Second, the Parties also dispute the question of whether damages arising from the gross negligence of the other party should be specifically excluded from any limitation on damages. Charter proposes to include gross negligence in this provision, so that damages between the Parties would not be limited where damages arise as a result of grossly negligent behavior by the party at fault.[161] CenturyTel, on the other hand, declines to include gross negligence in this provision.

As to the first question, the Arbitrator declines to adopt CenturyTel's cap upon the total amount of damages that may be available to Charter. It is inappropriate, either practically or as a matter of public policy, for the Parties to set an artificial cap on potential liability to each other. Practically speaking, it is inappropriate to cap potential damages because that would likely prohibit the innocent party from being fully compensated for its actual damages.

From a public policy standpoint, setting an artificial cap on damages reduces incentives for the Parties to ensure that their actions do not result in harm to the other Party. In other words, by not limiting damages, both Parties have appropriate incentives to take due care with respect to the network and facilities of the other Party.

As to the second question, the effect of CenturyTel's language is that it would artificially cap the amount of damages available to Charter, even in the context of damages that arose from CenturyTel's *grossly negligent* actions.[162] Because the Commission has already decided this very question, CenturyTel's proposal is rejected.

In the 2005 arbitration proceeding between SBC and various LECs, the Commission affirmed the Arbitrator's ruling that "it is contrary to public policy to cap liability for

---

[161] DPL at 57 (Charter proposed language, Art. III, § 30.3.3.7).

[162] *Id.*

intentional, willful, or grossly negligent action."[163] Thus, the Arbitrator rejects CenturyTel's proposed damage limitations in this arbitration proceeding.

Decision

The Arbitrator finds this issue in favor of Charter.

16. Should the Agreement contain a provision providing that CenturyTel is solely responsible for the costs and activities associated with accommodating changes to its network that are required due to Charter's modifications to its network?[164]

Findings of Fact

42. The Parties' dispute relates to "whether Charter can be permitted to require CenturyTel to apply what are *incumbent* LEC requirements regarding network changes to Charter's *CLEC* operations."[165]

43. Charter has misconstrued the issue since Charter is seeking interconnection from CenturyTel; thus, any changes that Charter makes to its network are irrelevant since CenturyTel is not seeking, and cannot seek, interconnection from Charter.[166]

---

[163] *SBC Missouri Arbitration*, Commission Order at 56 (affirming Arbitrator's Final Report, Sec. 1(a) at p. 71).

[164] Charter's phrasing of this issue is: "Should both Parties be allowed to modify, and upgrade, their networks, and should the other Party be responsible for assuming the costs of such network upgrades or modifications?"

[165] Ex. 13, p. 19, l. 15-17 (emphasis in original).

[166] *Id.* at 19, l. 17 – 20, l. 22.

44. Nothing in CenturyTel's language affects Charter's ability to upgrade its network.[167]

45. Nothing in CenturyTel's language would make Charter responsible for the costs CenturyTel incurs for CenturyTel's network upgrades.[168]

46. CenturyTel opposes the efforts of Charter to make the provision reciprocal in order to avoid any inferences that CenturyTel may be responsible for Charter's network upgrade costs.[169]

47. There are no governing standards applicable to Charter such as those that are applicable to CenturyTel.[170]

48. Charter witness Gates' reference to an FCC decision in Issue 9 is also consistent with CenturyTel's position since the FCC has recognized that interconnection under the Act is distinct from bilateral commercial negotiations, and that, in any event, there is no need for reciprocal language because, due to CenturyTel's network, there is nothing that CenturyTel needs from Charter.[171]

49. Charter witness Gates' reference to never seeing any provision similar to the one being addressed indicates that Mr. Gates has not reviewed the current Agreement between the Parties which includes a provision that is essentially identical to that being proposed by CenturyTel here.[172]

---

[167] *Id.* at 25, l. 11-18; Ex. 14, pp. 17-21.

[168] Ex. 13, p. 21, l. 21 – p. 22, l. 1; p. 22, l. 14-19.

[169] *Id.* at 24, l. 9-15; 25, l. 1-9.

[170] *Id.* at 21, l. 1 – 22, l. 11; 22, l. 14-22; 23, l. 1-3, l. 6-8, l. 10; 24, l. 2; Ex. 14, p. 22, l. 1-6.

[171] Ex. 14, p. 25, l. 3-12.

[172] *Id.* at 23, l. 5-25.

