

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

GALLATIN RIVER COMMUNICATIONS)	
L.L.C. D/B/A CENTURYLINK)	
)	
Petition for Arbitration Pursuant to)	
Section 252(b) of the Communications Act)	
of 1934, as amended by the)	Docket No. 11-0567
Telecommunications Act of 1996)	
To Establish the Rates, Terms and)	
Conditions of Interconnection with)	
NTS Services Corp.)	

*****PUBLIC***
INITIAL BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, and, pursuant to Section 761.440 of the Commission’s Rules of Practice, 83 Ill. Adm. Code 761.440, submits its Initial Brief in the instant arbitration proceeding.

I. PROCEDURAL BACKGROUND

This proceeding was initiated pursuant to a Petition (hereinafter, the “Arbitration Petition”) for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 (“1996 Act”), 47 U.S.C. § 252 (b), to Establish an Interconnection Agreement with NTS Services Corp. (“NTS”), filed on August 3, 2011, by Gallatin River Communications L.L.C. d/b/a CenturyLink (“CenturyLink”). The Arbitration Petition identified only two unresolved issues with respect to an attached “Interim” Interconnection Agreement, and detailed the position of each of the parties with respect to those issues. The Parties

failed to reach agreement on two rates, the pricing for (1) unbundled two wire loops and (2) unbundled DS1 loops.

In support of its positions noted in the Arbitration Petition, on August 17, 2011, CenturyLink filed Direct Testimony. Pursuant to Notice, the Administrative Law Judge held a pre-hearing conference on August 22, 2011, in which the parties agreed to a schedule. Pursuant to the agreed to schedule, NTS filed a Response to the Arbitration Petition (“Response”) along with Direct Testimony in support of its Response on September 23, 2011. In its Response, NTS also raised numerous other issues for arbitration. On November 7, 2011, the ALJ granted a CenturyLink Motion to Strike the new issues NTS raised in its Response.

On December 16, 2011, the Staff filed Direct Testimony. On January 20, 2012, Century Link filed Rebuttal Testimony. An Evidentiary Hearing was held on February 21, 2012, in Springfield, Illinois. At the conclusion of the February 21, 2012, evidentiary hearing, the parties set a briefing schedule. Staff files this Initial Brief pursuant to that briefing schedule.

II. INTRODUCTION

The parties to this proceeding, CenturyLink and NTS, disagree as to the appropriate rates for two unbundled network elements (“UNEs”) – in particular, the parties dispute the rates for unbundled two wire loops and for unbundled DS1 loops. (CenturyLink Petition at 10 and 11) CenturyLink offers rates derived from a total element long run incremental (“TELRIC”) cost study it has submitted in this proceeding. (CenturyLink Petition at 9) NTS argues that the CenturyLink TELRIC cost study is not accurate and that CenturyLink’s offered UNE rates are unsupported. (NTS Petition

Response at 3) NTS compares CenturyLink's proposed rates for the two UNEs at issue with prior rates and with rates in other similar density locations and proposes rates based on these comparisons. (NTS Ex. 1.0 at 9 – 11)

III. ISSUE: There are only two issues before the Commission for arbitration, which are: (1) the appropriate rate for unbundled 2-Wire Loops, and (2) the appropriate rate for unbundled DS1 Loops.

Summary of Staff Position The network modeled by CenturyLink in its TELRIC study for the 2-Wire Loop Rate is inconsistent with the FCC's TELRIC requirements regarding two-wire loops and thus an inadequate basis upon which to set rates. Because the TELRIC model for the 2-Wire Loop Rate is fatally flawed, Staff recommends that the Commission set the 2-Wire Loop Rate at the proxy rate of \$17.93. CenturyLink's TELRIC model, however, does not suffer from the same flaws for the DS1 Loop Rate as it does for the 2-Wire Loop Rate. Consequently, Staff recommends that the Commission adopt the CenturyLink proposed DS1 Loop Rate of \$121.97.

