directions) from Charter's switch to the meet point regardless of the distance involved. Charter's proposal to make CenturyTel financially responsible for the cost of one direction, of a one-way trunking arrangement, which would cover the distance from the meet point to Charter's switch, would unreasonably shift costs onto CenturyTel and is inconsistent with these requirements. Where the record supports that one-way trunks are less efficient than two-way trunks, unless addressing some billing concerns, it is hard to conceive of a circumstance where Charter would prefer one-way trunks indefinitely when costs are assigned consistent with these rules. To the extent that there are any disputes, such as whether one-way trunks should be used or where the the meet point interconnection should be located, it would be reasonable to negotiate those terms and if necessary to use the dispute resolution process.

Issue 21 Award

The Panel awards CenturyTel's proposed language for Art. V, section 3.2.3 with the removal of the words "for an interim period," as it is consistent with the above discussion. The Panel expects that given its award here and the awards on other related sections, the parties can reach their own agreement regarding any remaining sections in the interconnection agreement that may relate to this issue.

Issue 22: Charter version: What threshold test should be used to determine when the Parties will establish direct end office trunks?

CenturyTel version: Should the Parties utilize reasonable projections of traffic volumes in addition to actual traffic measurement in their determination of whether the threshold has been reached for purposes of establishing dedicated end office trunks versus after-the-fact traffic measurement solely for such determination.

Both Parties both propose threshold limits, such that when usage exceeds the threshold, direct end office trunks will be utilized. Charter believes the limits should be compared to actual

traffic volumes. CenturyTel proposes comparisons to forecasted traffic volumes. In addition, the Panel will also address in this issue the basis for such a threshold, which the Panel had deferred from Issue 19. CenturyTel, also in Issue 19, raised an issue whether the existing trunking arrangements should be allowed to be abandoned, which will now be addressed here. To the extent there is also language related to one-way trunks in the proposed contract language for this issue, the Panel addressed that issue in its determination of Issue 21.

Positions of the Parties

(a) Charter

In Issue 19, Charter points to Wis. Stat. § 196.04 as authorizing this Commission to impose a limitation on indirect interconnection. Charter points to the guidance provided by this Commission in docket 05-TI-1068 that any decision whether to compel direct interconnection would likely be carried out on "a route-by-route basis or at least a limited bundle of similar routes."[53] Charter accepts the use of a threshold based on a DS-1 volume, also known as twenty-four or more trunks, as a threshold above which it would agree to use direct end office trunking. Charter also equates that threshold to 240,000 minutes per use per month.

In evaluating whether that threshold has been met, Charter proposes to make a comparison to actual traffic volumes. Charter believes the use of projected volumes would be problematic as projections may prove incorrect and could thus require Charter to establish direct end office trunks that are not necessary. This could increase Charter's cost unnecessarily. Use of forecasts could also lead to disputes. Charter believes the use of actual traffic measurements will better allow a CLEC to exercise its § 251(a) rights.

[53] Final Decision, *Investigation on the Commission's Own Motion Into the Treatment of Transiting Traffic*, No. 05-TI-1068, at 15-16 (Wis. PSC Dec. 12, 2006).

Charter believes its proposal to use a mix of direct and indirect interconnection depending on the volume of traffic would be consistent with an approach where the Commission would further determine whether to require direct interconnection.

(b) CenturyTel

As discussed in Issue 19, CenturyTel believes its offering of indirect interconnection is voluntary. However, for market entry purposes CenturyTel offers a threshold for converting to direct end office trunking and to compare that threshold to forecasted traffic volumes. CenturyTel believes the parties should move to dedicated end office trunks in time to avoid overburdening common trunk facilities and avoid possible network degradation. CenturyTel believes Charter's proposal would only address the issue after problems arise, which would be contrary to service quality standards. CenturyTel notes that projections of traffic are commonplace in the telecommunications industry. CenturyTel believes that projections are the best information available to ensure quality service to the end users of both parties. While CenturyTel agrees to the DS-1 threshold, it believes that threshold equates to 200,000 minutes per use per month. In relation to the use of indirect interconnection, CenturyTel raises a concern that Charter should not be allowed to be abandon the existing trunking arrangements.

Proposed Contract Language

The Panel attempts to identify the specific language each party has proposed relative to the specific issue of whether there should be a limit on the use of indirect interconnection, and if so what such a limit should be. Both parties provide varying language in this regard for Article V, Interconnection, Transport and Termination, sections 3.3.1.2, 3.3.1.3, and 3.4.2.1.1. CenturyTel proposes section 3.3.2, which is omitted by Charter.