50. Charter has very similar language in place in its interconnection agreement with AT&T in Missouri.[173] Thus, Mr. Watkins's testimony of these facts undermines Mr. Gates' testimony regarding never having seen such a provision.[174]

51. Making the provision "mutual" would not negatively impact CenturyTel for all of the reasons he has provided.[175]

Conclusions of Law and Discussion

CenturyTel is correct that Charter sought interconnection from CenturyTel and CenturyTel cannot seek the same from Charter. Thus, the very structure of the Act is not reciprocal and that overarching fact must guide the resolution of this issue. CenturyTel's language should be adopted as it is consistent with Section 251(c)(5) of the Act. That section states as follows:

> (c) Additional obligations of incumbent local exchange carriers
>
> In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:
>
> . . .
>
> (5) Notice of changes
>
> The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

47 U.S.C. § 251(c)(5).

Moreover, CenturyTel has agreed to comply with 47 C.F.R. §§ 51.325 through 51.335 as noted by its witness. Those FCC Rules are applicable to ILECs.

---

[173] *Id.* at 23, l. 25 – 24, l. 16.

[174] *Id.* at 24, l. 16-17.

[175] *Id.* at 26, l. 1-8.

For example, Section 51.325(a) states that "An incumbent local exchange carrier ("LEC") must provide public notice regarding any network change. . . ." Similar references are made to the ILEC's requirements in the other relevant sections as well. As a result, the Arbitrator agrees with CenturyTel that the explicit network change requirements applicable to it are not applicable to Charter, but do provide Charter with rights when and if such requirements are triggered.

Charter has duties under Section 251(a)(2) and other general nondiscriminatory requirements under other applicable law. But Charter has provided no reference to any specific or explicit implementation rules or requirements under that provision. Without specific requirements governing Charter's CLEC network upgrades such as those that only apply to ILECs under the Act and FCC rules, there would be no explicit governing standards applicable to Charter. Accordingly, Charter's contention that the provision should be reciprocal is simply mistaken when viewed in light of applicable law.

Likewise, Charter's suggestion that there would be no adverse affect on CenturyTel if the provision were made reciprocal cannot withstand scrutiny based on the lack of any explicit rules or requirements applicable to Charter with respect to network changes. The fundamental incongruence of Charter's CLEC reciprocal language with applicable law renders its contract language subject to unnecessary questions as to its meaning, and Charter's approach should be avoided.

Simple logic suggests that the lack of any such explicit rules or requirements applicable to Charter concerning which CenturyTel can enforce Charter's compliance creates an essentially unlimited exposure for CenturyTel. Thus, Charter's contention that

making Section 47 reciprocal would present no adverse impact upon CenturyTel is rejected.

The additional reasons that Charter provides for its position are equally unavailing. First, Charter expresses concerns that the CenturyTel language could impose CenturyTel's upgrade costs upon Charter. While the Arbitrator does not find that the language proposed by CenturyTel could be construed in that manner, CenturyTel further has made clear that the concern expressed by Charter is not what the language entails. Therefore, this Charter concern has been addressed.

Second, Charter appears to be concerned that the language could be interpreted in a manner to preclude Charter from upgrading its network. That has also been rebutted on the record and nothing further regarding that apparent concern is necessary.

Third, the Charter witness' suggestion that the CenturyTel language is somehow novel has no merit. Charter has agreed to substantially similar language in its current agreement with CenturyTel and another agreement with another ILEC here in Missouri.

Decision

For the foregoing reasons, CenturyTel's proposed language regarding Section 47 shall be included in the Agreement. **The Arbitrator finds this issue in favor of CenturyTel.**

17. Should the Agreement contain terms setting forth the process to be followed if Charter submits an "unauthorized" request to CenturyTel to port an End

User's telephone number, and should Charter be required to compensate CenturyTel for switching the unauthorized port back to the authorized carrier?[176]

Findings of Fact

52. FCC "anti-slamming" regulations cited by Charter focus on protection of consumer interests as opposed to the interests of the carrier executing an unauthorized port, particularly as they relate to such carrier's recovery of its costs caused by the unauthorized port.[177]

53. CenturyTel cannot stop improper porting orders from occurring; thus, the Agreement should contain provisions that allow CenturyTel to recover costs incurred to correct any improper porting orders which is why CenturyTel has proposed Article III, §§ 50.1 and 50.2.[178]

Conclusions of Law and Discussion

CenturyTel's proposed language for Article III, §§ 50.1 and 50.2 establishes procedures that would apply if Charter submits an order for number portability or for UNEs in order to provide service to an end user. It also establishes the rate of $50.00 per affected line that would be charged by CenturyTel to Charter to switch an end user back to the LEC originally serving the end user.