IV. APPLICABLE STANDARDS

Section 252(d) of the Telecommunications Act of 1996 ("TA96") addresses the pricing standards the Commission must follow. It provides in relevant part that:

(d) Pricing standards

(1) Interconnection and network element charges

Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251 of this title, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section -

(A) shall be -

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

- (ii) nondiscriminatory, and
- (B) may include a reasonable profit.

47 USC § 252(d)

To implement the directives of TA96, the Federal Communications Commission's ("FCC") rules prescribe how UNE rates are to be established. Section 51.503(b) of the Federal Communications Rules state:

(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—

- (1) Pursuant to the forward-looking economic cost-based pricing methodology set forth in §§ 51.505 and 51.511; or
- (2) Consistent with the proxy ceilings and ranges set forth in § 51.513.

47 C.F.R. § 51.503(b)

In order to rely on proxy rates, the Commission must, as an initial matter, determine that it does not have cost information adequate to set rates based upon the FCC's prescribed forward-looking economic cost methodology. In particular, Section 51.513(a) states, in relevant part that:

(a) A state commission may determine that the cost information available to it with respect to one or more elements does not support the adoption of a rate or rates that are consistent with the requirements set forth in §§ 51.505 and 51.511. In that event, the state commission may establish a rate for an element that is consistent with the proxies specified in this section[.]

47 C.F.R. § 51.513(a)

Thus, as a threshold matter, the Commission must determine whether the cost information presented by CenturyLink in this proceeding is adequate to set rates based upon the FCC's prescribed forward-looking economic cost methodology.

The FCC's prescribed forward-looking economic cost methodology is called Total Long Run Incremental Cost ("TELRIC"). Sections 51.505 and 51.511, which contain the FCC's TELRIC rules, state:

§ 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).

(b) Total element long-run incremental cost. The total element long-run incremental cost of an element is the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements.

(1) Efficient network configuration. The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers.

(2) Forward-looking cost of capital. The forward-looking cost of capital shall be used in calculating the total element long-run incremental cost of an element.

(3) Depreciation rates. The depreciation rates used in calculating forward-looking economic costs of elements shall be economic depreciation rates.

(c) Reasonable allocation of forward-looking common costs—

(1) Forward-looking common costs. Forward-looking common costs are economic costs efficiently incurred in providing a group of elements or services (which may include all elements or services provided by the incumbent LEC) that cannot be attributed directly to individual elements or services.

(2) Reasonable allocation. (i) The sum of a reasonable allocation of forward-looking common costs and the total element long-run incremental cost of an element shall not exceed the standalone costs associated with the element. In this context, stand-alone costs are the total forward-looking costs, including corporate costs, that would be incurred to produce a given element if that element were provided by an efficient firm that produced nothing but the given element.

(ii) The sum of the allocation of forward-looking common costs for all elements and services shall equal the total forward-looking common costs, exclusive of retail costs, attributable to operating the incumbent LEC's total network, so as to provide all the elements and services offered.

(d) Factors that may not be considered. The following factors shall not be considered in a calculation of the forward-looking economic cost of an element:

(1) Embedded costs. Embedded costs are the costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC's books of accounts;

(2) Retail costs. Retail costs include the costs of marketing, billing, collection, and other costs associated with offering retail telecommunications services to subscribers who are not telecommunications carriers, described in § 51.609;

(3) Opportunity costs. Opportunity costs include the revenues that the incumbent LEC would have received for the sale of telecommunications services, in the absence of competition from telecommunications carriers that purchase elements; and

(4) Revenues to subsidize other services. Revenues to subsidize other services include revenues associated with elements or telecommunications service offerings other than the element for which a rate is being established.

(e) Cost study requirements. An incumbent LEC must prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with the methodology set forth in this section and § 51.511.

