expenses, 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 out of any error or omission for which CenturyTel is not liable pursuant to Section 7.1 above. CenturyTel agrees to indemnify, defend, and hold harmless **CLEC, its directors, officers, employees, agents and their affiliates (collectively, the "Indemnified Parties") from all losses, claims, damages, expenses, 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 out of any error or omission for which CenturyTel is liable pursuant to Section 7.1 above.**

- 7.3 To the maximum extent permitted by the applicable law, in no event shall CenturyTel or **CLEC 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 a CenturyTel an indemnity claim made against either Party that is covered by Section 7.2 above. Notwithstanding the foregoing, or any other provision of this Agreement, neither Party's liability shall be limited in any instance in which such Party, or its Publisher, causes the publication of End User Customer data or listings, where such End User Customer requests that such data or listings not be published in a directory.

V. DIRECTORY SERVICES RATES AND CHARGES

Preliminary Pages	No Charge
Directory Listings	
Primary Listings as Specified in Article XII	No Charge
Tariff Items requested by Charter (<i>e.g.</i> , additional listings, foreign listings, enhanced listings)	Rates set forth in CenturyTel of Central Wisconsin, LLC General Exchange Tariff P.S.C.
	of Wisconsin N. 1, Section 8, Subsection 6 - Rates
Order Fulfillment	No Charge
White Pages Galleys/Page Proofs/Corrections to Listings Supplied by	Cost determined by Publisher upon request by Charter
Copies of Directories	No Charge to Local End Users

Discussion

There is no testimony on this issue. There are specific federal and state statutes, rules and orders that relate to directories. The general federal statute, § 251(b)(3), includes the following duty for all local exchange carriers:

DIALING PARITY.-The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, without unreasonable dialing delays.

However, nothing in the FCC's implementing rules specifically identifies how indemnity should be handled in the case of directories.⁶⁴ The performance standard for directory services is "at least equal in quality" to that which a local exchange carrier provides to itself. To the extent that the parties choose to submit a contract dispute to the Commission for adjudication, the parties are necessarily choosing to use Wis. Stat. § 196.199 to resolve their disagreement. The Panel refers to Wis. Admin. Code § PSC 165.055 regarding directories.

Directories. (1) Exchange alphabetical telephone directories shall be made available to customers without charge for each local switched access line service. The listings of customers in foreign exchanges to which extended-area service is provided shall also be made available without charge to all local customers. Where such listings are not actually furnished all customers, the utility shall state in the directory how such listings may be obtained. Inclusion of all listings for the calling area within a single volume is recommended.

In Wisconsin, local exchange carriers are required to provide directories and directory listings free of charge. As seen in the undisputed language of Article XI., Pricing, CenturyTel will provide Charter with directories and directory listings free of charge. This is one element of non-discriminatory access, as CenturyTel provides directory listings to its own customers free of charge. To the extent enhanced listings are requested, which would include non-published numbers, CenturyTel proposes to provide the service from its tariff for which there is a nominal charge. CenturyTel's tariffs for enhanced listings include a limitation on liability. Charter proposes to include the rates set forth in the tariff, but not the terms of the tariff. The Panel determines that because CenturyTel's prices for directories and directory listings are limited by

⁶⁴ 47 C.F.R. § 51.217(a)(2) Nondiscriminatory access. "Nondiscriminatory access" refers to access to telephone numbers, operator services, directory assistance and directory listings that is at least equal to the access that the providing local exchange carrier (LEC) itself receives. Nondiscriminatory access includes, but is not limited to: (i) Nondiscrimination between and among carriers in the rates, terms, and conditions of the access provided; and (ii) The ability of the competing provider to obtain access that is at least equal in quality to that of the providing LEC.

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regulation, it is reasonable to include the terms and conditions associated with the provision of the service at those rates. The Panel determines that it is reasonable for the liability limitations as enumerated in CenturyTel of Central Wisconsin, LLC, General Exchange Tariff as it applies to Directory Services to be applicable between carriers.