While the FCC's "anti-slamming" regulations generally address this subject, the Arbitrator does not find any inconsistencies or conflicts between CenturyTel's proposed

---

[176] Charter's phrasing of this issue is: "Should Charter be contractually bound by terms concerning liability for carrier change requests that exceed its obligations under existing law?"

[177] Ex. 21, p. 52, l. 9-18.

[178] *Id.* at 53, l. 8-18.

language and such regulations, and Charter has not identified any. The Arbitrator concludes that CenturyTel's proposed language for Article III, §§ 50.1 and 50.2 is fair and reasonable and finds that such language should be and is approved.

Decision

The Arbitrator finds this issue in favor of CenturyTel.

Interconnection

18. Should Charter be entitled to interconnect with CenturyTel at a single point of interconnection (POI) within a LATA?[179]

Findings of Fact

54. CenturyTel is an incumbent local exchange carrier ("incumbent LEC"), as that term is defined under 47 U.S.C. § 251(h)(1).[180]

55. In order for Charter and CenturyTel to exchange traffic between their respective customers, they must interconnect their networks at a physical location called the "Point of Interconnection" or "POI."[181]

56. Charter must construct (or lease or acquire) new facilities for access to each POI.[182]

57. CenturyTel has not established that a single POI in the specific exchanges that Charter seeks to interconnect would be technically infeasible.

---

[179] CenturyTel's phrasing of this issue is: "What terms and conditions that govern the Point of Interconnection (POI) and trunking arrangements should be included in the Interconnection agreement?"

[180] The Arbitrator takes administrative notice of this fact pursuant to § 536.070(6) RSMo.

[181] Ex. 1, p. 30, l. 8-10.

[182] *Id.* at 32, l. 20-22.

Conclusions of Law and Discussion

In resolving this issue, the Arbitrator must "meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to section 251."[183] Thus, the decision here must, by necessity, turn upon the application of Section 251 of the Act and FCC regulations.

Section 251(c)(2)(B) imposes upon CenturyTel a "duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network; . . . at any technically feasible point within the carrier's network. . . ." [184] Thus, CenturyTel (the ILEC) has a duty to provide to Charter (the requesting carrier) interconnection with CenturyTel's network at "any technically feasible point" within CenturyTel's network.

Section 251(c)(2) references a technically feasible *point*, in the singular, as the place at where the ILEC must provide interconnection. Thus, the Act on its face reveals that a requesting carrier can choose to interconnect with the incumbent LEC at a *single* point on the incumbent's network, as long as that point is technically feasible.

This interpretation of the statute is consistent with the construction by the expert agency responsible for implementing the Act. Specifically, the FCC has considered this issue and repeatedly found that the Act grants requesting carriers the right to establish a single POI on the incumbent LEC's network.

In June 2000, the FCC stated:

> Section 251, and our implementing rules, requires an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. *This*

---

[183] 47 U.S.C. § 251(c)(1).

[184] 47 U.S.C. § 251(c)(2)(b).

means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA.[185]

In April 2001, in discussing its rules in the course of initiating a proceeding regarding intercarrier compensation, the FCC stated:

> As previously mentioned, an ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, *including the option to interconnect at a single POI per LATA.*[186]

In July 2002, in resolving an arbitration between Verizon and WorldCom, the FCC stated:

> Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point. *This includes the right to request a single point of interconnection in a LATA.*[187]

Finally, as recently as March 2005, the FCC explained:

> Under section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point.[188] The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect *at a single point of interconnection* (POI) per LATA.[189]

---

[185] *In the Matter of Application by SBC Communs. Inc., Southwestern Bell Telephone Co., and Southwestern Bell Communs. Services, Inc. d/b/a Southwestern Bell Long Distance; Pursuant to Section 271 of the Telecommuns. Act of 1996 to Provide In-Region, InterLATA Services in Texas*; CC Docket No. 00-65; Released June 30, 2000; at ¶ 78 (emphasis added).

[186] *In the Matter of Developing A Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) ("*Unified Intercarrier Compensation NPRM*") at ¶ 112 (footnote omitted, emphasis added).

[187] *Petition of WorldCom, Inc., et al., Pursuant to § 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Comm'n*, Memorandum Opinion and Order, 17 FCC Rcd 27039 at ¶ 52 (2002) (hereinafter "*FCC Worldcom*") (emphasis added). The Fourth Circuit affirmed that the Bureau's decision is entitled to the same deference that would normally be granted to a decision of the full Commission. *MCI Metro Access Transmission Servs. v. BellSouth Telecomms., Inc.* 352 F.3d 872, n. 8 (4th Cir. 2003).