(1) A state commission may set a rate outside the proxy ranges or above the proxy ceilings described in § 51.513 only if that commission has given full and fair effect to the economic cost based pricing methodology described in this section and § 51.511 in a state proceeding that meets the requirements of paragraph (e)(2) of this section.

(2) Any state proceeding conducted pursuant to this section shall provide notice and an opportunity for comment to affected parties and shall result in the creation of a written factual record that is sufficient for purposes of review. The record of any state proceeding in which a state commission considers a cost study for purposes of establishing rates under this section shall include any such cost study.

47 C.F.R. § 51.505

§ 51.511 Forward-looking economic cost per unit.

(a) The forward-looking economic cost per unit of an element equals the forward-looking economic cost of the element, as defined in § 51.505, divided by a reasonable projection of the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services, during a reasonable measuring period.

(b)(1) With respect to elements that an incumbent LEC offers on a flat-rate basis, the number of units is defined as the discrete number of elements (e.g., local loops or local switch ports) that the incumbent LEC uses or provides.

(2) With respect to elements that an incumbent LEC offers on a usage-sensitive basis, the number of units is defined as the unit of measurement of the usage (e.g., minutes of use or call-related database queries) of the element.

47 C.F.R. § 51.511

As the FCC has described its prescribed cost estimation methodology, “TELRIC equates the current market value of the existing network of an incumbent telecommunications provider with the cost the incumbent LEC would incur today *if it built a local network that could provide all the services its current network provides*, to meet reasonably foreseeable demand, using the least-cost, most efficient technology currently available.” See Federal Communications Commission, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, and 98-147, released August 21, 2003, at ¶ 670, emphasis added (“First Report and Order”).

V. Argument

In this section Staff will address the following: (1) the flaw in the network modeled by CenturyLink in its TELRIC study, (2) the legal issue CenturyLink has raised regarding the Commission's authority to set proxy rates, and (3) the specific just and reasonable rates proposed by Staff.

1. Staff Position on the TELRIC Study

With respect to two-wire loops, the network modeled by CenturyLink in its TELRIC study is capable of providing more services than CenturyLink's current network is capable of providing and, therefore, is inconsistent with the FCC's TELRIC prescriptions. (Staff Ex. 1.0 Revised at 9.)

In making "all loops appear to the CO switch as if they were within the 12k ft. limit" (CenturyLink Ex. 2.1, at p. 15 of 29), CenturyLink has modeled a network with the ubiquitous capability to provide higher bandwidth or broadband services. (Staff Ex. 1.0 Revised at 11.) CenturyLink's actual network does not, however, contain such ubiquitous capability. In particular, while CenturyLink does not maintain a list of the number of loops in its existing network that do or do not meet the 12,000 feet engineering criteria (*Id.* at 11 – 12), the number of digital loop carriers ("DLCs") included in the companies existing network are insufficient to provide the ubiquitous higher bandwidth or broadband services capability that is included in CenturyLink's cost model. (*Id.* at 15 – 18.) Furthermore, manuals outlining procedures for network deployment, relied upon by CenturyLink indicate that deployment determinations are made considering cost factors relevant to deployments and are not based solely on invariant engineering criteria such as the 12,000 feet engineering criteria. (*Id.* at 13.)

Ms. Londerholm states that “[b]roadband is not a functionality required by the FCC in defining the 2-wire loop element.” (*Id.*) Staff agrees. However, Staff’s position is that broadband capability is also not required by the FCC in defining the 2-wire loop element. In modeling such capability, where that capability does not exist, CenturyLink is modeling a local network that has the capability to provide services that its current network does not have the capability to provide. This increases two-wire loop costs above those that are consistent with TELRIC requirements. As summarized by Dr. Zolnierek “I believe that CenturyLink built a broadband capability although they did not necessarily provide all the electronics that would be necessary to actually provision the loop for broadband. The capability is there. The functionality was built into loops in the model that just doesn’t exist in actual practice to my knowledge.” (Tr. at 144, lines 3-10.) As a result, in Staff’s view the cost information submitted by CenturyLink is not an adequate basis upon which to set rates.

