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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Prehearing Conference
November 6, 2006
Jefferson City, Missouri
Volume 1

Eminent Network Technologies, Inc.,)
d/b/a Interlinc.net,)
Complainant,)
v.) Case No. IC-2007-0092
CenturyTel of Missouri, LLC and)
Spectra Communications Group, LLC,)
d/b/a CenturyTel,)
Respondents.)

KENNARD L. JONES, Presiding,
REGULATORY LAW JUDGE.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

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APPEARANCES:

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FOR: Staff of the Missouri Public
Service Commission.

1 P R O C E E D I N G S

2 JUDGE JONES: We're on the record for the
3 prehearing conference of Case No. IC-2007-0092, Eminent
4 Network Technologies, Inc., doing business as
5 Interlinc.net, Complainant vs. CenturyTel of Missouri, LLC
6 and Spectra Communications Group, d/b/a, CenturyTel,
7 Respondent.

8 Okay. Let's see. First let's deal with
9 the issue of jurisdiction. That seems to be a good place
10 to start. I know that CenturyTel doesn't contend there is
11 jurisdiction over the whole case, just a portion of it.

12 MR. DORITY: Judge, if I may.
13 Mr. Steinmeier and I have had some discussions along with
14 Mr. Haas, and we have a proposal that we would like to
15 present to your Honor this morning to move this along. I
16 didn't know if you wanted us to make written entries or
17 oral entries or not.

18 JUDGE JONES: I should do that, yeah,
19 starting with Mr. Steinmeier.

20 MR. STEINMEIER: Thank you, your Honor.
21 Let the record reflect the appearance of William D.
22 Steinmeier, William D. Steinmeier, PC, Post Office
23 Box 104595, Jefferson City, Missouri, 65110-4595, on
24 behalf of Complainant, Eminent Network Technologies, Inc.,
25 doing business an Interlinc.net.

1 JUDGE JONES: And from CenturyTel?

2 MR. DORITY: Thank you, Judge. Appearing
3 on behalf of Respondents CenturyTel of Missouri, LLC and
4 Spectra Communications Group, LLC, doing business as
5 CenturyTel, Larry W. Dority with the firm Fischer &
6 Dority, PC. Our address is 101 Madison, Suite 400,
7 Jefferson City, Missouri 65101.

8 JUDGE JONES: And from Staff?

9 MR. HAAS: Good morning. William K. Haas
10 appearing on behalf of Staff of the Public Service
11 Commission. My address is Post Office Box 360,
12 Jefferson City, Missouri 65102.

13 JUDGE JONES: Thanks for reminding me,
14 Mr. Dority. Now, what were you-all going to propose?

15 MR. DORITY: Your Honor, as I mentioned,
16 we've had some discussions among the parties, along with
17 counsel for the Staff, and as you referenced, there are
18 some pending motions in front of the Commission regarding
19 this complaint. We are willing to defer addressing those
20 motions specifically this morning.

21 The parties would like to have the
22 opportunity to engage in some additional settlement
23 discussions. One of the requests that the Respondents had
24 made in our responsive pleading essentially asked the
25 Commission to invoke one of the sections of the

1 Commission's rules dealing with complaints in Chapter 2,
2 which is having the Staff investigate or have a role with
3 the parties, and we had asked for that. And in
4 Mr. Steinmeier's responsive pleading to our motions, they
5 concur in that as well.

6 So we would like to propose that we have at
7 least a couple of Staff members participate in our
8 discussions to address the amounts due and owing. And as
9 Mr. Steinmeier indicated in his pleading, some of the
10 services, if not all of those that were invoked by the
11 Complainant Eminent Technologies have now been migrated
12 over to their sister company or affiliated CLEC,
13 CD Telecom, and there are some amounts due and owing the
14 Respondents from CD Telecom as well, and we would like to
15 have this addressed in an aggregate so we don't have to
16 repeat this process necessarily in terms of the affiliated
17 company as well.

18 So having said all that, it's my
19 understanding that both the Complainant and the
20 Respondents would request the Commission to appoint two of
21 its Staff members in the telecom department to work with
22 the parties as we sort through the issues, and I would
23 suggest that perhaps we can make a status report filing to
24 the Commission within 30 days. We're hoping that it can
25 be handled on a pretty expedited manner.