However, state commissions are also given the role to enforce provisions regarding interactions between carriers. Wis. Stat. § 196.199 includes specific authorization and procedures to handle disputes that arise between carriers with differing limits on Commission ordered forfeitures depending on whether a failure is willful or not. Further, Wis. Stat. § 196.219 provides additional enforcement powers in relation to protection of telecommunications consumers (which includes a telecommunications provider) and allows the commencement of civil actions. Wis. Stat. § 196.199(4m) allows the Commission to request the attorney general to bring an action “to compensate any person for any pecuniary loss caused by the failure of a utility or provider to comply with this section.”

In light of the foregoing, the Panel is also concerned that the indemnity section covering directory services should not expand, limit, or otherwise alter the duties between carriers or the Commission’s ability to supervise compliance those duties. The Panel will add a preamble to this section clarifying the overriding application of these requirements.

In relation to Charter’s concern that numbers with a non-published designation may indeed be published in error, the Panel does not intend for this award to prejudice any particular event that may occur. As noted above, CenturyTel is required to provide access to directory assistance and directory listings that are at least equal in quality to that which it provides to itself. In this particular proceeding, there have been no particular facts and circumstances presented on

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the record regarding CenturyTel's processes and care regarding non-published numbers. However, while CenturyTel states that Charter is contractually prohibited from providing to CenturyTel or a third party publisher the listings of any of its customers who do not wish to have published listings, at the same time CenturyTel contracted with a third party vendor to maintain different databases for directory assistance information and directory book publication. Charter should have no less protection against the directory publisher's errors than CenturyTel has secured for itself. CenturyTel cannot absolve itself of its responsibility to supervise the conduct of its selected third party vendor will be further covered in Issue 33.

Issue 32 Award

The Panel awards the liability limitation in CenturyTel tariffs as it applies to directory services. Thus, the reference to the tariff should cover all aspects of directory service. However, that limitation does not change the fact that CenturyTel is also subject to the further requirements of § 251(b)(3) and the implementing regulations currently contained in 47 C.F.R. § 51.217. The Panel expects, given this award and the awards on other issues, that the parties can reach their own agreement on redrafting the contract.

Issue 33: How should the Agreement define each Party's directory assistance obligations under Section 251(b)(3)?

This issue addresses CenturyTel's use of a third-party vendor for directory assistance information.

Positions of the Parties

(a) Charter

Charter seeks language in the agreement that will ensure that when CenturyTel subscribers dial directory assistance and request the phone number of a Charter subscriber, that

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phone number, along with other relevant information, will be available. Charter seeks this language because it has had a prior experience with a third-party vendor selected by CenturyTel where CenturyTel's customers, upon requesting directory assistance to reach Charter's customers, were told the information was not available. In resolving the problem, it was determined that CenturyTel's third party vendor only queried a local database and did not query a national database where Charter's subscriber listings resided. Further when Charter alerted CenturyTel to the problem, CenturyTel took the position that the problem was Charter's problem and that Charter was responsible for dealing with CenturyTel's third-party vendor. Charter explains that its proposed language will obligate CenturyTel to ensure that it, or its vendor, always queries the appropriate directory assistance databases to ensure that Charter's end user subscriber directory listing information is made available to CenturyTel's subscribers when they call directory assistance. Further, Charter disputes an administrative charge which CenturyTel proposes in briefing as inconsistent with the requirement of 47 C.F.R. § 51.217(c)(3) that "[a] LEC shall accept the listing of those customers served by competing providers for inclusion in its directory assistance/operator services databases." Charter believes that the fact that CenturyTel sub-contracts out specific directory assistance functions does not relieve CenturyTel of the obligation to fulfill its responsibilities under U.S.C. § 251(b)(3).