2. The Commission Has Authority To Set Proxy Rates

CenturyLink takes the position that the Commission cannot impose a proxy rate in this proceeding because the FCC rules providing for proxy rates were overturned.

Specifically, Mr. Miller states:

Dr. Zolnierek states in his testimony, [that] 47 CFR 51.513 appears to authorize the ability to assign proxy rates for UNEs. However, the Eighth Circuit Court of Appeals *vacated* Rule 51.513 in *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000). This case was subsequently affirmed in part and reversed in part on other grounds by the U.S. Supreme Court in *Verizon Communications Inc. v. FCC*, 535 US 467 (2002). Because Rule 51.513 was not at issue before the US Supreme Court, the Eighth Circuit did not reinstate Rule 51.513 on remand. Therefore, the only alternative left under the FCC rules is one that sets rates using a TELRIC cost model. There is no longer any applicable rule that permits the use of proxy rates for UNEs.

CenturyLink Ex. 4.0 at 7.

CenturyLink is essentially wrong. It is true that the actual proxy rates in Rule 51.513 were vacated by the Eighth Circuit but that fact is not relevant to Staff's position. In *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000), the Appellate Court ruled that the FCC did not have authority to set specific proxy rates. The Court explained that:

The Supreme Court held that the FCC "has jurisdiction to design a pricing methodology." *AT & T Corp.*, 525 U.S. at 385. However, the FCC does not have jurisdiction to set the actual prices for the state commissions to use. Setting specific prices goes beyond the FCC's authority to design a pricing methodology and intrudes on the states' right to set the actual rates pursuant to § 252(c)(2). Following the Supreme Court's opinion, we now agree with the FCC that its role is to resolve "general methodological issues," and it is the state commission's role to exercise its discretion in establishing rates.

Iowa Utilities Board v. FCC, 219 F.3d 744, 757

Staff is not proposing that the Commission use FCC proxy rates. Staff is proposing that the Commission set proxy rates that are just and reasonable. Staff's proposal is entirely consistent with the *Iowa Utilities Board* Court's conclusion.

Although the Eighth Circuit may have vacated the specific rates found in Sections 51.513, 51.611 and 51.707, it expressly did not find unlawful the establishment and use of proxy rates by State Commissions.¹ In fact, the Commission may even use the specific vacated FCC proxy rates if arrived at independently. *Southwestern Bell Tel. Co. v. AT&T Communs.*, 1998 US Dist. LEXIS 15637, at 48-49 ("[N]othing in the Eighth Circuit's decision prevents state commissions from

independently concluding that the FCC's wholesale discount proxy rates are appropriate."). Moreover, the Eighth Circuit clearly reserved the right to set proxy rates to State Commissions either in the manner the FCC set them or on the best evidence available, as long as they are just and reasonable. See *Bell Atlantic-Delaware, Inc. v. McMahon*, 80 F. Supp. 2d 218 (Del. Dist. 2000) ("The Act allows the Commission to set rates based on the best evidence available to it [.]"); Arbitration Decision, *Hamilton Co., et. al., Petition for Arbitration with Verizon Wireless*, ICC Docket Nos. 05-0644; 05-0645; 05-0646; 05-0647; 05-0648; 05-0649; 05-0657 (Cons.) (Jan. 25, 2006), 2006 Ill. PUC LEXIS 5, *14-15 ("the Federal Act and the remaining FCC rules that were not vacated provide a basis for state commissions to establish default proxy rates within the discretion of the state commissions [.]").

3. Staff's Proposed Just and Reasonable Rates

As explained by Staff witness Mr. McClerren, Staff proposes as just and reasonable rates the 2-Wire Loop Rate at the proxy rate of \$17.93 and the CenturyLink proposed DS1 Loop Rate of \$121.97.