[188] 47 U.S.C. § 251(c)(2)(B).

[189] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 15 at ¶ 87 (2005) (emphasis added).

It is settled law that competitive providers, like Charter, have the right to interconnect with incumbent providers, like CenturyTel, at a single POI within a LATA. This right is supported by a plain reading of the Section 251(c)(2), and the FCC regulations implementing that statute.[190]

The Arbitrator expressly rejects CenturyTel's assertion that this established rule only applies to ILECs that are also former Bell Operating Companies ("BOCs").[191] This is decided for several reasons.

First, and most importantly, the Act itself (and Section 251(c) in particular) does not except non-BOCs from the rule. Had Congress intended to apply the single POI rule only to ILECs that also were BOCs it clearly could have done so expressly.

Indeed, Congress carved out the former BOCs for the purpose of imposing specific, additional obligations on such companies.[192] Congress set forth these provisions in a separate section of the Act, Part III, entitled "Special Provisions Concerning Bell Operating Companies." In contrast, the statutory provision which gives rise to the single POI obligation, Section 251(c), clearly applies to *all* incumbent local exchange carriers (regardless of whether they are, or are not, a former BOC).

Accordingly, under accepted rules of statutory construction, it is clear that Congress intended all incumbent LECs (including both non-BOCs and BOCs) to be subject to those duties set forth under Section 251(c). Because the single POI per LATA rule derives from

---

[190] 47 C.F.R. §51.321(a) ("...an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier.")

[191] *See* Ex. 13, p. 27, l. 12-18.

[192] *See*, e.g., 47 U.S.C. §§ 271-276. These provisions clearly only apply to BOCs, for example, Section 271 governs "Bell Operating Company" entry into InterLATA services. And Section 273 governs manufacturing by "Bell Operating Companies."

the obligations under Section 251(c)(2) which applies to all incumbent LECs, the rule applies to CenturyTel.

Next, the FCC has implemented the single POI per LATA requirement as a component of its interconnection rules, including 47 C.F.R. § 51.305(a)(2) – which applies to all ILECs, not just BOCs. Also, the FCC orders which establish the single POI obligation upon ILECs, like CenturyTel, do not explicitly (or even implicitly) carve out non-BOC ILECs. There is no distinction made by the FCC in its orders affirming this rule.

Given the express language of the Act, and the FCC's repeated statements interpreting the Act, Charter has the right to interconnect with CenturyTel at a single POI on CenturyTel's network. Further, Charter's proposed language, which provides a right to establish a single POI per LATA, with CenturyTel's network, is consistent with Section 251 and FCC regulations.

Under Section 251(c)(2) and applicable FCC regulations, the only limitation to Charter's right to interconnect at a single POI is where such an arrangement would be "technically infeasible." As the FCC has explained,

> Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA. The incumbent LEC is relieved of its obligation to provide interconnection at a particular point in its network only if it *proves* to the state public utility commission that interconnection at that point is technically infeasible.[193]

---

[193] *In the Matter of Application of SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, FCC 00-238, CC Docket No. 00-65, Released June 30, 2000, ¶ 78 ("Texas 271 Order") (footnotes omitted, emphasis added).

Thus, the inquiry turns to the question of whether CenturyTel has proven that Charter's request for interconnection at a single point would be technically infeasible. CenturyTel has not made that showing.

At the outset, CenturyTel's witness Mr. Watkins makes several statements in his direct testimony that suggest it would be technically infeasible to interconnect with CenturyTel at a single POI on their network.[194] However, Mr. Watkins' statements on this issue evolved, and in his rebuttal testimony he clearly moved away from his prior statements suggesting that interconnection at a single POI would be infeasible.[195] Instead, Mr. Watkins asserted on rebuttal an alternative argument: granting Charter the right to interconnect at a single POI would create additional costs for CenturyTel to transport traffic on its network.[196] Each potential objection will be addressed in turn.

As to the question of technical infeasibility, CenturyTel bears the burden of proof on this question. FCC rule 47 C.F.R. § 51.305 requires that "an incumbent LEC that denies a request for interconnection at a particular point must prove to the state commission that the interconnection at that point is not technically feasible."[197] The FCC has defined technical infeasibility narrowly, requiring significant technical or operational concerns to overcome the presumption against technical feasibility:[198]

> [a] determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC

---

[194] Ex. 13, p. 28, l. 5-22.

[195] Ex. 14, p. 26, l. 22-26.

[196] *Id.* at 36, l. 10-15.