3.3.1.2 Unless otherwise agreed, the Parties shall exchange all Local Traffic and ISP-bound Traffic indirectly through one or more transiting carriers until the total volume of Local Traffic and ISP-bound Traffic being exchanged between the Parties' networks exceeds 240,000 minutes per month for three (3) consecutive months, at which time either Party may request the establishment of Direct Interconnection. Notwithstanding the foregoing, if either Party is unable to arrange for or maintain transit service for its originated Local Traffic upon commercially reasonable terms before the volume of Local Traffic and ISP-bound Traffic being exchanged between the Parties' networks exceeds 240,000 minutes per month, that Party may unilaterally, and at its sole expense, utilize one-way trunk(s) for the delivery of its originated Local Traffic to the other Party.

3.3.1.3 After the Parties have established Direct Interconnection between their networks, neither Party may continue to transmit its originated Local Traffic and ISP-bound Traffic indirectly except on an overflow basis to mitigate traffic blockage, equipment failure or emergency situations.

3.3.1.2 Indirect Network Connection shall be accomplished by CenturyTel and **CLEC each being responsible for delivering Local Traffic to and receiving Local Traffic at the Tandem Switch serving the CenturyTel end office. Each Party is responsible for the facilities to its side of the tandem. Each Party is responsible for the appropriate sizing, operation, and maintenance of the transport facility to the tandem.

3.3.1.3 The Parties agree to enter into their own agreements with third-party providers. In the event that **CLEC sends traffic through CenturyTel's network to a third-party provider with whom **CLEC does not have a traffic interexchange agreement, then **CLEC agrees to indemnify CenturyTel for any termination charges rendered by a third-party provider for such traffic.

3.3.2. Direct Network Connection and Point of Interconnection (POI)

3.3.2.1 Unless the parties mutually agree otherwise, a Direct Network Connection and a POI shall be established upon occurrence of any of the triggers set forth in Section 3.3.2.4 of this Article.

3.3.2.2 A Direct Network Connection shall be established by connecting **CLEC's network to CenturyTel's network at a technically feasible point on CenturyTel's network within the CenturyTel local exchange. The connection can be established in any of the manners described in Section 2 of this Article.

3.3.2.3 The Direct Network Connection point established in Section 3.3.2.2 of this Article shall also be the Local POI. Each party shall be responsible for establishing and maintaining all facilities on its side of the Local POI. Each Party is responsible for the appropriate sizing, operation, and maintenance of the transport facility to the POI.

3.3.2.4 Unless the parties agree otherwise, a Direct Network Connection and Local POI shall be established upon the occurrence of either of the following:

3.3.2.4.1 **CLEC has begun serving end users within a CenturyTel local exchange, or has assigned to any end user numbers that are rated to a rate center that is within the local calling area of a CenturyTel exchange and the resulting Local Traffic that is to be exchanged between the Parties is equal to or greater than a DS-1 trunk equivalency as described in Section 3.3.2.5 of this Article.

3.3.2.4.2 Either Party is assessed transiting costs by a third party and such charges associated with a single traffic exchange route exceed $200.00 for one month.

3.3.2.5 A DS-1 trunk equivalency is deemed established in any the following instances:

3.3.2.5.1 Traffic studies of peak busy CCS indicate that the number of trunks necessary to achieve a .001 Grade of Service based upon application of the Erlang B table is equal to or exceeds 24 for three consecutive months, or for three months of any consecutive five month period.

3.3.2.5.2 Combined two-way traffic between two single switches of each Party reaches 200,000 combined minutes of use per month for two consecutive months, or for any two months in a consecutive three-month period.

3.3.2.5.3 At any point where a traffic forecast prepared pursuant to requirements of Article III, Section 11 or Article V, Section 3.5 indicates that combined two-way traffic between two single switches of each Party will exceed 200,000 minutes of use per month.

3.3.2.5.4 In any instance where **CLEC has requested to port a number or numbers associated with an end user customer and it is known that local trunks previously associated with that customer and those numbers equaled or exceeded 24. In any other instance where it can be shown that a customer that **CLEC is about to serve previously had 24 or more local trunks associated with the service that the customer will disconnect or has disconnected in migrating its service to **CLEC.

3.3.2.5.5 In any instance where **CLEC is providing a tandem function then **CLEC must direct connect to CenturyTel pursuant to the terms of this section. Language should also require them to record and provide billing records for that traffic transiting their switch and terminating to CenturyTel.

3.3.2.6 The Parties may mutually agree to establish a Direct Network Interconnection even where none of the conditions set forth in Section 3.3.2.4 of this Article has occurred.