Staff witness McClerren addressed whether or not the proposed prices developed by CenturyLink's TELRIC model appear just and reasonable, as required by Section 252(d)(1) of the Telecommunications Act of 1996. Table 1 shows the wholesale rates CenturyLink currently charges to NTS, CenturyLink's proposed wholesale rates, and NTS' proposed wholesale rates for the two disputed elements. (Staff Ex. 2.0 at 2)

¹ For example, it did not vacate 47 CFR § 51.503(b)(2), which FCC rule provides the general authority for State Commissions to set proxy rates, as does the First Report and Order, ¶¶ 767-828.

Table 1

	Current CenturyLink Rate	Proposed CenturyLink Rate	Proposed NTS Rate
2-Wire Loop	\$17.93	\$26.85	\$12.50
DS1 Loop	\$181.51	\$121.97	\$99.00

For the 2-Wire Loop, relative to CenturyLink’s current rate, CenturyLink proposes a 50% rate increase, while NTS proposes a 30% rate decrease. For the DS1 Loop, again relative to CenturyLink’s current rate, CenturyLink proposes a 33% rate decrease, while NTS proposes a 45% rate decrease. (Staff Ex. 2.0 at 3)

Mr. McClerren stated that it was his understanding that CenturyLink’s current rates were the result of successful negotiations between CenturyLink’s predecessor, Gallatin River Communications, and NTS, which concluded in August 2006, and were not based upon a TELRIC model. Mr. McClerren averred that Gallatin River Communications and NTS negotiated rates allowed a reasonable return for Gallatin River Communications. Further, Mr. McClerren indicated that he is unaware of strong upward or downward cost pressures relative to 2-Wire Loop or DS1 Loop services since 2006. (Staff Ex. 2.0 at 3-5)

Mr. McClerren disagreed with CenturyLink witness Ms. Londerholm who testified she concludes that CenturyLink’s proposed unbundled network element (“UNE”) prices are reasonable when compared to Verizon Illinois’ UNE pricing. (CenturyLink Ex. 2.0 at 39-40) As pointed out in Table 2 below, Mr. McClerren considered Verizon’s 21% lower

rates for 2-Wire Loop and 15% lower rates for DS1 Loop to be significantly lower than CenturyLink's proposed rates. (Staff Ex. 2.0 at 5-6)

Table 2

	CenturyLink Monthly Rate	Verizon Monthly Rate	Percent Difference
2-Wire Loop	\$26.85	\$21.13	(21%)
DS1 Loop	\$121.97	\$103.19	(15%)

Mr. McClerren indicated he had no reason to believe the Verizon Illinois rates were inadequate for Verizon Illinois to receive a reasonable return. Mr. McClerren focused on the comparability of Verizon Illinois' rates because he agreed with Ms. Londerholm, who testified in her Direct Testimony, (CenturyLink Ex. 2.0 at 39-40), that loop density (loops per square mile) is one of the largest factors affecting costs, and that Verizon's service area in Illinois is the closest to CenturyLink's service area when comparing loop density. Mr. McClerren noted that, according to Ms. Londerholm, Verizon's Illinois service territory has a loop per square mile density of 28.1, while CenturyLink's Illinois service territory has a loop per square mile density of 48.1. (CenturyLink Ex. 2.0 at 40) Accordingly, CenturyLink's Illinois service territory has over 70% more loops per square mile than Verizon's Illinois service territory. (Staff Ex. 2.0 at 6-7)

Mr. McClerren noted that a higher loop per square mile is significant because the higher the loop density per square mile, the shorter the average loop length will be. The shorter the average loop length, the lower costs per loop will be. Accordingly, in

Illinois, it would be reasonable to expect CenturyLink's proposed UNE prices to actually be lower than Verizon's UNE prices considering loop density. Table 2 does not verify that expectation. (Staff Ex. 2.0 at 7)