(b) CenturyTel

CenturyTel asserts that it does not provide directory assistance itself, but rather contracts with a third party vendor. In its vendor selection process, CenturyTel has selected a vendor that will allow Charter to submit directory assistance listing data directly to the vendor without charge to Charter. Accordingly, it is CenturyTel's position that if Charter requests that

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CenturyTel process Charter's directory listing information, then Charter must pay the cost incurred by CenturyTel to perform that function. As Charter has not requested this service in the past, CenturyTel believes it should be provided the opportunity to set forth terms and a rate for providing such a service. CenturyTel requests that the Panel modify Charter's language in this manner in the event the Panel approves Charter's language.

Further, as CenturyTel believes that because it uses the same processes to submit its listings to its third-party vendor, it is providing directory assistance services to Charter on the same rates, terms, and conditions on which CenturyTel obtains such services. Thus CenturyTel asserts that its proposed language satisfies the requirements of § 251(b)(3) and 47 C.F.R. § 51.217. In CenturyTel's opinion, any information regarding past disputes is irrelevant as the record shows that Charter acknowledges CenturyTel is currently making directory assistance information relating to Charter customers available on a satisfactory basis.

Proposed Contract Language

Charter and CenturyTel each propose certain language for Art. XII, Directory Services, section 8.

8.0 DIRECTORY ASSISTANCE OBLIGATIONS

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:

- 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;
- 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.
- 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.

To ensure that each Party's subscribers have non-discriminatory access to directory assistance listings of the other Party's subscribers, the Parties' agree to provide each other all necessary End User subscriber listing information for inclusion in each Party's relevant directory assistance listing databases, as required by Section 251(b)(3) of the Act.

CenturyTel Obligations.

CenturyTel will accept, include, and maintain, in the same manner that Century Tel treats listings of its own End Users, CLEC subscriber listings in the directory assistance databases maintained by CenturyTel or its third-party vendors. To the extent that CenturyTel's directory assistance listings are maintained in a database administered by a third party vendor, CLEC shall cooperate with CenturyTel as needed to ensure that CLEC listings are promptly loaded into such database and accessible to CenturyTel's End Users, upon request. CenturyTel will not charge CLEC for including and maintaining CLEC subscriber listings in the directory assistance databases maintained by CenturyTel, or its vendors.

CLEC Obligations.

CLEC authorizes CenturyTel, and its third party vendors, to include and use CLEC's directory assistance listing information in accordance with Applicable Law, and shall provide such information to CenturyTel, or its third-party vendors, at no charge. CLEC shall provide to CenturyTel the names, addresses and telephone numbers of all End Users who wish to be listed in the directory assistance

database but omitted from publication in white pages directories (i.e. non-published listings).

Discussion

The Panel agrees with Charter that when CenturyTel sub-contracts out specific directory assistance functions, it does not relieve CenturyTel of the obligation to fulfill its responsibilities under 47 U.S.C. § 251(b)(3). This is a well-established principle based on numerous court cases as cited by Charter.⁶⁵ Further the Panel determines that Charter's proposed language is reasonable in order to assure CenturyTel actually meets the following dialing parity duties required under § 251(b)(3).

DIALING PARITY-The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

This duty is not limited to CenturyTel establishing a process that it believes will meet these requirements, but in fact the requirements regarding dialing parity include the contract performance of these functions. To the extent CenturyTel chooses to use a third-party vendor, it is CenturyTel's responsibility to supervise that vendor to assure that it actually provides the required dialing parity. This is particularly important in light of the fact that, for some apparently unstated reason, Charter's subscriber listings are placed into a national database and not the same local database into which CenturyTel's subscriber listings are placed. This is a system that is set up in a manner that can lead to the kind of failures that Charter has already

⁶⁵ See *MCI Telecomm. Corp. v. Michigan Bell Tel. Co.*, 79 F. Supp. 2d 768 (E.D. Mich. 1999) (finding that because an ILEC caused its listings to be published in a third party's directory, it owed the CLEC a duty to provide non-discriminatory access to the same directories); *U.S. West Comm., Inc. v. Hix*, 93 F. Supp. 2d 1115 (D. Colo. 2000) (rejecting an ILEC's attempt to relinquish its § 251(b)(3) responsibilities because it had subcontracted its directory listing functions to a third party).