[197] 47 C.F.R. § 51.305(e).

[198] 47 C.F.R. §51.5.

> must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.[199]

Accordingly, based on these standards, any suggestion by CenturyTel that it must modify the facilities on its side of the POI has no bearing on whether Charter should be allowed to choose a single POI per LATA. This standard also means that CenturyTel's proposed POI limitations, including the requirement that Charter "negotiate" a POI, or establish a "Local POI,"[200] are inconsistent with the presumption under federal law that a single POI is the competitor's right, absent a showing of technical infeasibility. CenturyTel's other proposed limitations on Charter's ability to request a single POI per LATA (including considerations related to CenturyTel's network architecture, potential costs, future capacity needs, etc.) are not consistent with FCC regulations implementing Section 251, and must therefore be rejected.

Further, CenturyTel's statement concerning the potential economic impact of allowing Charter to establish a single POI is not relevant to the analysis. FCC rule 51.305 states that "technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns." As such, the Arbitrator cannot deny Charter's right to a

---

[199] *Id.*

[200] CenturyTel's proposed term "Local POI" is not well defined, but suggests that Charter would be obligated to establish multiple POIs in each local exchange area in which it provides service. This clearly conflicts with the FCC's single POI per LATA requirement.

single POI simply because of any alleged additional costs that CenturyTel asserts may arise.[201]

Mr. Watkins' testimony, suggesting that interconnection at a single POI would constitute either a technically infeasible interconnection arrangement, or an unreasonably costly arrangement, is unpersuasive. Further, the Arbitrator also rejects other assertions made by Mr. Watkins, regarding the limitations of CenturyTel's interconnection obligations. In particular, Mr. Watkins suggests that the non-discrimination principles of Section 251(c)(2) limit Charter's right to request a single POI.

For example, Mr. Watkins states that an ILEC is "not required to provision interconnection arrangements for the benefit of its competitors that are more than what the incumbent does for itself . . . ,"[202] and "under Section 251(c)(2) of the Act, [ILECs] are not required to provision superior arrangements at the request of the competing carriers."[203] The facts revealed by CenturyTel's network diagram, however, establish that Charter's request would simply seek interconnection arrangements that are equal to what CenturyTel already provides itself, not a "superior" arrangement.

Nor is Mr. Watkins correct to suggest that Charter's proposal would require CenturyTel to build new facilities. For example, he states that "competitive carriers requesting interconnection should have access 'only to an incumbent LEC's *existing*

---

[201] The Arbitrator does not necessarily accept CenturyTel's assertions that a single POI would necessarily impose greater costs upon CenturyTel. Charter witness Mr. Gates testified that a "single POI should actually reduce costs for CenturyTel and for Charter due to lower fiber transport costs." Ex. 1, p. 45, lines 12-13.

[202] Ex. 13, p. 30, l. 24-27.

[203] *Id.* at 31, l. 15-16.

network –not to a yet unbuilt superior one'"[204], and "incumbents are not required 'to alter substantially their networks in order to provide superior quality interconnection . . ."[205]

Taken as a whole, these facts demonstrate that Charter's single POI request: (1) is technically feasible; (2) does not present a "superior" form of interconnection; and, (3) should not require CenturyTel to incur any appreciable additional costs.[206] Factors such as "super" interconnection or additional costs cannot be considered in determining whether a POI is technically feasible.

Furthermore, allowing CenturyTel to dictate the location of a single POI or multiple POIs for originating traffic would be problematic. That result could allow CenturyTel to force Charter to build out a ubiquitous network based on the same geographic reach as the CenturyTel network. Additionally, by forcing CLECs to use multiple POIs of CenturyTel's choice and location, CenturyTel is prohibiting CLECs, like Charter, from enjoying the efficiencies CenturyTel built into the network for its own use, and improperly shifting the costs of building out the CenturyTel network to its competitors. Nothing about this approach represents an appropriate balance of costs between the ILEC's existing network dominance and a CLEC's investment to compete in the market.

In short, allowing CenturyTel to determine the number and location of POIs would allow CenturyTel to have control over Charter's investment decisions and could force Charter to invest in facilities that are not justified from a market or engineering

---

[204] *Id.* at 32, l. 6-7.

[205] *Id.* at 32, l. 20-21.

