

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

MCImetro Access Transmission Services, LLC,)	
Brooks Fiber Communications of Missouri, Inc., and)	
Intermedia Communications, Inc.)	
)	
Complainants,)	
)	
v.)	<u>Case No. LC-2005-0080</u>
)	
CenturyTel of Missouri, Inc.,)	
)	
Respondent.)	

**CENTURYTEL OF MISSOURI, LLC'S
MOTION TO DISMISS, ANSWER AND AFFIRMATIVE DEFENSES**

COMES NOW CenturyTel of Missouri, LLC ("CenturyTel"), pursuant to Commission Rule 4 CSR 240-2.070, and respectfully submits its Motion to Dismiss, Answer and Affirmative Defenses to the Complaint filed by MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Missouri, Inc. and Intermedia Communications, Inc.

INTRODUCTION

The Commission should reject and dismiss MCI's¹ attempt to broaden and expand the legal obligations of CenturyTel with respect to local number

¹ By cloaking the three individual complainants under the collective cover of "MCI" for purposes of making allegations and representations to the Commission in this matter, the complainants clearly have made it more difficult for CenturyTel to identify specific allegations relating to specific entities in turn making it more difficult for CenturyTel to respond with specificity and raise appropriate defenses in its answer.

portability. MCI's porting requests are not legitimate, as they are seeking location portability which CenturyTel is not required to provide. As will be fully addressed herein, to the best of CenturyTel's knowledge, each of MCI's requests for CenturyTel to port the number of a customer changing provider from CenturyTel to MCI, involved MCI changing the service location of the customer to a location in a completely different local calling area that is not even within CenturyTel's service territory. CenturyTel's obligation to port numbers when a customer changes service providers arises only when service is to be "at the same location." In essence, MCI is attempting to utilize number assignment for arbitrage to bypass lawful toll access charges. Such use of "Virtual NXX" – the assignment of numbers from an NPA/NXX associated with one rate center to customers physically located in another rate center – shifts the burden of additional costs on CenturyTel and circumvents the lawful rate and regulatory structure sanctioned by this Commission.

Pursuant to the Virtual NXX scheme, none of the complainants are providing service to customers within the former Verizon service territory and, accordingly, the local interconnection aspects of the referenced interconnection agreements do not apply. The local interconnection aspects of these interconnection agreements do not cover CenturyTel providing facilities to help MCI to provide services outside of CenturyTel's (the former Verizon) territory. In addition, even if the local interconnection aspects of the referenced interconnection agreements were applicable, MCI has not fully utilized the

dispute resolution process contained therein, which is a condition precedent to bringing any action before this Commission.

MOTION TO DISMISS

Pursuant to Commission Rule 4 CSR 240-2.070(6), CenturyTel hereby moves that the Commission dismiss the above captioned matter for failure to state a claim upon which relief may be granted. In support of its motion, CenturyTel respectfully states as follows:

1. Complainants have framed the instant proceeding as a Complaint to *Enforce Interconnection Agreements* (emphasis added); however, the local interconnection provisions of the Interconnection Agreements referenced in the complaint are not applicable to the proposed service arrangements of Complainants. The local interconnection provisions of the interconnection agreements cover the provisioning of services only within CenturyTel's (the former Verizon) service territory. Since complainants are not providing service to any customers physically located within such territory, the local interconnection provisions of the interconnection agreements simply do not apply. Accordingly, there are no applicable interconnection agreement provisions to "enforce," and the complaint should be dismissed.

Complainants reference Missouri Public Service Commission Case Nos. CK-2002-1145 and CK-2002-1146 and the interconnection agreements approved therein as the basis for their requested relief. These two cases were originally filed in Missouri by Intermedia Communications, Inc. (1145) and Brooks Fiber Communications of Missouri, Inc. (1146) as attempted adoptions of the Verizon

California/ICG Telecom Group interconnection agreement terms. After GTE Midwest Incorporated d/b/a Verizon Midwest was made a party to the proceedings, Intermedia and Verizon Midwest, as well as Brooks Fiber and Verizon Midwest, jointly filed a Substitute Interconnection Agreement in the respective cases, pursuant to Section 252(e) of the Telecommunications Act of 1996 (47 U.S.C. § 252). Each "Substitute Agreement" consisted of (a) Verizon's adoption letter dated July 11, 2002, duly executed by both parties; (b) Comprehensive Agreement Termination letter of Verizon dated July 11, 2002, confirming the sale of Verizon's remaining local exchanges and access lines in Missouri to CenturyTel of Missouri, LLC²; and (c) the ICG Telecom/Verizon California Agreement. The Commission's "Order Approving Interconnection Agreement" was entered in each case on August 5, 2002, effective August 15, 2002.