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experienced. CenturyTel must take responsibility to assure that the results satisfy its duties under 47 U.S.C. § 251(b)(3).

In relation to CenturyTel's request for a reservation of the ability to impose an administrative charge on Charter, the Panel denies this request. Such a charge would be inconsistent with the requirement of 47 C.F.R. § 51.217(c)(3) that "A LEC shall accept the listing of those customers served by competing providers for inclusion in its directory assistance/operator services databases" (emphasis added). The rates, terms, and conditions upon which CenturyTel accepts listings from its own customers include no charges as required by Wis. Admin. Code § PSC 165.055 regarding directories and discussed in more detail in Issue 32. It would be discriminatory to impose a charge on Charter for CenturyTel to accept Charter's listings. If Charter believes that its rights to receive non-discriminatory directory assistance and directory listings will be better met by submitting its directory listing information directly to CenturyTel, it should be allowed to do so at no charge.

Issue 33 Award

The Panel awards Charter's proposed language for Art. XII, Directory Services, section 8.

Issues 34: Charter version: Should CenturyTel be required to make 911 facilities available to Charter at cost based rates pursuant to Section 251(c)?

CenturyTel version: Is Charter entitled to lease CenturyTel facilities for the purpose of connecting Charter's network to CenturyTel's 911 networks? If so, is Charter entitled to lease such facilities at TELRIC rates?

Issue 35: Charter version: Should CenturyTel be entitled to assess charges upon Charter for including Charter's End User Customer 911 records in the CenturyTel E911 database?

CenturyTel version: Should Charter and its customers be allowed to free ride on the 911 databases maintained by CenturyTel as part of its 911 system pursuant to Wis. Stat. § 256.35 and the county agreements?

The dispute in these issues is about the appropriate cost standard to apply to services and facilities that CenturyTel provides to Charter for purposes of providing 911 emergency calling for Charter's customers. Issue 34 covers the facilities to connect to 911 networks, and Issue 35 covers the maintenance of 911 databases. Because Issues 34 and 35 are interrelated they are reasonably analyzed together.

Positions of the Parties

(a) Charter

Charter believes that CenturyTel non-rural companies are required to provide unbundled access to 911 databases and interconnection to 911 facilities per 47 U.S.C. § 251(c) and such unbundled access is required to be provided at TELRIC-based rates. Charter refers to paragraph 38 and the associated footnote 128 of the FCC's 2005 *IP-Enabled 911 Order*, which describes the status of availability of 911 to CLECs at the time that order was issued to support its belief that TELRIC-based pricing applies to all these facilities:

We note that the Commission currently requires LECs to provide access to 911 databases and interconnection to 911 facilities to all telecommunications carriers, pursuant to sections 251(a) and (c) and section 271(c)(2)(B)(vii) of the Act. We expect that this would include all the elements necessary for telecommunications carriers to provide 911/E911 solutions that are consistent with the requirements of this Order, including NENA's I2 or wireless E911-like solutions.⁶⁶

Furthermore, Charter believes that it should not be subject to charges associated with the costs of maintaining the 911 databases. Charter believes CenturyTel already recovers these costs

⁶⁶ First Report and Order and Notice of Proposed Rulemaking, *In the Matters of IP-Enabled Services 911 Requirements for IP-Enabled Service Providers*, 20 F.C.C.R. 10,245, 10,267, ¶ 38 (2005) (2005 *IP-Enabled 911 Order*).

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through the cost recovery mechanisms provided in Wisconsin's countywide 911 system contracts as authorized by Wis. Stat. § 256.35, and any further charges imposed on Charter would result in double recovery of these costs.