3.3.1.2 Each party shall be responsible for establishing and maintaining all facilities on its side of the POI. Each Party is responsible for the appropriate sizing, operation, and maintenance of the transport facility to the POI.

3.4 Trunk Groups

3.4.1 The following trunk groups shall be used to exchange local traffic between **CLEC and CenturyTel.

3.4.2 Local Interconnection Trunk Group(s) in Each Exchange

3.4.2.1 Direct End Office Trunking

3.4.2.1.1 **The Parties shall establish** As described in 3.3.1.1, the Parties have established a direct End Office primary high usage Local Interconnection Trunk Groups for the exchange of Local Traffic, where actual or projected traffic **volume reaches** demand is or will be twenty four (24) or more trunks, **for three consecutive months** as described in Section 3.3.2.5 of this Article.

Discussion

As the Panel determined in relation to Issue 19, Charter has a statutory right under § 251(a) to utilize indirect interconnection. There is no limit as to its use, such as for "start-up" market entry only. Accordingly, the Panel agrees with Charter that the ability of this Commission to require direct interconnection is based upon Wis. Stat. § 196.04. In order to establish a threshold the Panel considers the basis for selecting such a threshold. Under Wis. Stat. § 196.04 the Commission can evaluate whether the "public convenience and necessity require the use [of] physical connections." If the Commission requires physical interconnections, it can further determine reasonable compensation and it would consider the factors in Wis. Stat. § 196.03(6).

On the record, witnesses for both parties agree that there is no absolute threshold that will result in the blocking of traffic. Per Charter's witness it is a matter of preference as to how "hot"

to operate a network.[54] Per CenturyTel's witness, "It has to do with measuring busy hours and how many trunks may be in use during the busiest time of day, and it deals with an elaborate form of probabilities."[55] Further, the Charter witness clearly stated that Charter agreed to the application of a threshold and that Charter agreed to use end office trunking.[56] The CenturyTel witness did explain its proposed 200,000 is based on a "DS-1 traffic usage equivalency . . . related to the reality of network design and trunk deployment of telecommunications carriers."[57]

In light of the record, the Panel does not find any particular set of facts in this case that would require end office trunking, although the factors discussed certainly could be taken into consideration. The Panel agrees with Charter that any decision whether to compel direct interconnection would be carried out on "a route-by-route basis or at least a limited bundle of similar routes." At that time, a record would be developed, and based on specific facts, the Commission would decide whether or not to require direct end office trunking. To the extent Charter would propose to abandon an existing direct end office trunk, such an issue could be taken up in that context of a specific case. In summary, the Panel views this award as an acceptance of a voluntary agreement to use a threshold. With that, the Panel chooses the least restrictive threshold as a threshold that has been mutually agreed upon by both parties.

Issue 22 Award

The Panel awards a threshold of 240,000 minutes per month to determine when to establish direct interconnection and when to limit indirect interconnection to an overflow basis. This threshold will be compared to three months of actual traffic volumes. The parties may seek

[54] Tr. 634-635, 894-895.
[55] Tr. 894.
[56] Tr. 636.
[57] Tr. 818.

further determinations from the Commission regarding direct interconnection pursuant to Wis. Stat. § 196.03(6).

The Panel expects that given its award here and the awards on other related sections, the parties can reach their own agreement on redrafting the contract.

Issue 23: Addressed in Issue 20.

Issue 24: Charter version: Should Charter pay CenturyTel a tariffed access charge for transiting traffic in: (a) those instances where CenturyTel end office switches perform a transit functionality for unqueried calls that have been ported to another carrier; (b) those instances when CenturyTel transits Charter's traffic to a third-party carrier?

CenturyTel version: (a) Where Charter is the N-1 carrier for calls to ported numbers of third party carriers, should Charter be responsible for data base queries and the proper routing of its calls to third party carriers? (b) For calls that Charter fails to fulfill its N-1 carrier obligations and are routed improperly to a CenturyTel end office, what should Charter be required to pay to CenturyTel for the completion of such calls to third parties?

Position of the Parties

(a) Charter

Charter agrees that when it is the N-1 carrier for a ported number, it has the responsibility to query the database and properly route calls that are to go to third-party carriers. Charter also acknowledges that, on rare occasions, calls can be misrouted so that CenturyTel receives a call from Charter that does not include the proper routing information. When this happens, CenturyTel will need to query a database to receive the routing information, then transit the call to the designated carrier. Charter further agrees that it will pay CenturyTel to complete the call, but that the amount it will pay should be based on the cost CenturyTel incurs because this service is part of CenturyTel's interconnection obligations under § 251(c). Charter suggests that a transiting charge of $.005 would be appropriate because this rate has been negotiated between the parties in another jurisdiction.