In Missouri P.S.C. Case No. TM-2002-232, the Commission approved the above-referenced sale of GTE Midwest Incorporated d/b/a Verizon Midwest's local exchanges and access lines in Missouri to CenturyTel of Missouri, LLC. A Nonunanimous Stipulation and Agreement was filed in that proceeding and adopted in the Commission's Report and Order issued on May 21, 2002. One section of the Nonunanimous Stipulation and Agreement addressed Interconnection

² Among the provisions of the letter:

"As a part of the Transaction [sale of Missouri properties], the Agreement between Verizon and [both parties, Intermedia and Brooks Fiber] in the State of Missouri is being terminated in accordance with its terms, effective upon and no later than the closing date of the Transaction, which is estimated to be *August 31, 2002*.

Verizon will continue the performance of its obligations under the Agreement prior to the termination of the Agreement concurrent with the closing of the Transaction. For post-closing activities and services in the State of Missouri, [Intermedia / Brooks Fiber] and any affiliates must enter into a separate agreement with CenturyTel." Interconnection Agreement, page 8.

Agreements and provided, *inter alia*, that “CenturyTel agrees to negotiate in good faith new interconnection agreements with all CLECs who currently have interconnection agreements with Verizon and who desire to have interconnection with CenturyTel.” That section further provided, “If any particular interconnection agreement has not been replaced through negotiation or arbitration within one year, that agreement will continue in force on a month-to-month basis until so replaced.” (Report and Order, Attachment 1, pages 4-5).

Both Intermedia and Brooks Fiber reviewed and countersigned the provisions of Points A, B and C of Paragraph 1 of the Adoption Letter (pages 2-3 of Interconnection Agreement), which specifically provides that the Agreement applies to the “service territory of Verizon,” and that their “adoption of the Verizon California Terms will only cover services in the service territory of Verizon in the state of Missouri.” In addition, the Interconnection Agreements provide that, “The determination of whether Telecommunications traffic is Exchange Access or Information Access shall be based upon Verizon’s local calling areas as defined in Verizon’s effective Customer Tariffs and in applicable Commission and FCC orders. . . . For purposes of this definition, a Verizon local calling area includes a Verizon non-optional Extended Local Calling Scope Arrangement, but does not include a Verizon optional Extended Local Calling Scope Arrangement.” (See, Section 2.83, Interconnection Agreement, page 52).

The Parties agree that this definition of Reciprocal Compensation Traffic is adopted by the Parties in conjunction with their adoption of the provisions of this Agreement related to Interconnection Points (including, but not limited to, Section 7.1 of the Interconnection Attachment) and other network interconnection arrangements, and

is intended to be integrally associated with and a part of such provisions.” Interconnection Agreement, Section 2.83, page 52.

The local calling area as defined in CenturyTel’s tariff, coupled with the Complainants’ admissions that their customers would not be physically located within CenturyTel’s service territory, confirms that the requested trunking facilities would not be used for local interconnection as contemplated by the subject interconnection agreements. Simply put, since the MCI entities are not providing service to customers within CenturyTel’s service territory, the local interconnection aspects of the interconnection agreements do not apply.

2. The Complainants’ allegations concerning CenturyTel’s obligations to provide local number portability are without merit. MCI’s porting requests are not legitimate, as they are seeking location portability which CenturyTel is not required to provide.

CenturyTel’s obligation to provide “number portability” when a customer changes providers is stated at Section 147 U.S.C. 251 (b)(2). The term “number portability” is specifically defined as excluding attempts to change the serving location of the customer. Section 147 U.S.C. 151 (30) defines “number portability” as follows:

The term ‘number portability’ means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

To the best of CenturyTel’s knowledge, each of MCI’s requests for CenturyTel to port the number of a customer changing providers from CenturyTel to MCI involved MCI changing the service location of the customer. CenturyTel’s

obligation to port numbers when a customer changes service providers arises only when service is to be “**at the same location.**” As a result, the Complaint should be dismissed.

3. In the alternative, to any extent that the subject interconnection agreements would apply, the complainants have not exhausted the remedies afforded them by the dispute resolution process contained therein, which is a condition precedent to bringing an action before this Commission. Pursuant to the Interconnection Agreements’ Section 14, Dispute Resolution, “any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties.” Initiation of such negotiations requires written notice of the dispute, setting forth both a detailed description of the dispute or alleged nonperformance and the name of the initiating party’s representative to the negotiations. The parties’ representatives must meet at least once within thirty days after the date of the notice. If the parties have been unable to resolve the dispute within thirty days of the notice, either Party may pursue any remedies available.