1 We've had some discussions with counsel for
2 the Staff, and I had suggested perhaps Mr. Bill Voight and
3 Mr. Larry Henderson, given their expertise and backgrounds
4 in the subject matter, would be good candidates for this
5 sort of thing. And with that, the Respondents would
6 request that the Commission take that action, and I'm sure
7 Mr. Steinmeier and Mr. Haas may want to touch on that,
8 too.

9 JUDGE JONES: Mr. Steinmeier?

10 MR. STEINMEIER: I would concur, other than
11 to say that I am not entirely familiar or up to date with
12 CenturyTel's position on alleged migration. But I would
13 absolutely agree that everything Mr. Dority has mentioned
14 is worthy of informal discussion, and I believe that there
15 is potential for that discussion to be fruitful and save
16 the Commission's time.

17 JUDGE JONES: So I was geared for a
18 complicated case. You-all make it easy. Mr. Haas?

19 MR. HAAS: Yes, Judge. The question I had
20 raised with Mr. Dority and Mr. Steinmeier is if a Staff
21 member is appointed to mediate this case and if there is
22 not settlement, is that person then barred from
23 participating in the case if it goes forward?

24 And a second question I have that I had not
25 asked them yet is, in particular why they would think --

1 they were mentioning Mr. Henderson and why they were
2 looking for someone with technical background on a billing
3 dispute.

4 JUDGE JONES: Mr. Dority, you suggested
5 those two.

6 MR. DORITY: I did.

7 JUDGE JONES: I should remind you that
8 regardless of what names you put out, Van Eschen is the --
9 that's his ball.

10 MR. DORITY: And I appreciate that.

11 MR. STEINMEIER: We understand that.

12 MR. DORITY: And we understand that. To
13 answer the inquiries, I'll start with the last one. We
14 felt it would be helpful to have someone with a technical
15 background just by virtue of the types of services that
16 are at issue here and understanding how the network works
17 and why particular services would be ordered or necessary,
18 and I just think that would lend some assistance to the
19 process.

20 In terms of Mr. Voight, we felt like he had
21 certainly a wealth of background in both tariff matters,
22 and I think he had previously been involved in the
23 industry and worked directly, I'm sure, with billing sorts
24 of issues. So that was the logic, if you will, for
25 suggesting those two individuals.

1 In terms of what their status would be
2 should this matter not be able to be resolved through what
3 we'll call this informal mediation process, I really
4 haven't had a chance to visit with my client about that
5 yet, and if I could perhaps -- I don't know if
6 Mr. Steinmeier's given that any thought yet or not either.
7 But perhaps if we could reserve positions on that and get
8 back with the Staff, maybe within the next several days,
9 we could address that issue.

10 MR. STEINMEIER: Yeah. And I have not, and
11 my client is ill, and I'm handicapped in terms of the
12 ability to communicate.

13 JUDGE JONES: Did you say your client is
14 ill?

15 MR. STEINMEIER: That's correct.

16 JUDGE JONES: That's a corporation. How
17 can it be?

18 MR. STEINMEIER: I'm sorry. The president
19 of my client corporation is ill.

20 JUDGE JONES: Is he the only one that you
21 communicate with over there?

22 MR. STEINMEIER: Yes, sir. It's a small
23 firm.

24 JUDGE JONES: Okay. Now, I've never been
25 involved in complaints where our Staff investigates. I

1 don't know exactly what goes on. I suspect whatever they
2 would do in this case is what they would do in any other
3 complaint case. I don't see them as a mediator. I just
4 see them as someone representing the Staff of the
5 Commission giving an opinion about how the case should go
6 and then offering that opinion to the Commission.

