

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 29th day
of August, 2002.

In the Matter of the Joint Application of GTE Midwest)
Incorporated, d/b/a Verizon Midwest, and CenturyTel)
of Missouri, LLC, for 1) Authority to Transfer and Acquire)
Part of Verizon Midwest's Franchise, Facilities or System)
Located in the State of Missouri; 2) for Issuance of)
Certificate of Service Authority to CenturyTel of) **Case No. TM-2002-232**
Missouri, LLC; 3) to Designate CenturyTel of Missouri,)
LLC, as Subject to Regulation as a Price Cap Company;)
and 4) to Designate CenturyTel of Missouri, LLC, as a)
Telecommunications Carrier Eligible to Receive Federal)
Universal Service Support.)

ORDER DENYING APPLICATION TO INTERVENE,
DENYING MOTION TO SUSPEND TARIFF,
APPROVING TARIFFS, CANCELING TARIFFS,
AND DIRECTING FILING

On May 21, 2002, the Commission issued its Report and Order approving the application of CenturyTel of Missouri, LLC, and GTE Midwest Incorporated, doing business as Verizon Midwest, seeking, among other things, approval of Verizon's transfer to CenturyTel of its remaining 96 Missouri exchanges. That order directed CenturyTel to file appropriate tariffs no later than 45 days prior to the closing of the transaction on August 31, 2002, which tariffs were required to mirror those of Verizon as closely as possible. CenturyTel filed its tariffs on July 15, 2002.

Thereafter, on August 16, 2002, the Staff of the Missouri Public Service Commission filed its Memorandum and Recommendation advising the Commission to

approve CenturyTel's proposed tariffs as complying in every respect with the Commission's order of May 21. Staff also advised the Commission to cancel Verizon's tariffs.

On August 22, 2002, the Midwest Independent Coin Payphone Association¹ filed its Motion to Suspend and Application to Intervene, contending that CenturyTel's proposed rates and charges for the local exchange and other network telecommunications services it will offer to payphone service providers fail to comply with the Federal Communications Commission's directives outlined in Case No. FCC-96-388, Case No. FCC-96-439 (Reconsideration Order) and FCC 02-25. MICPA states that it is "unable to discern from the documentation accompanying the tariff filing whether compliance with the FCC directives has occurred. Specifically, there is no showing by CenturyTel that the rates have been set in accord with the New Services Test required by the FCC. The tariff filing is hence unlawful and unreasonable and should be suspended and subjected to a hearing before this body."

Due to the very short interval remaining before the effective date of the tariff, the Commission issued its Order Directing Filing on August 23, requiring responses no later than 4:00 p.m. on Tuesday, August 27. Staff and CenturyTel both filed timely responses, which on initial examination suggest that the New Services Test referred to by MICPA is

¹This entity refers to itself as "MICPA" and it will be so called here.

applicable, in fact, only to Local Exchange Carriers that are Bell Operating Companies.² CenturyTel is not a Bell Operating Company. In any event, as Staff points out, MICPA is free to pursue its concern as a complaint. MICPA also filed a response on August 28, 2002.

Nowhere does MICPA address the fact that its Application to Intervene was filed seven months after the intervention deadline had passed on January 4, 2002. While the Commission can excuse a late application to intervene for good cause shown, MICPA has not even attempted to show good cause sufficient to explain its tardy application.³ Thus, the Commission's discretion to permit a late intervention has not even been invoked.

For these reasons, the Commission will deny MICPA's Application to Intervene and deny its Motion to Suspend.

As noted above, the Commission's Staff has reviewed the tariffs filed by CenturyTel and advises the Commission to approve them. Staff assures the Commission that these tariffs, as ordered, reflect those of Verizon in all material respects. Therefore, the Commission will approve the tariffs. Staff also advises the Commission to cancel the analogous tariffs of Verizon. The Commission will do so.

² The "New Services Test" is one of the "nonstructural safeguards" promulgated by the FCC as required by Section 276 of the Telecommunications Act of 1996, *codified* as 47 U.S.C. Section 276. That section requires that the FCC "prescribe a set of nonstructural safeguards for Bell operating company payphone service" MICPA particularly relies upon the FCC's January 31, 2002, Memorandum Opinion and Order in *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, FCC 02-25; Bureau/CPD No. 00-01 ("*Wisconsin Order*"), which MICPA characterized as requiring this Commission to apply the New Services Test to CenturyTel's tariffs. However, the FCC itself acknowledged in the *Wisconsin Order* that it lacked authority to require the application of the New Services Test to Local Exchange Carriers that are not Bell Operating Companies: "Since there are statutory provisions that empower us to apply the new services test to payphone line rates and grant us that authority only over BOCs, we do not have a Congressional grant of jurisdiction over non-BOC LEC line rates." *Wisconsin Order* at Para. 42. Thus, MICPA's motion appears to be without merit.

³ Regulation 4 CSR 240-2.075(5).

IT IS THEREFORE ORDERED:

1. That the Motion to Suspend filed by the Midwest Independent Coin Payphone Association on August 22, 2002, is denied.

2. That the Application to Intervene filed by the Midwest Independent Coin Payphone Association on August 22, 2002, is denied.

3. That the proposed tariffs filed by CenturyTel of Missouri, LLC, on July 15, 2002, are approved as amended on August 5, 6, and 7, 2002, for service rendered on and after September 1, 2002. The specific tariffs approved are:

PSC MO No. 1 General and Local Exchange Tariff
PSC MO No. 2 Facilities for Intrastate Access
PSC MO No. 3 Long Distance Message Telecommunications Services
PSC MO No. 4 Wide area Telecommunications Service
PSC MO No. 5 Private Line Service
PSC MO No. 6 Digital Data Transmission Service
PSC MO No. 7 Exchange Boundary Maps
PSC MO No. 8 Local Network Access Services

4. That the tariffs listed below of GTE Midwest Incorporated, doing business as Verizon Midwest, are canceled as of September 1, 2002. The specific tariffs canceled are:

PSC MO No. 1 General and Local Exchange Tariff
PSC MO No. 2 Facilities for Intrastate Access
PSC MO No. 3 Long Distance Message Telecommunications Services
PSC MO No. 4 Wide area Telecommunications Service
PSC MO No. 5 Private Line Service
PSC MO No. 6 Digital Data Transmission Service
PSC MO No. 7 Exchange Boundary Maps
PSC MO No. 8 Local Network Access Services

5. That the Commission's Staff shall file its Memorandum, on or before 4:00 p.m. on September 13, 2002, advising the Commission whether this case may now be closed and, if not, what more remains to be done.

6. That this order shall become effective on September 1, 2002.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Simmons, Ch., Murray, Lumpe,
Gaw, and Forbis, CC., concur.

Thompson, Deputy Chief Regulatory Law Judge