Charter supports its position that transiting of an unqueried call is a § 251(c) obligation by pointing to FCC rule 47 C.F.R. § 52.26(b)(1), which states that a local exchange carrier can block an unqueried call only if performing the database query is likely to impair network reliability.[58] While Charter cannot point to a decision where the FCC directly declared that transiting is an interconnection service, Charter did provide a record to establish that the FCC has indirectly held transiting to be an interconnection service. In particular, Charter points out that Qwest was fined for not submitting its transiting service agreement to the Minnesota commission for approval after the FCC ruled that it was required to do so. The inference is that the FCC requires that § 251(c) rates in interconnection agreements be cost-based and must be submitted to a state commission for approval, so by requiring Qwest to submit its transiting rate for approval, the FCC had determined that transiting is an interconnection service.[59]

(b) CenturyTel

CenturyTel's position is that it will complete unqueried calls to ported numbers subject to reasonableness and to being reimbursed for its costs, although it is not obligated to complete the calls. CenturyTel's primary distinction between the FCC rules on transiting and the completion of nonqueried calls to ported numbers is that transiting typically makes use of tandem switches that are designed to handle transit traffic in the normal course of operations. In contrast, the local switches operated by CenturyTel are not designed to handle transit traffic, so when these switches receive a call that should have been ported to a different switch, it requires an extraordinary effort on CenturyTel's part, above and beyond the normal transiting process, to complete this call. It is the extra processes undertaken in addition to normal transiting that

[58] Charter Reply Br. 55.

CenturyTel believes are not §251(c) interconnection obligations that are subject to TELRIC pricing.

CenturyTel further states that Charter should not be permitted to dispute the application of intrastate access charges to recover its costs for handling nonqueried calls because Charter did not raise the issue of TELRIC-based rates for transiting in the issues list for this arbitration, as required by § 252(b)(2) of the 1996 Act.

Proposed Contract Language

Charter and CenturyTel propose varying language for Article V., Interconnection & Transport & Termination, section 4.6.5; Article XI, Pricing, III. Interconnection Pricing; B Transiting Charges; Article XI, Pricing, VI Other Pricing; D. Additional Services, NP Dip Charge.

> 4.6.5 When CenturyTel receives an unqueried call from **CLEC to a telephone number that has been ported to another local service provider, **CenturyTel will complete such calls to the new local service provider and Charter shall pay CenturyTel** the **applicable** transit rate and NP **query** dip charge **set forth in Article XI (Pricing).**

[59] Second Report and Order, *In the Matter of Telephone Number Portability*, 12 F.C.C.R. 12,281, 12,324-25, ¶ 76 (1997).

B. Transiting Charges:

CenturyTel of the Midwest-Wisconsin, LLC Intrastate Access Tariff #1
http://www.centurytel.com/resources/pdf/applications/tariffs

Tandem Switching:	Intrastate Switched Access Service Tariff rate **set forth in Section 26.2.2(A)(3)** of CenturyTel of the Midwest-Wisconsin, LLC Intrastate Access Tariff No. 1
Tandem Switched Facility	Intrastate Switched Access Service Tariff rate **set forth in Section 26.2.2(A)(3)** of CenturyTel of the Midwest-Wisconsin, LLC Intrastate Access Tariff No. 1
Transport Switched Termination	Intrastate Switched Access Service Tariff rate **set forth in Section 26.2.2(A)(3)** of CenturyTel of the Midwest-Wisconsin, LLC Intrastate Access Tariff No. 1
CHARTER PROPOSED TRANSIT RATE	**$.005**

D. Additional Services

NP Dip Charge	**Rates set forth in** the National Exchange Carrier Association Interstate Access Tariff FCC No. 5 **[TBD. No NECA interstate access rates defined for CenturyTel of Central Wisconsin, LLC]**

Discussion

The Panel is persuaded that under 47 C.F.R. § 52.26(b)(1), CenturyTel is required to complete calls ported from Charter even if Charter has failed to conduct the query function. The FCC does give Century the option to not complete the call if doing so would impair its network reliability. Charter agrees that it is responsible for conducting the query and insists that instances where a query has not been completed are quite rare. The only real concern the Panel has over the issue of obligations is that it is possible for the delivery of non-queried calls by Charter to CenturyTel to move from being rare to common, and the Panel believes that if these calls do become common, CenturyTel would be justified in blocking the calls because they would start to impair its network reliability.

