

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 21st day of
December, 2004.

Petition of FullTel, Inc. for Approval of an)	
Interconnection Agreement Pursuant to Section 252)	<u>Case No. TK-2005-0079</u>
of the Communications Act of 1934, as Amended)	

**ORDER RECOGNIZING ADOPTION
OF INTERCONNECTION AGREEMENT**

This order recognizes the adoption by FullTel, Inc., of an interconnection agreement previously approved by the Commission.

Procedural History

On September 30, 2004, FullTel filed a Petition of FullTel, Inc., for Confirmation of Interconnection Agreement Adoption. In that petition, FullTel requested adoption of the interconnection agreement for the exchanges of CenturyTel of Missouri, LLC, and Spectra Communications Group LLC, d/b/a CenturyTel. However, FullTel provided documentation of its request to CenturyTel, and not to Spectra, that it desired to adopt the terms of an interconnection agreement between GTE Midwest Incorporated, d/b/a Verizon Midwest and Brooks Fiber Communications of Missouri, Inc. The Commission approved that agreement in Case No. CK-2002-1146.

On October 5, 2004, the Commission notified all interexchange and local exchange telecommunication companies about the adoption and made CenturyTel a party. The notice stated that any party wishing to request a hearing should do so no later than October 25, 2004.

On October 25, CenturyTel of Missouri, LLC, objected to FullTel's petition. CenturyTel stated that Section 47 U.S.C. 252(i) requires local exchange carriers to offer interconnection agreements to which it is a party to any other requesting carrier. CenturyTel argues that it was not a party to the Brooks Fiber agreement, and, therefore, is not obligated to offer it to FullTel. In response to CenturyTel's pleading, the Commission also added Spectra as a party.

On November 5, 2004, the Staff of the Missouri Public Service Commission recommended that the Commission reject FullTel's petition. Staff reasoned that neither CenturyTel nor Spectra were parties to the Brooks Fiber agreement, so that Section 47 U.S.C. § 252(i) would not require CenturyTel or Spectra to make that agreement available to FullTel.

Findings of Fact

On May 21, 2002, the Commission granted CenturyTel a certificate of service authority in Case No. TM-2002-232. In that same case, the Commission also allowed CenturyTel to buy the remaining 96 of Verizon Midwest's exchanges. On August 5, 2002, the Commission approved an interconnection agreement between Verizon Midwest and Brooks Fiber in Case No. CK-2002-1146.

The Commission finds that FullTel notified CenturyTel, but not Spectra, of its desire to adopt the same terms and conditions of the interconnection agreement between Verizon Midwest and Brooks Fiber. The Commission approved that agreement in Case No. CK-2002-1146 on August 5, 2002. The Commission further finds that CenturyTel adopted the agreement and that the agreement is still in operation.

The Commission further finds that CenturyTel is Verizon Midwest's successor-in-interest. When CenturyTel bought Verizon Midwest's exchanges, CenturyTel filed tariffs virtually identical to Verizon Midwest's tariffs. On September 1, 2002, after those purchases, Verizon Midwest stopped doing business in Missouri.¹ The Commission finds the combination of the asset purchase, the similar tariffs, and the cancellation of Verizon Midwest's tariffs made CenturyTel Verizon Midwest's successor-in-interest. As a successor-in-interest, CenturyTel is obligated to fulfill Verizon Midwest's contracts. The Commission further finds that CenturyTel was obligated to honor the Brooks Fiber agreement upon its purchase of the Verizon Midwest exchanges.

Conclusions of Law

The adoption of the terms and conditions of a previously approved interconnection agreement is authorized by Section 252(i) of the federal Telecommunications Act of 1996.² Section 252(i) states:

¹ See In re the Joint Application of GTE Midwest Incorporated, d/b/a Verizon Midwest, and CenturyTel of Missouri, LLC, Case No. TM-2002-232 (Order dated August 29, 2002).

² See 47 U.S.C. § 251, *et seq.*

(i) Availability to Other Telecommunications Carriers. –

A local exchange carrier shall make available any interconnection, services, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The Commission concludes that CenturyTel is a party to the Brooks Fiber agreement. The Brooks Fiber agreement specifically provided that it would be binding on and inure to the benefit of the parties and their respective legal successors and permitted assigns.³ The Brooks Fiber agreement also contains a clause allowing a party to opt out of the agreement upon giving 90 days, written notice to the other party.⁴ The record contains no mention of CenturyTel giving such notice. As the agreement is still in operation, CenturyTel is thereby bound to offer its terms pursuant to 47 U.S.C. § 252(i).

Because FullTel did not notify Spectra of its wish to adopt the Brooks Fiber agreement, FullTel is not a “requesting telecommunications carrier” in relation to Spectra. Spectra is therefore not obligated under 47 U.S.C. § 252(i) to make the agreement available to FullTel.