Mr. McClerren noted that comparisons of different companies are complicated, and should only be used carefully, and would not, for example, advocate setting any rate based on a simple comparison of two companies. Differences between companies that could impact a comparison include geographical characteristics, regulatory differences, or economies of scale for purchasing. (Staff Ex. 2.0 at 8) Regarding the validity of a Verizon and CenturyLink comparison, Mr. McClerren stated that the analysis is not obviously flawed. Regarding geographical characteristics, both companies are providing local exchange service in primarily suburban or rural Illinois. Most of their respective territories would require construction trenching through primarily soil-based rights-of-way, not rocky territory or through highly congested, concrete-covered sidewalks or streets likely found in urban areas. Regarding regulatory differences, both companies are subject to the Illinois Commerce Commission, so their regulatory requirements have been very similar. Regarding economies of scale for purchasing, historically, Verizon would have been able to acquire goods and services at relatively lower prices than CenturyLink due to Verizon's larger size. However, CenturyLink acquired Qwest on April 1, 2011, making CenturyLink the third largest telecommunications carrier in the United States. On a going forward basis, CenturyLink should be able to acquire goods and services at discounted prices comparable to prices Verizon received. (Staff Ex. 2.0 at 6-8)

Mr. McClerren notes that CenturyLink witness Ms. Londerholm, in her Direct Testimony, (CenturyLink Ex. 2.0 at 41, Table 13), provides a comparison of CenturyLink properties in other jurisdictions as further support of rate reasonableness. Mr. McClerren states that the comparison in Ms. Londerholm's Table 13 is inherently problematic and unpersuasive. It does not provide the loop per square mile density numbers that Ms. Londerholm agrees represents one of the largest factors affecting an underlying carrier's cost. Additionally, different states have various geographical characteristics and regulatory requirements are inconsistent. (Staff Ex. 2.0 at 9)

Additionally, Mr. McClerren does not believe that the proposed rates developed by NTS witness Fred Miri in his Direct Testimony, (NTS Ex. 1.0 at 10-11, 2-Wire Loop rates of \$12.50 and DS1 Loop rates of \$99.00) are appropriate. Mr. McClerren notes that Mr. Miri utilized rates from AT&T Illinois as an approximation for NTS' proposed rates. The validity of comparing AT&T Illinois rates to CenturyLink rates is questionable, particularly given AT&T Illinois' loop per square mile metric of 465.9 compared to CenturyLink's loop per square mile metric of 48.1. While AT&T Illinois and CenturyLink are both regulated by this Commission, AT&T Illinois has operated under an alternative form of regulation since 1993, the only telecommunications carrier in Illinois to do so. Finally, Mr. McClerren notes that geographically, AT&T Illinois' service territory is primarily urban, which is very different than the suburban and rural nature of the CenturyLink territory. (Staff Ex. 2.0 at 9-10)

Mr. McClerren states that there are four 2-Wire Loop rates possible in the record, and that any other rate advocated beyond those four rates would be arbitrary. The four possible 2-Wire Loop rates, in ascending order, are contained in Table 3.

Table 3

	NTS Proposed Rate	CenturyLink Current Rate	Verizon Rate	CenturyLink Proposed Rate
2-Wire Loop Rate	\$12.50	\$17.93	\$21.13	\$26.85

Mr. McClerren does not support the NTS proposed 2-Wire Loop rate due to its reliance on AT&T Illinois' 2-Wire Loop rate as a foundation. Similarly, the CenturyLink proposed rate appears high, and is based upon CenturyLink's flawed TELRIC model. That effectively leaves the CenturyLink current 2-Wire Loop rate and the Verizon 2-Wire Loop rate as the remaining viable choices. Given that: (1) the CenturyLink current 2-Wire Loop rates are based on successful negotiations conducted by Gallatin River and NTS in 2006, (2) that Mr. McClerren is unaware of strong overall upward price pressure on 2-Wire Loops since 2006, and (3) Verizon's 2-Wire Loop rates are based on a 70% lower loop per square mile density than CenturyLink's, Mr. McClerren recommends that the Commission set the current CenturyLink 2-Wire Loop rate of \$17.93 as the just and reasonable 2-Wire Loop rate in this proceeding.² (Staff Ex. 2.0 at 10-11)

Regarding DS1 Loop rates there are 4 rates possible in the record. Again, any other rate advocated beyond those four rates would be arbitrary. The four possible rates for DS1 Loop rates, in ascending order, are contained in Table 4.