(b) CenturyTel

CenturyTel believes the countywide 911 contracts provide the mechanism through which Charter should obtain 911 facilities and services from CenturyTel. CenturyTel claims that regardless of whether all LECs are parties to the county 911 agreement, all LECs are required to "jointly . . . determine the method by which each service supplier will be compensated for its costs in that county." Wis. Stat. §256.35(3)(e). CenturyTel believes this means that all LECs must enter into agreements to cooperate with each other and those agreements, which are between LECs in some cases, can be separate from the county 911 agreement. CenturyTel's understanding of this arrangement is that all LECs in a county should charge the same 911 surcharge, and for those that have a surplus, the surplus must be provided back to the other 911 country agreement participants. For those that do not recover enough from the 911 surcharges, those LECs would be made whole by the other participants.

CenturyTel provides copies of data request responses that show that Charter does impose 911 surcharges. (CenturyTel In. Br., App. A, DR. No. 37; two examples: Green, \$0.12; Green Lake, \$0.47.) CenturyTel believes Charter is seeking a competitive advantage such that it would be able to charge its customers lower 911 surcharges than other LECs that participate in the countywide 911 contract. CenturyTel questions the basis for Charter's 911 surcharge as Charter does not participate in the countywide 911 contract.

CenturyTel does not believe Charter is entitled to lease the end-office trunks at TELRIC prices. CenturyTel believes that tariffed rates apply per Wis. Adm. Code § PSC 173.04(2).⁶⁷ CenturyTel proposes to charge Charter the tariff rate for the end office trunks. CenturyTel disputes Charter's assertion that it should not have to pay anything for access to any other part of CenturyTel's 911 systems. CenturyTel believes the facilities in question are not subject to the FCC rules implementing the interconnection requirements of 47 C.F.R § 251(c)(2) because the facilities are for one-way dedicated 911 traffic and not "for the transmission and routing of telephone exchange service and exchange access." The facilities are not subject to 47 C.F.R § 251(c)(3) as UNEs because the FCC has only designated the 911 databases as UNEs.

CenturyTel also proposes a 10-cent per record database charge, and a monthly fee of \$0.0022 for each record that is loaded in the selective router database based on CenturyTel's tariff. CenturyTel says these costs for maintaining and updating its ALI databases are the same 911 costs that are aggregated and collected through Commission approved county 911 surcharges. CenturyTel says these charges are generally the largest cost components associated with CenturyTel's 911 systems. CenturyTel asserts that it does not provide these services for free and that it will not recover these costs unless Charter is a party to the 911 agreements or the Commission orders Charter to pay these fees. CenturyTel does not propose any charges for accessing these databases.

⁶⁷ Wis. Admin. Code § PSC 173.04 Commission review. (1) Upon receipt of a contract for wireline 911 emergency telecommunications service, the commission shall issue a notice of investigation in accordance with s. PSC 2.09.

(2) Within 60 days of receipt of a contract for the provision of wireline 911 emergency telecommunications service, the commission may disapprove the contract if it finds any of the following:

(a) The contract is not compensatory.

(b) The contract is excessive.

(c) The contract does not comply with the utility's tariff specifying the rates and charges or terms and conditions for the offering of wireline 911 emergency telecommunications service.

While not its central argument, CenturyTel also states that the Panel has discretion to establish cost-based rates on a basis other than TELRIC for § 251(c)(2) interconnection.

CenturyTel asserts that 911 interconnection is an obligation that is only applicable to Bell Operating Companies under 47 U.S.C. § 271.

Proposed Contract Language

Charter proposes language for Art. VII, 911, Section 3.3.1, and 3.4.5 and intentionally omits Section 3.4.8. CenturyTel proposes language for Art. VII, 911, Section 3.3.1, 3.4.5 and 3.4.8.

3.3 Facilities and Trunking

3.3.1 CenturyTel shall provide and maintain sufficient dedicated E911 circuits/trunks from each applicable Selective Router to the PSAP(s) of the E911 PSAP Operator, according to provisions of the applicable State authority, applicable NENA standards and documented specifications of the E911 PSAP Operator. CenturyTel will permit **CLEC to lease 911 facilities from **CLEC's network to CenturyTel's Selective Router(s) at the rates set forth in Article XI (Pricing). **The rates for 911 facilities set forth in Section III.C, of Article XI (Pricing) are TELRIC-based rates as required by Section 251(c).** **CLEC has the option to secure alternative 911 facilities from another provider to provide its own facilities.