[206] CenturyTel has presented no cost evidence regarding the ramification of Charter's single POI language despite having express notice of Charter's proposal no later than when the DPL was filed.

standpoint.[207] Further, from an economic standpoint, a single POI allows CLECs to have a minimal, yet efficient, presence until its customer base and traffic patterns warrant the further expansion of its own network.[208]

Decision

Charter is entitled, under federal law, to establish a single POI per LATA with CenturyTel as the point at which it will exchange all traffic with CenturyTel in that LATA. The FCC's language could not be clearer: "an ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA."[209]

For these reasons, Charter's proposed language on this issue shall be adopted. **The Arbitrator finds this issue in favor of Charter.**

19. Should Charter's right to utilize indirect interconnection as a means of exchange traffic with CenturyTel be limited to only those instances where Charter is entering a new service area, or market?[210]

---

[207] Ex. 1, p. 38, l. 10-19.

[208] *Id.* at 42, l. 4-6.

[209] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92 (rel. Apr. 27, 2001), at ¶ 112; *see also In the Matter of Application by SBC Communications Inc. et al. to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238 at ¶ 78, n. 174 (rel. June 30, 2000) ("a competitive LEC has the option to interconnect at only one technically feasible point in each LATA").

[210] CenturyTel's phrasing of this issue is: "Should the Agreement between the Parties limit the voluntary utilization of third party transit arrangements to a DS1 level of traffic?"

Findings of Fact

58. Direct interconnection is a form of interconnection where there is an actual physical connection of networks for the purpose of exchanging traffic originating on two service provider's networks.[211]

59. Transiting connotes indirect interconnection through an intermediary carrier's network.[212]

60. Indirect interconnection will end when exchanged traffic meets a 240,000 MOU threshold for three consecutive months.[213]

Conclusions of Law and Discussion

Section 251 of the Act requires telecommunications carriers to interconnect "directly *or indirectly* with the facilities and equipment of other telecommunications carriers."[214] The right under Section 251(a) to interconnect through either direct *or indirect means* has been expressly recognized by the Commission:

> "[a] CLEC may choose to indirectly interconnect with SBC Missouri by using the facilities of another carrier. Such indirect interconnection does not release the CLEC from any of the obligations to which it is held under the agreement."[215]

---

[211] Ex. 1, p. 49, l. 11-12.

[212] *Id.* at 49, l. 23-25.

[213] Tr. p. 80; l. 10-19; Tr. 106, l. 15-25; Tr. 107, l. 1-3.

[214] 47 U.S.C. § 251(a)(1) (emphasis added).

[215] *Petition of Socket Telecom, LLC for Compulsory Arbitration of Interconnection Agreements with CenturyTel of Missouri, LLC and Spectra Communications, LLC, pursuant to Section 251(b)(1) of the Telecommunications Act of 1996*, Final Commission Decision, Case No. TO-2006-0299, 2006 Mo. PSC LEXIS 1380, at *32-33 (2006) (hereinafter Socket Arbitration-Commission Decision); *see also Southwestern Bell Telephone d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Missouri 271 Agreement*, Final Arbitrator's Report, Case No. TO-2005-0336 ("...pursuant to 47 USC 251(a)(1), an ILEC has a duty to indirectly interconnect with a CLEC that chooses such method of interconnection") (hereinafter SBC Arbitration-Arbitrator's *Final Report*).

In that case the Commission rejected CenturyTel's attempt to adopt language that would limit a carrier's right to indirect interconnection, explaining that such limitations are not consistent with Section 251(a)(1) and the Commission's previous interpretation of the Act.[216] Charter seeks to maintain its federally-established right to choose indirect interconnection when it is the most appropriate means of exchanging traffic. Contrary to CenturyTel's assertion, Charter is not attempting to "use indirect interconnection indefinitely."[217] Rather, Charter wants to establish a more reasonable threshold of traffic volume before the Parties move away from indirect interconnection arrangements.

Charter has a statutory right under Section 251(a) to utilize indirect interconnection as a means of exchanging traffic with CenturyTel. There are no statutory or regulatory limitations on the use of indirect interconnection. Charter can utilize indirect interconnection as a means of exchanging local, extended area service ("EAS") and other traffic with CenturyTel's network, where appropriate.

Decision

The Arbitrator adopts Charter's proposed language as consistent with the Commission's prior decisions and federal law. Charter has a right under the Act to interconnect with CenturyTel through direct or indirect means. Furthermore, the Act contains no limitations on this right, and Charter is entitled to use indirect interconnection as a means of exchanging EAS and other traffic. CenturyTel's position is inconsistent with

---

[216] *Socket Arbitration-Commission Decision, at *32-33.*

[217] Ex. 13, p. 44, l. 15.

the Commission's prior decisions on this issue, and impedes competition by imposing impermissibly restrictive limitations on the use of indirect interconnection arrangements.