The more contested dispute between the parties, as has been the case on a number of the issues in this arbitration, is over the pricing standard to be applied. In addressing this issue, the Panel determines that there are two sets of pricing standards involved. One is the pricing standard applicable to the query function itself and the second is the pricing standard applicable to rerouting the call once the query has been made.

In relation to the queries, the charges associated with number portability are not governed by § 251(c). The requirement to provide number portability stems from § 251(b)(2). Recovery of cost associated with number portability is governed by § 252(e)(2). The application of the number portability cost recovery standards to the obligations of N-1 carriers is captured in the following statement of the FCC:

> We note further that if the N-1 carrier does not perform the query, but rather relies on some other entity to perform the query, that other entity may charge the N-1

> carrier, in accordance with guidelines the Commission will establish to govern long-term number portability cost allocation and recovery.[60]

While the FCC rule 47 C.F.R. § 52.26(b)(1) prohibits CenturyTel from blocking an unqueried call, it says nothing about the terms of an arrangement between CenturyTel and Charter for CenturyTel to perform queries for Charter's unqueried calls. To the extent Charter relies on some other entity such as CenturyTel to perform its queries, then that other entity may charge Charter. The Panel further notes that Charter does not dispute that it is required to compensate CenturyTel to perform such queries. The Panel determines that in relation to pricing standards, the standards for arbitration per § 252 only contain § 252(d) pricing standards that are applicable to obligations under § 251(c)(2) and (3) and § 251(b)(5). There are no standards for arbitration of pricing related to number portability required by § 251(b)(2). However, it is clear that the TELRIC standard stemming from 47 U.S.C. § 252(d), as proposed by Charter, is not applicable. Therefore, CenturyTel's proposal for its charges for queries is reasonable.

However, in relation to the routing of the call the Panel is persuaded, as argued by Charter, that the service provided is the transiting of a local call and the FCC requires transiting rates that are included in interconnection agreements to be cost-based. The FCC's standard for establishing cost-based rates for interconnection is TELRIC. The Panel also understands that access rates typically have not been developed using TELRIC or other incremental cost-based standards, so it is not inclined to accept CenturyTel's proposed rates for completing non-queried calls from Charter.

The Panel is concerned that Charter has not provided evidence that its proposed rate of $.005 reflects the TELRIC costs that CenturyTel would incur to complete the calls. Charter

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[60] *Id.*, at ¶ 75.

asserts that this rate has been negotiated between the parties in another agreement, but there is no evidence that this negotiation included the cost of the extra activity CenturyTel must perform in addition to normal transiting functions. To resolve this dispute, the Panel has decided to accept the $.005 rate proposed by Charter. Because there is minimal information on the record to support this rate, CenturyTel will have the right to elect either to negotiate an amendment to the transit rate using §251/252 procedures, or to file a complaint with the Commission to establish a just and reasonable rate for transit service. CenturyTel must make this request within one year after final Commission approval of this agreement and after giving 30 days advance notice to both Charter and the Commission. The Panel expects that if, as Charter maintains, the incidence of non-queried calls delivered by Charter to CenturyTel is indeed quite rare, then it may not be worth CenturyTel's time and expense to renegotiate this rate. This assumes that Charter does not increase its use of CenturyTel's transiting functions when using indirect interconnection.

Issue 24 Award

The Panel awards CenturyTel's proposed rate for performing queries of unqueried calls delivered to CenturyTel by Charter. The Panel awards the language proposed by Charter for the transiting of these calls. Within one year of the adoption of this award, CenturyTel has the option either to negotiate an amendment to the transit rate using §251/252 procedures, or to file a complaint with the Commission to establish a just and reasonable rate for transit service. Before exercising this option, CenturyTel must give 30 days advance notice to Charter and to the Commission. The Panel expects that given the above description of its award and its award on other related issues, the parties can reach their own agreement on redrafting the contract.

Issue 25: Addressed in Issue 2.

Issue 26: Resolved.

Issue 27: Resolved.

Issue 28: Charter version: Should CenturyTel be allowed to assess a charge for administrative costs for porting telephone numbers from its network to Charter's network?

CenturyTel version: 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?

Issue 41: Should the Pricing Article include Service Order rates and terms?

Century proposes to apply a service order charge each time Charter forwards a subscriber request to port a telephone number from CenturyTel's network to Charter's. The issue here is whether this service order charge is a prohibited charge under the FCC's orders in its proceeding on number portability. *See* First Report and Order and Further Notice of Proposed Rulemaking, *Telephone Number Portability,* 11 F.C.C.R. 8352 (1996).