Federal rule 51.809 (Rule 809) was promulgated to implement Section 252(i) of the Act. Rule 809 provides that the incumbent local exchange company must provide the interconnection, network elements, or services to a requesting telecommunications carrier that notifies the ILEC that it wishes to adopt the interconnection, network elements, or services from a Commission-approved interconnection agreement unless stated conditions

³ See In re Brooks Fiber Communications of Missouri, Case No. CK-2002-1146 (Agreement filed July 30, 2002, at ¶ 39.)

⁴ Id. at ¶ 2.2.

are proven to the Commission. An ILEC can deny an adoption if it proves that (1) the cost of providing a particular interconnection, service, or element to the requesting telecommunications carriers is greater than the cost of providing it to the telecommunications carrier that originally negotiated the agreement, or (2) the provision of the particular interconnection, service, or element to the requesting carrier is not technically feasible.⁵

The Commission further concludes that the FCC's Interim Rules do not prevent FullTel from adopting the Brooks Fiber agreement.⁶ The rule states that the FCC "... conclude(s) that the appropriate interim approach here is to require incumbent LECs to continue providing unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms and conditions that applied under their interconnection agreements as of June 15, 2004."⁷ While those rules may temporarily freeze ILECs obligations to offer unbundled network elements, those rules do not freeze adoptions of interconnection agreements in their entirety. The Brooks Fiber agreement has provisions beyond UNE's, including resale. Furthermore, the Commission notes that the issue of whether the unbundling portions of the agreement are unenforceable under the Interim Rules is not before us in this case.

⁵ 47 C.F.R. § 51.809(b).

⁶ *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 69 Fed. Reg. 55,111, 55,112 (effective September 13, 2004) (to be codified at 47 C.F.R. pt. 51) (hereafter referred to as Interim Rules).

⁷ Interim Rules at ¶ 16.

The Commission further concludes that as a successor-in-interest, CenturyTel takes on Verizon Midwest's liability on the Brooks Fiber agreement.⁸

The Commission notes that prior to providing telecommunications services in Missouri, a party shall possess the following: (1) an interconnection agreement approved by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide interexchange or basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

Modification of the Agreement

The Commission has a duty to review all resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act.⁹ In order for the Commission's review and approval to be effective, the Commission must also review and approve modifications to these agreements.

The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection.¹⁰ This duty is set forth in the Commission's rules which require telecommunications companies to keep their rate schedules on file with the Commission.¹¹

The parties to each resale or interconnection agreement must maintain a complete and current copy of the agreement, together with all modifications, in the

⁸ See, e.g., ARE Sikeston Ltd. Pshp v Weslock Nat'l, 120 F.3d 820, 828 (8th Cir. 1997).

⁹ 47 U.S.C. § 252.

¹⁰ 47 U.S.C. § 252(h).

¹¹ 4 CSR 240-3.545.

Commission's offices. To that end, the Commission will order the parties to file the approved interconnection agreement in this case. Any proposed modification must be submitted for Commission approval, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

Modifications to the agreement must be submitted to the Staff for review. When approved, the modified pages will be substituted in the agreement, which should contain the number of the page being replaced in the lower right-hand corner. Staff will date-stamp the pages when they are inserted into the agreement. The official record of the original agreement and all the modifications made will be maintained in the Commission's Data Center.

The Commission does not intend to conduct a full proceeding each time the parties agree to a modification. Where a proposed modification is identical to a provision that has been approved by the Commission in another agreement, the Commission will take notice of the modification once Staff has verified that the provision is an approved provision, and prepared a recommendation. Where a proposed modification is not contained in another approved agreement, Staff will review the modification and its effects and prepare a recommendation advising the Commission whether the modification should be approved. The Commission may approve the modification based on the Staff recommendation. If the Commission chooses not to approve the modification, the Commission will establish a case, give notice to interested parties and permit responses. The Commission may conduct a hearing if it is deemed necessary.

IT IS THEREFORE ORDERED:

1. That FullTel, Inc.'s Petition of FullTel, Inc., for Confirmation of Interconnection Agreement Adoption is granted in part and denied in part.
2. That FullTel, Inc.'s adoption of the terms and conditions contained in the interconnection agreement between Brooks Fiber Communications of Missouri, Inc., and GTE Midwest Incorporated, d/b/a Verizon Midwest, Case No. CK-2002-1146, is hereby recognized as to CenturyTel of Missouri, LLC, but not Spectra Communications Group LLC, d/b/a CenturyTel, pursuant to Section 252(i) of the Telecommunications Act of 1996.
3. That the FullTel, Inc., shall file a copy of the interconnection agreement described in paragraph 1 in this case.
4. That any changes or modifications to this agreement shall be filed with the Commission for approval pursuant to the procedure outlined in this order.
5. That all pending motions are denied.
6. That this order shall become effective on December 31, 2004.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Gaw, Ch., Clayton and Appling, CC., concur
Murray and Davis, CC., dissent

Pridgin, Regulatory Law Judge