3.4.5 CenturyTel will update **CLEC's End User 911 Records in the E911 DBMS, **at no charge to **CLEC**, if **CLEC uses CenturyTel's E911 gateway to maintain **CLEC's End User records. Because Charter does not participate in the County contract for E911 service, such updates shall be subject to an applicable charge as set forth more fully in Section 3.4.8. CenturyTel will then provide **CLEC an error and status report. This report will be provided in a timely fashion and in accordance with the methods and procedures to be provided to **CLEC.

(3) The commission may act on the contract without hearing.

- 3.4.8 **Intentionally omitted.** CenturyTel will charge **CLEC for each **CLEC End User Customer record that CenturyTel maintains in the E911 database or DBMS. The applicable per record charge is set forth in Article XI (Pricing), Section IV(B) as the CenturyTel ALL Database charge.

Discussion

The Panel determines that there are complex legal underpinnings associated with the intercarrier charges for 911 facilities and services and neither party's testimony or arguments fully capture the applicable law and rules related to these issues. Issues 34 and 35 involve the interplay of federal and state statutes and rules. The FCC rules implementing the unbundling requirements of 47 U.S.C. § 251(c)(3) require incumbent local exchange carriers to provide unbundled access to 911 data bases.⁶⁸ The State of Wisconsin also has adopted the statewide emergency service number of "911" and has established wireline countywide 911 systems and a system for sharing the funding of these wireline countywide 911 systems through surcharges on service users in the county.⁶⁹ The state of Wisconsin has a separate funding mechanism for wireless 911.⁷⁰

The Panel notes that under federal law and rules, there are a number of possible bases for establishing these 911 charges depending on the type of carriers involved. For example, Commercial Mobile Radio Service providers (CMRS, commonly known as wireless providers)

⁶⁸ 47 C.F.R. § 51.319 (d)(4)(i)(B)(1). Call-related databases include, but are not limited to, the calling name database, 911 database, E911 database, line information database, toll free calling database, advanced intelligent network databases, and downstream number portability databases by means of physical access at the signaling transfer point linked to the unbundled databases.

⁶⁹ Wis. Stat. § 265.35(3), Funding for Countywide systems; Wis. Admin. Code ch. PSC 173, Subchapter II — Wireline 911 Emergency Telecommunications Service Contracts.

⁷⁰ Wis. Stat. § 256.35(3m) WIRELESS PROVIDERS; Wis. Admin. Code ch. PSC 173, Subchapter III — Wireless 911 Fund.

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do not receive interconnection under 47 U.S.C. § 251(c) and thus the TELRIC pricing standard is not applicable to CMRS providers. CMRS providers receive interconnection under 47 U.S.C. § 251(a). The FCC provided interconnected VoIP providers with the same access to 911 services and facilities as is available to wireless providers. While Charter asserts otherwise, the Panel looks to the specific FCC rules, as well as the language contained in the *2005 IP-Enabled 911 Order* referenced by Charter, and determines that the TELRIC standard applicable under 47 U.S.C. § 251(c)(3) appears to be only specifically applicable to the database access and does not address facilities connecting to those databases outside of sections applicable only to Bell Operating Companies under 47 U.S.C. § 271. Indeed, the reference to 47 U.S.C. § 251(a) supports not making 911 end office trunks available at TELRIC rates, as will be described in more detail below. Further, the Panel determines that the FCC has allowed states a degree of latitude so as not to disrupt 911 mechanisms in place as will be described in further detail below.

The Panel turns to a portion of paragraph 52 of the FCC's *2005 IP-Enabled 911 Order* that provides greater detail in regard to the latitude allowed state commissions for funding mechanisms.