Position of the Parties

(a) Charter

The petitioner proposes the following language for Article IX, Section 1.2.3 of the Interconnection Agreement:

> 1.2.3 Notwithstanding any other provision of this Agreement, the Pricing Appendices, and any attachment or appendix incorporated herein, the Parties shall not assess charges on one another for porting telephone numbers, or for processing service orders associated with requests for porting numbers. Neither Party will bill the other Party any service order charge for a LSR, regardless of whether that LSR is later supplemented, clarified or cancelled. Notwithstanding the foregoing, neither Party will bill an additional service order charge for supplements to any LSR submitted to clarify, change or cancel a previously submitted LSR.

(b) CenturyTel

CenturyTel would instead word Section 1.2.3 as follows:

> 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.

Discussion

The Act facilitates competitive entry into the local telecommunications exchange market by mandating local number portability pursuant to § 251(b)(2). An incumbent local exchange carrier may not recover carrier-specific costs directly related to providing number portability from the competitive carrier submitting the request. Instead, those costs are recovered through a surcharge on local telephone service authorized by 47 C.F.R. § 52.33. The FCC defines carrier-specific cost directly related to providing number portability as follows:

> 72. We conclude that carrier-specific costs directly related to providing number portability are limited to costs carriers incur specifically in the provision of number portability services, such as for the querying of calls and the porting of telephone numbers from one carrier to another. Costs that carriers incur as an incidental consequence of number portability, however, are not costs directly related to providing number portability.

Third Report and Order, *Telephone Number Portability,* 13 F.C.C.R. 11,701, 11,740 (1998)(*Third Report and Order*).

The FCC further prohibits additional charges that may shift recovery of number portability costs to other carriers in a competitively biased manner:

> 62. We agree with Comcast that incumbent LECs may not recover any number portability costs through interconnection charges or add-ons to interconnection charges to their carrier "customers," nor may they recover carrier-specific costs through interconnection charges to other carriers where no number portability functionality is provided. To the extent necessary, we clarify our decision accordingly. The Third Report and Order allows incumbent LECs to assess number portability charges in limited circumstances and only where the incumbent LEC provides number portability functionality: (1) on resellers of the

> incumbent LEC's local service; (2) on purchasers of switching ports as unbundled network elements under section 251; and, (3) on other carriers for whom the LEC provides query services. Allowing the incumbent LECs to assess an end-user charge on resellers and on purchasers of switching ports as unbundled network elements is competitively neutral because the reseller and the purchaser of the switch port will incur the charge in lieu of costs they would otherwise incur in obtaining long-term number portability functionality elsewhere. (Notes omitted).

Memorandum Opinion and Order on Reconsideration and Order on Application for Review, *Telephone Number Portability*, 17 F.C.C.R. 2578, 2608 (2002) (*2002 Cost Reconsideration Order*).

Finally, the FCC later clarified that standard fee charges that are common to a variety of service order situations should be recovered from the customer submitting the order rather than through an end-user charge:

> n. 49. ... With respect to the transaction charges that BellSouth intends to assess on Verizon Wireless, ... BellSouth has stated that, to the extent it imposes such charges, they are standard fees assessed for various services provided to carriers, which are unrelated to the provision of number portability, and therefore are not recoverable through an end-user (or other portability) charge. ... [F]ees for non-LNP related services do not satisfy the Commission's cost recovery standards for portability-related charges. Were BellSouth to seek recovery of such costs through its intermodal tariff filing, they would be rejected. However, because BellSouth is not seeking to recover these costs from its own end-users, there is no danger of double recovery.

Order, *Telephone Number Portability; BellSouth Corporation Petition for Declaratory Ruling and/or Waiver,* 19 F.C.C.R. 6,800, 6806 n. 49 (2004) (*BellSouth Declaratory Ruling*).

For each number porting order, there are a set of administrative or record-keeping tasks necessary to enter and prepare the order and an additional set of tasks that Century believes are more central to the actual porting event.[61] Century distinguishes these two sets of tasks in that the first set are common to a variety of service order situations, while the second set only occur

[61] Tr. 714.

in the event of a number porting request. Century would recover the cost of the first set of tasks with its service order charge, and recover the cost of the second set of tasks through its end-user Local Number Portability (LNP) charge.

Charter, following the language of the *2002 Cost Reconsideration Order,* asserts that the service order costs are a part of the number porting process, and would not be incurred but for the fact that Charter submitted the request. Thus Charter would describe the service order charge as an interconnection charge or add-on to an interconnection charge within the meaning of that earlier order.