Table 4

	NTS Proposed	Verizon Rate	CenturyLink Proposed	CenturyLink Current
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² The current CenturyLink 2-Wire Loop rate of \$17.93 is applicable for 2-Wire Loops across CenturyLink's entire Illinois service area. .

	Rate		Rate	Rate
DS1 Loop Rate	\$99.00	\$103.19	\$121.97	\$181.51

Mr. McClerren does not support the NTS proposed DS1 Loop rate due to its reliance on AT&T Illinois' DS1 Loop rate as a foundation. With their proposed DS1 Loop rates, both CenturyLink and NTS propose rates below CenturyLink's current DS1 Loop rate. That effectively leaves the Verizon DS1 Loop rate and the CenturyLink proposed DS1 Loop rate as the remaining viable choices. (Staff Ex. 2.0 at 12)

Verizon's DS1 Loop rate is based on a 70% lower loop per square mile density than CenturyLink's DS1 Loop rate, so Verizon's DS1 Loop rate should be higher than CenturyLink's DS1 Loop rate. That Verizon's DS1 Loop rate is close but actually lower than CenturyLink's proposed DS1 Loop rate is a reason to accept Verizon's DS1 Loop rate as a reasonable proxy. Conversely, CenturyLink's proposed DS1 Loop rate of \$121.97 is dramatically lower than the CenturyLink's current DS1 Loop rate of \$181.51, a reduction of 33%. NTS agreed in 2006's successful negotiations that CenturyLink's current DS1 Loop rate of \$181.51 was acceptable. CenturyLink's proposed DS1 Loop rate could also be found to be appropriate. Accordingly, both Verizon's DS1 Loop rate of \$103.19 and CenturyLink's proposed DS1 Loop rate of \$121.97 are defensible, and the Commission could select either and be within the parameters of just and reasonable. (Staff Ex. 2.0 at 12-13) Nonetheless, Staff recommends that the Commission adopt the CenturyLink proposed DS1 Loop rate because it is supported by a network model in the TELRIC study that is not flawed in the manner the network model is for the 2-Wire Loop rate.

In rebuttal testimony, Ms. Londerholm claims that Mr. McClerren’s “just and reasonable” standard is inappropriate, arguing that Mr. McClerren “incorrectly applies a rate of return standard in testing the appearance of just and reasonableness.” Ms. Londerholm inappropriately conflates a “rate of return” standard with “just and reasonable” to reach the entirely unfounded conclusion that “rate of return” (that is, “just and reasonable”) has no relevance in this proceeding, and says, “...yet it appears to be the standard by which Mr. McClerren determines just and reasonable for UNE rates.” (CenturyLink Ex. 3.1 at 24) This is a creative albeit absurd argument. Mr. McClerren clearly used the appropriate standard, the just and reasonable standard.³

Regardless, Mr. McClerren did not utilize a rate of return standard to establish whether or not the rates were just and reasonable. On cross-examination, Ms. Londerholm admitted that Mr. McClerren did not develop a revenue requirement, determine a rate base, proffer an allowed rate of return, or calculate operating expenses, depreciation, or taxes, all of which are required in a rate of return proceeding. (Tr., February 21, 2012, at 97-98) Ms. Londerholm’s rate of return argument is a red herring, and baseless in fact.