The Arbitrator finds this issue in favor of Charter.

20. Should Charter be entitled to lease interconnection facilities from CenturyTel at cost-based rates pursuant to Section 251(c)(2) of the Act?[218]

Findings of Fact

61. Charter seeks access to CenturyTel's network to interconnect and exchange local voice traffic with CenturyTel.[219]

62. An interconnection (or "entrance") facility is a transmission facility used to interconnect two networks for the mutual exchange of traffic on such networks.[220]

63. When carriers exchange traffic, they sometimes use a "relative use factor."[221]

64. Under a relative use factor, costs are proportioned based on the amount of a carrier's originated traffic.[222]

Conclusions of Law and Discussion

Charter and CenturyTel do not dispute that Section 252(c)(2) requires CenturyTel to lease interconnection facilities to Charter at cost-based rates.[223] As the Commission has

---

[218] CenturyTel's phrasing of this issue is: "How long should the Agreement provide the Parties to negotiate cost-based rates for such facilities before they may seek Commission intervention?"

[219] Ex. 1, p. 60, l. 5-6.

[220] *Id.* at 56, l. 5-8.

[221] Tr. 82, l. 13-18.

[222] *Id.*

[223] Ex. 13, p. 67, l. 7-9.

determined, the FCC ruled that CLECs have the right to obtain interconnection facilities pursuant to Section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service.[224] Further, CLECs are entitled to access to interconnection facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network.[225]

The Commission and the federal courts have both ruled that incumbent LECs like CenturyTel must make available interconnection (or "entrance") facilities to CLECs like Charter, at TELRIC rates pursuant to Section 251(c)(2). That is settled law. Accordingly, the Arbitrator affirms that pursuant to Section 251(c)(2), Charter is entitled to lease facilities that are used to interconnect to CenturyTel for the exchange of traffic at cost-based rates.[226]

Moreover, cost-based rates are determined using the TELRIC pricing standard.[227] With respect to the question of whether interconnection facilities must be made available at TELRIC rates, the Eighth Circuit ruled that "CLECs must be provided access at TELRIC rates if necessary to interconnect with the ILEC's network."[228]

Next, which Party's proposed interim rate methodology should be adopted? Under CenturyTel's proposal the cost-based standard would not apply to the interim lease rates. Pursuant to CenturyTel's proposed language, these "interim rates" would be governed

---

[224] *See* SBC Arbitration–Arbtrator's Final Report, Section V, at p. 16, Case No. TO-2005-0336 (Mo. PSC 2005).

[225] *Id.*

[226] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report & Order and Order on Remand and Notice of Proposed Rulemaking, 18 FCC Rcd. 16978 at ¶ 366 (2003) ("Triennial Review Order").

[227] *Southwestern Bell Telephone, L.P. v. Missouri Public Service Comm'n*, 461 F.Supp.2d 1055 (D. Mo. 2006).

[228] *Southwestern Bell Telephone, L.P. v. Missouri Public Service Comm'n*, 530 F.3d 676, 684 (8th Cir. 2008).

solely by CenturyTel's tariff—not according to cost-based principles.[229] Charter proposes the use of CenturyTel's tariffed rate, subject to the originated local traffic factor (sometimes referred to as a relative use factor, or "RUF") of fifty percent (50%).[230] According to Charter, applying an RUF percentage to this arrangement would result in a rate that is closer to the rates Charter pays in other TELRIC-based states.[231]

CenturyTel's proposal to use tariffed rates would probably translate into rates that are significantly higher than would be expected for a 251(c)(2) rate. Charter's proposed language presents a more reasonable approach, consistent with both federal law and by the Commission's decisions in other arbitration proceedings.[232]

Next, the Arbitrator must choose between the Parties' competing "true-up" proposals. CenturyTel's proposed language for establishing an interim rate does not account for recovery of any above-cost amounts paid by pending adoption of a final rate. Notably, CenturyTel does not offer any language in the DPL which indicates it would accept a "true-up" clause.[233] Nevertheless, Mr. Watkins testified that "any interim rate will be adjusted (i.e., "trued-up") once the final rates are determined."[234] Charter's language clearly includes a "true-up" clause that ensures payments made prior to the establishment of the final rate can be trued-up back to the effective date of the Agreement.

---

[229] DPL at. p. 77.

[230] Ex. 1, p. 83, l. 23-25.

[231] *Id.* at 83, l. 10-15.