7 So that issue about mediation, I think we
8 can just stop that right here. If someone from our Staff
9 participates and has an opinion about how this should be
10 resolved, then their opinion should be accepted as a
11 recommendation to the Commission. The Commission will act
12 as it has in any other complaint case. Mr. Haas, did
13 you --

14 MR. HAAS: No.

15 JUDGE JONES: Does that sound all right to
16 everybody? Does it make sense, or am I talking out of
17 turn?

18 MR. DORITY: No. I think it's just a
19 question of how you characterize the involvement. I think
20 you're correct from the technical standpoint of the rule,
21 it does speak in terms of an investigation by the Staff.
22 I think we were just trying to perhaps signal to the
23 Commission and the Staff members themselves that we
24 would -- we are going to continue in settlement
25 discussions to try to resolve this matter, and we would be

1 looking to them to have perhaps a role within that, but we
2 can structure this however it makes sense.

3 MR. STEINMEIER: Your Honor, I guess I was
4 hoping for a little more flexible approach to the matter
5 if it were at all possible. Your description of the
6 Staff's role is absolutely historically correct. It's an
7 unusual case in a couple of regards. The Complainant's a
8 very small firm.

9 The issues, although billing, are deeply
10 steeped in occasionally to me mind-boggling technical
11 descriptions of the services and what piece of a tariff
12 services are necessary to do what they need done and what
13 pieces may not be, which are subjects that we thought the
14 technical staff would be well positioned to help sort out
15 from an objective perspective and, therefore, perhaps be
16 in a unique position to move us toward resolution without
17 fully litigating the matter.

18 JUDGE JONES: So your description doesn't
19 encompass Staff being a mediator either, it's just doing
20 what they normally do?

21 MR. STEINMEIER: I mean, a mediator helps
22 parties move toward the middle. As distinguished from an
23 arbitrator hears both sides, says this is how it is, a
24 mediator hears both sides, tries to focus on or narrow
25 down their real priorities, their real driving issues and

1 then try to -- tries to move them toward the middle.

2 JUDGE JONES: So that's what both of you
3 want then is a mediator?

4 MR. DORITY: Well, I did not agree to,
5 quote, mediation as I understand it within the confines of
6 the Commission's complaint procedures, which invokes what
7 I will consider a more formal process with law students at
8 the University of Missouri School of Law engaged and so
9 forth. And plus from a time factor, my client is very
10 anxious to get this matter resolved.

11 I agree with Mr. Steinmeier's description
12 that in terms of a more informal process that the
13 Commission Staff could participate in, and whether we call
14 it investigatory or informal mediation, perhaps we're
15 getting hung up here on characterizations as opposed to --

16 JUDGE JONES: The difference might be is
17 that, as Mr. Steinmeier described, a mediator tries to get
18 the parties to agree and come to some resolution. Staff
19 on the other hand just gets to what they think is the
20 right resolution regardless of where you-all stand, which
21 is what I'd rather Staff do, just do what they do.
22 Instead of trying to bring the parties together, come up
23 with their own understanding of the case and, of course,
24 share it with you-all. And if that results in you-all
25 meeting halfway or a third of the way or wherever you

1 meet, then let that be, but I don't want to change the
2 role of Staff. I don't know. Mr. Haas, how do you feel
3 about that?

4 MR. HAAS: I think that's what we normally
5 do, we investigate and we make our recommendations.

6 JUDGE JONES: Now, would that aid you-all
7 by them just doing what they normally do, or do you need
8 more?

9 MR. DORITY: Could we go off the record and
10 maybe I could confer?

11 JUDGE JONES: Off the record.

12 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

13 JUDGE JONES: We're back on the record in
14 Case IC-2007-0092. Off the record there was some
15 discussion about -- I'll say more discussion about the
16 role Staff might play in this case. I'll try to sum it
17 and allow correction from the parties, is that Staff
18 listens to both sides, tries to figure out who they'd go
19 with, and if they wouldn't go with anyone, the Staff would
20 file a report and the case would go forward, or if they
21 would go with one party or the other, I suppose that party
22 would say, okay -- or I should say the party which Staff
23 did not go with would throw their hands up and the case
24 would be over. Is that right?

25 MR. STEINMEIER: I'm not sure I got all

1 that exactly. But I think what we're contemplating is an
2 informal process of dialog with the Staff in which they
3 come to understand where the parties are on the various
4 issues in dispute. They evaluate those and share with us
5 the results of their evaluation. Hopefully that
6 expression of their evaluation of the issue helps move the
7 parties toward an informal resolution of the case. If it
8 fails to achieve an overall resolution of the case, then
9 Staff would file a report in the case and the case would
10 go forward, I think is my sense.