Ms. Londerholm also states that Mr. McClerren’s loop density per square mile analysis is incomplete, claiming that, “Higher loop density is not related to shorter loop length as Mr. McClerren concludes.” (CenturyLink Ex. 3.1 at 27.) Ms. Londerholm states that other factors that drive increased cost include loop length and total area to be served and compares two CenturyLink exchanges to demonstrate that a higher

³ See Section 2 above, at 10-11, where Staff explained that the Commission has full authority to set proxy rates, in their discretion, on the best evidence available, as long as they are just and reasonable.

density loop rate does not translate directly to loop cost. (CenturyLink Ex. 3.1 at 27-28) Ms. Londerholm then speculates that, “In a square mile, CenturyLink’s 48 customers could all be located out to the very edge from the central office while Verizon’s 28 customers could be dispersed within close proximity of the central office.” (CenturyLink Ex. 3.1 at 29) On cross-examination, however, Ms. Londerholm admitted that the converse could also be true, that you could just as easily flip the names Verizon and CenturyLink and the sentence would be true. Her rebuttal arguments are based entirely on speculation, as she acknowledges not performing any sort of customer dispersion analysis for Verizon Illinois’ territory. (Tr., February 21, 2012, at 107) In fact, Ms. Londerholm testified, “I don’t know the Verizon territory at all.” (*Id.*, at 52)

Ms. Londerholm’s customer dispersion analysis is entirely theoretical, and does not address the actual comparability of Verizon and CenturyLink service territories. Generically, exchanges are built in a “hub and spoke” design, with a central office near the geographical center of the largest town in an exchange. (*Id.*, at 103) Both Verizon Illinois and CenturyLink provide local exchange service in primarily suburban or rural Illinois. (Staff Ex. 2.0 at 8) Ms. Londerholm admitted that she had done no dispersion comparison of Verizon and CenturyLink. (Tr., February 21, 2012, at 105)

When Ms. Londerholm states in rebuttal testimony that, “It should be easy to conclude that Verizon’s density could indeed be less while their cost could be equal or less than CenturyLink’s,” the creative nature of her position again becomes clear. (CenturyLink Ex. 3.1 at 28) On cross-examination, Mr. Londerholm admitted that the converse could also be true, that you again could just as easily flip the names Verizon and CenturyLink and the sentence would remain true. (Tr., February 21, 2012, at 105-

106) As noted above, Ms. Londerholm testified that, “I don’t know the Verizon territory at all.” (*Id.*, at 52)

In her direct testimony, Ms. Londerholm stated that the prices proposed by CenturyLink were reasonable when compared to other Illinois ILECs, and then focused on Verizon as a fair test of reasonableness since “Verizon’s service area in Illinois is the closest to CenturyLink’s service area when comparing the loop density.” (CenturyLink Ex. 2.0 at 39-40) Ms. Londerholm’s theoretical and flawed arguments in her rebuttal do not change the accuracy of her initial position in Direct Testimony about the appropriateness of comparing Verizon Illinois’ and CenturyLink’s UNE rates. (CenturyLink Ex. 2.0 at 39-40)

Verizon Illinois UNE rates do provide a valid comparison to CenturyLink UNE rates, and that comparison, when combined with the observations that CenturyLink current 2-Wire Loop rates are based on successful negotiations conducted by Gallatin River and NTS in 2006, that Mr. McClerren is unaware of strong overall upward price pressure on 2-Wire Loops since 2006, and that Verizon’s 2-Wire Loop rates are based on a 70% lower loop per square mile density than CenturyLink’s, indicates that the Commission should set the current CenturyLink 2-Wire Loop rate of \$17.93 as the just and reasonable 2-Wire Loop rate in this proceeding.

VI. Conclusion

WHEREFORE, for all the foregoing reasons, Staff respectfully requests that the ALJ accept Staff's recommendations in their entirety as set forth herein.

Respectfully submitted,

Michael Lannon
James Olivero
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street
Suite C-800
Chicago, Illinois 60601
(312) 793-2877

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Counsel for the Staff of the
Illinois Commerce Commission