[232] *See* SBC Final Arbitrator's Report, Section V, at p. 16, Case No. TO-2005-0336 (Mo. PSC 2005) ("To the extent CLECs desire to obtain interconnection facilities described above, they may do so at cost-based (TELRIC) rates"), *see also Southwestern Bell Telephone, L.P. v. Missouri Public Service Comm'n*, 461 F.Supp.2d 1055 (D. Mo. 2006) ("...the Arbitration Order should be affirmed to the extent it determined that CLECs are entitled to entrance facilities as needed for interconnection pursuant to § 251(c)(2), and that TELRIC is the appropriate rate for these facilities").

[233] DPL at. pp. 77-78.

[234] Ex. 1, p. 67, l. 18-19.

Finally, CenturyTel proposes a significantly longer negotiations period for establishing the cost-based rate. Under CenturyTel's proposal, the Parties would have to wait six months before an unresolved dispute may be escalated to the Commission. Charter's language shortens this period, requiring the Parties to negotiate instead for three months prior to seeking Commission intervention. A three-month timeframe is a reasonable amount of time for the Parties to negotiate.

Decision

Charter's proposed language is consistent with applicable law, and provides a reasonable process for CenturyTel to determine an appropriate cost-based rate for interconnection facilities that it must make available to competitors like Charter. Charter has proposed a specific, and precise, formula for establishing interim rates that will apply during the negotiations period. This formula fairly compensates CenturyTel for the facilities it provides. By the same token, the formula does not require Charter to pay more than is reasonably required.

For these reasons, Charter's proposed language is adopted. **The Arbitrator finds this issue in favor of Charter.**

21. Should Charter be allowed to deploy one-way trunks at its discretion, and without having to assume the entire cost of interconnection facilities used to carry traffic between the Parties' respective networks?[235]

---

[235] CenturyTel's phrasing of this issue is: "a) Under what terms and conditions should one-way trunks be used for the exchange of traffic within the scope of this Agreement? b) Regardless of whether one-way or two-way trunks are deployed, where should Points of Interconnection (POIs) be located and what are each Party's responsibilities with respect to facilities to reach the POI?"

Findings of Fact

65. A one-way trunk is a trunk between two switching centers over which traffic may be originated from only one of the two switching centers.[236]

66. The one-way trunk may be deployed from either carrier's network.[237]

67. A two-way trunk allows calls to originate from both ends of the trunk.[238]

68. Both one-way and two-way trunks can carry the traffic that is exchanged between Charter and CenturyTel.[239]

69. Charter's proposed language for Section 3.2.3. states in part: "[W]here one-way trunks are deployed then each Party is responsible for establishing any necessary interconnection facilities, over which such one-way trunks will be deployed to the other Party's switch."[240]

70. Charter does not dispute that each Party should bear the financial responsibility on its side of the POI.[241]

Conclusions of Law and Discussion

FCC rules place the selection of one-way versus two-way trunks in the hands of the connecting CLEC, subject to issues of technical feasibility.[242] Consistent with federal

---

[236] Ex. 1, p. 61, l. 16-19.

[237] *Id.*

[238] *Id.* at 61, l. 23-24.

[239] *Id.* at 62, l. 1-2.

[240] Revised Statement, pp. 80-81.

[241] Ex. 1, p. 30, l. 11-12; p. 31, l. 5-8; p. 45, l. 15-18.

[242] 47 C.F.R. § 51.305(f) ("If technically feasible, an incumbent LEC *shall* provide two-way trunking upon request")(emphasis added).

jurisdiction,[243] and the decisions of this Commission,[244] Charter proposes language that would allow Charter to choose the circumstances when it would employ two-way or one-way trunks. As Charter witness Gates testified, Charter expects that it will routinely order two-way trunks.[245] However, two-way trunks may not always be necessary. Under some circumstances, such as where the traffic is clearly one-way, a one-way trunk may be more efficient.

CenturyTel's proposed language restricts CenturyTel's ability to deploy one-way trunks because it requires both Parties to negotiate the appropriate trunk configuration. If the Parties cannot agree on the deployment of a one-way trunk, the matter would proceed through the dispute resolution process. As such, CenturyTel would essentially have a "veto" power over Charter in regard to the types of trunks it chooses to deploy.

Decision

The Arbitrator adopts Charter's proposed language as consistent with federal law in that it provides a CLEC the ability to choose either one-way or two-way trunks, depending upon the particular circumstances of the traffic the CLEC will exchange with the ILEC.

The Arbitrator finds this issue in favor of Charter.

---

[243] *FCC WorldCom Arbitration Order, at ¶ 147.*

[244] *Socket Arbitration-Commission Decision*, at *49

[245] Tr. 155, l. 1-4.