The testimony on this point does not resolve this dispute. The Century witness testified that the service order charge at issue compensates the carrier for administrative activities undertaken prior to executing the porting function, and that these activities and the associated costs are incidental to the provision of number portability.[62] However, from the witness'description of the tasks, it is simply not clear that the description matches the comment in footnote 49 of the *BellSouth Declaratory Ruling.*

The main problem with this issue is that the dispute turns on the meaning of a footnote in an order meant to clarify a point of policy dissimilar from the issue in dispute here. Century asserts on the basis of this footnote that it could not recover its service order costs of number porting through its end-user surcharge. However, it is not clear from the record whether Century's assertion is correct or not.

In this circumstance, it would seem prudent to steer closely to basic principles here, and allow the parties to pursue a clarification from the FCC if they wish to do so. At bottom, the Century is required by statute to port numbers. It is appropriate to recover the cost of porting a

number through an end-user surcharge since charging a customer for each number porting request would create a financial impediment and frustrate the purpose of the underlying statute. Dividing the tasks necessary to port a number in two, and permitting an additional charge to recover the one set of costs would certainly cause at least some impediment to the competitive offering of telephone service. Whether that brake on competition would be outweighed by the risk of unrecovered costs under the FCC's several LNP orders cannot be answered from this record. Therefore it is appropriate to award the language proposed by Charter for these issues.

Issues 28 and 41 Award

The Panel awards the language proposed by Charter for Article IX, Section 1.2.3.

Issue 29: Does CenturyTel have the right to monitor and audit Charter's access to its OSS?

Issue 29 involves whether CenturyTel should be required to obtain Charter's consent before CenturyTel would engage in auditing or monitoring Charter's access to CenturyTel's Operations Support Systems. An example of a function the OSS provides is Charter's ability to electronically submit orders to CenturyTel, or Charter's access to a customer's records including the features to which a customer subscribes.

Positions of the Parties

(a) Charter

Charter raises concerns that the terms audit and monitor are undefined. Charter questions CenturyTel's intent in auditing or monitoring activity and whether the activity would be limited to checking for compliance with terms of the agreement and applicable law. Charter agrees that it is required to comply with these requirements. To allay its concerns, Charter proposes

[62] Tr. 714.

language that would require CenturyTel to obtain consent from Charter before engaging in this activity. Charter opposes CenturyTel's proposal which it believes would give CenturyTel unrestricted rights to monitor and audit Charter's use of the OSS. Charter believes this would provide CenturyTel "the potential to use such information in an anti-competitive manner to initiate marketing retention programs to retain customers."

(b) CenturyTel

CenturyTel believes that its proposed language would provide it the ability to engage in reasonable monitoring and auditing of Charter's access to CenturyTel's OSS to ensure compliance with the terms of the agreement and applicable law. CenturyTel objects to Charter's proposed language that it believes would provide Charter the ability to veto CenturyTel's legitimate rights to assure compliance. CenturyTel believes other sections of the agreement and CenturyTel's corporate policy regarding the use of customer proprietary information will sufficiently protect Charter from the anti-competitive concerns Charter raises. CenturyTel believes that requiring CenturyTel to obtain consent to these activities would defeat the purpose of the monitoring or auditing activity.

Proposed Contract Language

Charter and CenturyTel each propose certain language additions to Art. X, sections 8.3.1, 8.3.2, and 8.3.3.

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.

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 **may, upon CLEC's consent,** 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 the obligation) to electronically monitor **CLEC's access to and use of CenturyTel OSS Information which is made available by CenturyTel to **CLEC through CenturyTel OSS Facilities.

8.3.3 Information obtained by CenturyTel pursuant to this Section 8.0 shall be treated by CenturyTel as Confidential Information of **CLEC pursuant to Section 14.0, Article III of the Agreement; provided that, CenturyTel shall have the right (but not the obligation) to **may, upon CLEC's consent,** use and disclose information obtained by CenturyTel pursuant to this Article to enforce CenturyTel's rights under the Agreement or Applicable Law.

Discussion

The Panel turns to 47 U.S.C. § 222(b) regarding the use of information obtained from another telecommunications carrier as follows:

> (b) Confidentiality of carrier information
> A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

Also, as the parties have chosen 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, which in turn, as indicated in the notice, allows consideration of other provisions

of Wis. Stat. ch. 196 as may be pertinent hereto. Accordingly, the Panel also considers the factors listed in Wis. Stat. § 196.03(6), in particular, (a) the promotion and preservation of competition consistent with Wis. Stat. ch. 133 and Wis. Stat. § 196.219 and (b) the promotion of customer choice. The other factors in Wis. Stat. § 196.03(6) are not relevant to the issue at hand.