"52. ... For example, we have explained that interconnected VoIP providers often enlist a competitive LEC partner in order to obtain interconnection to the Wireline E911 Network, and we believe that as a result of this Order, many more will do so. In that situation, states may impose 911 funding obligations on the competitive LEC partners of interconnected VoIP providers, regardless of whether the VoIP providers themselves are under any obligation to contribute. Similarly, states may be able to impose funding obligations on systems service providers, such as incumbent LECs, that provide direct interconnection to interconnected VoIP providers. We believe that the ability to assess 911 funds on interconnected VoIP providers indirectly should narrow any gap in 911 funding attributable to consumers switching to interconnected VoIP service.

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The FCC provided further information about the applicable cost standards associated with 911 services and facilities in its 2008 *NET 911 Order*,⁷¹ paragraph 31 and associated footnote 90. Clearly, TELRIC pricing for access for CMRS providers under 47 U.S.C. § 251(a) is rejected.

Para. 31. Contrary to the approach advocated by some commenters, we find no indication that Congress intended the Commission to issue detailed regulations regarding the pricing methodology under which E911 capabilities must be made available.⁹⁰

Fn. 90 We therefore reject the request of certain commenters that we establish a specific pricing standard for access to E911 capabilities, such as requiring that such access must be based on forward-looking costs under the Commission's total element long run incremental cost (TELRIC) standard.

As further evidence of the flexibility regarding cost recovery, the Panel looks to para. 4 of the FCC's Second Memorandum Opinion and Order in CC Docket No. 94-102. In this Order, the FCC eliminated the obligation of wireless carriers to have cost recovery mechanisms, as formerly contained in 47 C.F.R. § 20.18(h). The FCC expressed concerns about not disrupting the actions of states in relation to 911.

4. ... However, in removing the condition that a cost recovery mechanism for carriers' costs be in place before the carrier is obligated to provide E911 service, we do not intend to disturb the actions of States or localities that already have adopted such mechanisms or to discourage them from deciding that cost recovery or sharing mechanisms that cover carrier costs are an effective way of expediting wireless E911 for their citizens, especially in rural areas.⁷²

The Panel interprets Charter's reference to 47 U.S.C. § 251(c) as Charter seeking access to 911 as an unbundled network element. The Panel concludes that the TELRIC standard of 47

⁷¹ *Implementation of the NET 911 Improvement Act of 2008*, WC Docket 08-171, FCC 08-249, 2008 WL 4659843, ¶ 31 (Oct. 21, 2008).

⁷² , Second Memorandum Opinion and Order, *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, FCC 09-352 (Rel. Dec. 8, 1999).

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U.S.C. § 251(c) is only applicable to access to the databases and does not apply to maintenance of the databases or to the facilities to connect to the databases. Nothing in the following rule mentions end office trunks.

47 C.F.R. § 51.319 (d)(4)(i)(B)(1). Call-related databases include, but are not limited to, the calling name database, 911 database, E911 database, line information database, toll free calling database, advanced intelligent network databases, and downstream number portability databases by means of physical access at the signaling transfer point linked to the unbundled databases.

To the extent access is sought pursuant to 47 U.S.C. § 251(a), the TELRIC standard is not applicable. The Panel determines that in order to not disrupt existing funding mechanisms for 911 systems and to promote a competitive marketplace, the Panel will apply the pricing methods applicable to the Wisconsin's wireline countywide 911 systems. The Panel determines that CenturyTel's proposed terms for the interconnection agreement are consistent with the pricing methods applicable to the wireline countywide funding mechanisms. Using these costs to determine CenturyTel's charges to Charter should result in Charter having a similar surcharge for its 911 services as other wireline carrier's surcharges.

As discussed in Issue 20, the Panel does not agree with CenturyTel's assertion that even if the facilities must be unbundled under 47 U.S.C. § 251(c)(2), and at "cost-based" rates, that those rates are not necessarily TELRIC rates. The Panel limits the application of TELRIC to charges for access to the databases for this issue. CenturyTel does not assert any costs or any charges for access to 911 databases and thus the access to 911 databases is consistent with TELRIC.

CenturyTel's proposal to determine costs based on tariffed rates for the connection to 911 databases is consistent with the Wisconsin wireline county contracts. CenturyTel's proposal