While CenturyTel admits that Intermedia initiated the dispute resolution process regarding the provisioning of local interconnection trunks in Columbia, Missouri, in the course of negotiations on June 15, 2004, Intermedia agreed to CenturyTel’s provisioning of 240 tandem interconnection trunks with an initial Percent Local Usage (“PLU”) of zero, *i.e.*, provisioned for intrastate access. However, before the trunks could be provisioned, Intermedia cancelled the order

on July 28, 2004. Regarding the request to provide additional trunks in the Branson exchange, that order was cancelled on July 28, 2004; the matter was never addressed in dispute resolution. Porting issues were never identified in any notices regarding dispute resolution, and to the extent they may have been discussed during negotiations concerning other matters, such claims were not formally presented to CenturyTel for possible resolution but rather abandoned.

As a result of the foregoing, MCI cannot now be heard to complain regarding matters that were either never addressed through the dispute resolution process, or later abandoned in the course of good faith negotiations. Thus, the complaint should be dismissed.

ANSWER TO COMPLAINT

For its Answer, CenturyTel states:

1. Except as specifically admitted herein, CenturyTel denies each and every allegation, averment and statement in the Complaint.
2. CenturyTel denies all allegations contained in the narrative introductory paragraphs contained at pages 1 and 2 of the Complaint.
3. CenturyTel is without sufficient information to admit or deny the allegations contained in paragraphs 1-3 of the Complaint and therefore denies same.
4. CenturyTel admits the allegations contained in paragraphs 4 and 5 of the Complaint.
5. CenturyTel admits the allegations contained in paragraph 6 of the Complaint, except that some of the information regarding its address, phone and

fax numbers and email address is in error. For purposes of this proceeding, contact information for CenturyTel of Missouri, LLC should be:

Arthur Martinez
Director Government Relations
CenturyTel
220 Madison Street
Jefferson City, Missouri 65101
(573) 636-7196
(573) 636-6826 (fax)
arthur.martinez@centurytel.com

All communications and pleadings in this case should be directed to:

Larry W. Dority
Fischer & Dority, P.C.
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Jefferson City, MO 65101
(573) 636-6758
(573) 636-0383 (fax)
lwdority@sprintmail.com

6. CenturyTel denies the allegations contained in paragraph 7 of the Complaint. CenturyTel has recognized the two referenced interconnection agreements pursuant to the terms and conditions of the Report and Order issued in Case No. TM-2002-232, *supra*.³ CenturyTel is not aware of “MCI’s adoption thereof” as alleged in paragraph 7, or which “MCI” entity is being referred to.

7. CenturyTel denies the allegations contained in paragraph 8 of the Complaint. CenturyTel admits that the Commission approved CenturyTel of Missouri, LLC's acquisition of GTE Midwest Incorporated d/b/a Verizon Midwest's remaining local exchanges and access lines in Missouri in Case No. TM-2002-

³ By written correspondence dated September 24, 2004, sent certified mail return receipt requested, CenturyTel notified Brooks Fiber Communications of Missouri, Inc. that the Brooks FiberNerizon Agreement was being terminated.

232, and submits that the Commission's Report and Order issued in that proceeding on May 21, 2002, speaks for itself.

8. CenturyTel denies the allegations contained in paragraphs 9-18 of the Complaint.

AFFIRMATIVE DEFENSES

1. Complainants fail to state a claim upon which relief can be granted. CenturyTel incorporates by reference the statements and allegations contained in its Motion to Dismiss, *supra*.

2. Complainants' claims are barred by laches, waiver and estoppel.

3. Complainants' claims are barred by state and federal law.

4. Should the Commission deny Defendant's Motion to Dismiss and proceed to hearings on this matter, Defendant will present its case concerning Complainants' utilization -- and their instant attempts to perpetuate such use - of "Virtual NXX." As discussed, *supra*, Virtual NXX is the assignment of numbers from an NPA/NXX associated with one rate center to customers physically located in another rate center, primarily used for arbitrage. Defendant CenturyTel will request that the Commission investigate and thoroughly examine the Virtual NXX issue and its resultant negative impacts on other regulated carriers, the basic rules of the numbering plan and numbering resource conservation, and regulatory structure. The Commission should confirm that the physical location of the calling and called parties determine the rating and classification of traffic, rather than rate center designation of calling and called parties' numbers, and that number assignment not be used for arbitrage to bypass toll access charges.

WHEREFORE, having fully answered, CenturtyTel of Missouri, LLC respectfully requests the Commission to enter an Order dismissing Complainants' Complaint to Enforce Interconnection Agreements.

Respectfully submitted,

/s/ Larry W. Dority
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 4th day of November, 2004, to:

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