The Panel agrees with both Parties' concerns. CenturyTel's language does not provide reasonable limits on its proposed monitoring and auditing activity to assure such information is not used by CenturyTel for its marketing activity. However, Charter should not be able to reject monitoring or auditing for compliance or to use consent to defeat the purpose of monitoring and auditing activity.

The Panel agrees with Charter's concern that CenturyTel's corporate policy provides no protection that information gained from monitoring and auditing activity will not potentially be used for anti-competitive purposes. Such policies and procedures are under the sole control of CenturyTel and subject to change. Both the existence of § 222(b) and a recent determination by the FCC that Verizon violated this section[63] demonstrate that proper use of such information is important to promoting competition and customer choice. Charter provided reference to language in the AT&T/Charter interconnection agreement which limits AT&T's use of such information. The Panel disagrees with CenturyTel's assertion that Charter's concern regarding CenturyTel's possible anti-competitive use of auditing or monitoring has been addressed.

However, the Panel also agrees that Charter should not be able to reject being subject to monitoring and auditing, and that providing consent should not be able to defeat the purpose of such monitoring and auditing activity. The Panel believes it would be reasonable to clarify the purposes of the monitoring and auditing activity and to obtain enforceable limitations on the use

of information gained in that context. Consent that is limited to these purposes would be reasonable. The Panel will add language that Charter's consent shall not be unreasonably withheld.

Issue 29 Award

The Panel awards the following language for Article X:

> 8.3.1 CenturyTel may, upon Charter consent, which consent shall not be unreasonable withheld, audit Charter to ascertain whether Charter is complying with the requirements of Applicable Law and this Agreement with regard to Charter's access to, and use and disclosure of, CenturyTel OSS Information.
> 8.3.2 Without in any way limiting any other rights CenturyTel may have under the Agreement or Applicable Law, CenturyTel may, upon Charter consent, which consent shall not be unreasonably withheld, monitor Charter's access to and use of CenturyTel OSS Information which is made available by CenturyTel to Charter pursuant to this Agreement, to ascertain whether Charter is complying with the requirements of Applicable Law and this Agreement, with regard to Charter'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 the obligation) to electronically monitor Charter's access to and use of CenturyTel OSS Information which is made available by CenturyTel to Charter through CenturyTel OSS Facilities.
> 8.3.3 Information obtained by CenturyTel pursuant to this Section 8.0 shall be treated by CenturyTel as Confidential Information of Charter pursuant to Section 14.0 Article III of the Agreement; provided that, CenturyTel may, upon Charter's consent, which consent shall not be unreasonably withheld, use and disclose information obtained by CenturyTel pursuant to this Article to enforce CenturyTel's rights under the Agreement or Applicable Law.

Issue 30: Should the Agreement preserve CenturyTel's rights to recover from Charter certain [unspecified] costs of providing access to "new, upgraded, or enhanced" OSS? [bracketed word is Charter's wording]

This issue concerns whether there should be a provision in the interconnection agreement that would reserve CenturyTel a right to charge Charter for potential future upgrades or enhancements to its OSS.

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[63] *In the Matter of Bright House Networks, LLC, et al., v. Verizon California, Inc., et al.*, 23 F.C.C.R. 10704 (2008).

Positions of the Parties

(a) Charter

Charter believes that CenturyTel should not have the unilateral right to recover unspecified costs related to future upgrades or enhancements to CenturyTel's OSS. Charter believes the appropriate process in the event of CenturyTel wishes to seek recovery would be the contract amendment process. This would include 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. Accordingly, Charter omits section 15.2 of Article X, Access to Operations Support Systems, and believes parties should rely on Article III, section 4, Amendments, and Article III, section 12.1, Changes in law, with the added protection of the dispute resolution process of Article III, section 20. Charter objects to the inclusion of CenturyTel's proposed language as it believes the section would shift the burden to Charter to rebut any newly proposed OSS charges.

(b) CenturyTel

CenturyTel proposes to add section 15.2, of Article X, Access to Operations Support Systems, in order to preserve its right to recover costs associated with future upgrades and enhancements to its OSS. CenturyTel explains that its proposed language would require CenturyTel to obtain Commission approval and an order from the Commission that Charter is responsible for payment of the new charges, thus providing protections to Charter that the charges are reasonable. Without such a provision, CenturyTel is concerned that Charter will argue that the lack of such a provision in the interconnection agreement prohibits CenturyTel from assessing such a charge to Charter, per Article I, section 3, Scope of the Agreement.