11 JUDGE JONES: Now, how is that different
12 from any other case?

13 MR. STEINMEIER: The initial informal --

14 JUDGE JONES: The amount of Staff
15 involvement or --

16 MR. STEINMEIER: Up front with the parties.
17 And correct me if I'm wrong. I haven't been through
18 the --

19 JUDGE JONES: Well, just attorneys on the
20 record right now. Mr. Haas?

21 MR. HAAS: The difference that I think I'm
22 hearing here is that they are asking for more give and
23 take, more input, more discussion with the Staff before it
24 files its report, rather than the Staff just collecting
25 information and filing the report.

1 JUDGE JONES: In collecting information, in
2 the normal course of things, doesn't Staff have to
3 interact with the parties to get that information?

4 MR. HAAS: Well, yes, but we don't have to
5 get both of them in one room and on the conference call
6 and say, okay, you defend your position, you defend your
7 position, explain it.

8 JUDGE JONES: Do you see any problems with
9 proceeding this way?

10 MR. HAAS: No, I guess not.

11 JUDGE JONES: Okay.

12 MR. STEINMEIER: And I think, as I hear
13 this discussion, that the real difference may be that we
14 hear more from Staff informally of what its evaluation is
15 and have a chance to respond to it informally before they
16 file a report than would typically be true. That may be
17 the real difference we're proposing.

18 JUDGE JONES: Okay. What I'll do is, just
19 to have a paper trail, issue an Order directing Staff to
20 investigate, no different than any Order directing Staff
21 to investigate, and I'll leave it to you-all to determine
22 the amount of participation. That way if it doesn't work
23 out, Staff will still be filing a report, despite the
24 amount of participation that takes place. I don't know
25 what kind of burden Staff has right now. So I'm not going

1 to direct them to participate more than they normally
2 would, because for one thing that doesn't mean anything to
3 me because I don't know how much they participate anyway.
4 Are you-all still getting service?

5 MR. STEINMEIER: Yes.

6 JUDGE JONES: And you say you need a month
7 to do this?

8 MR. STEINMEIER: We would request that, I
9 think, your Honor.

10 MR. DORITY: My suggestion was that we --
11 that perhaps we -- either Staff files a report or we file
12 a status report as to where things stand within 30 days
13 just to make sure that we are on a track and everybody's
14 moving forward because we would like to bring this to
15 closure as soon as possible.

16 JUDGE JONES: Mr. Haas, how do you feel
17 about that time frame? Do you want to talk with your
18 client?

19 MR. HAAS: Yes, please.

20 JUDGE JONES: Let's go off the record.

21 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

22 JUDGE JONES: After Staff has conferred
23 with his counsel, we're back on the record. And Mr. Haas?

24 MR. HAAS: It would be acceptable for Staff
25 to file either a status report or its report within a

1 month or at one month.

2 JUDGE JONES: All right. I'll issue an
3 Order today in that regard. Is there anything else
4 you-all need to discuss?

5 MR. DORITY: Not on the record. Thank you,
6 Judge.

7 JUDGE JONES: Mr. Steinmeier?

8 MR. STEINMEIER: I agree. Thank you, your
9 Honor.

10 JUDGE JONES: You-all have a good morning
11 and afternoon. Thank you.

12 WHEREUPON, the recorded portion of the
13 prehearing conference was concluded.

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C E R T I F I C A T E

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Kellene K. Feddersen, Certified
Shorthand Reporter with the firm of Midwest Litigation
Services, and Notary Public within and for the State of
Missouri, do hereby certify that I was personally present
at the proceedings had in the above-entitled cause at the
time and place set forth in the caption sheet thereof;
that I then and there took down in Stenotype the
proceedings had; and that the foregoing is a full, true
and correct transcript of such Stenotype notes so made at
such time and place.

Given at my office in the City of
Jefferson, County of Cole, State of Missouri.

Kellene K. Feddersen, RPR, CSR, CCR
Notary Public (County of Cole)
My commission expires March 28, 2009.