

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

In the Matter of CenturyTel of Missouri, LLC and)	
Spectra Communications Group, LLC, d/b/a)	<u>Case No. TC-2007-0307</u>
CenturyTel Tariff Filings to Grandfather Remote)	Tariff Nos. JI-2007-0498
Call Forward Services to Existing Customers and)	JI-2007-0499
Existing Locations.)	

**JOINT APPLICATION FOR REHEARING
OF CENTURYTEL OF MISSOURI, LLC AND
SPECTRA COMMUNICATIONS GROUP, LLC, D/B/A CENTURYTEL**

COME NOW CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, d/b/a CenturyTel (collectively "CenturyTel") and for their Joint Application for Rehearing, pursuant to Section 386.500, RSMo. 2000 and 4 CSR 240-2.160, respectfully state the following:

1. On December 4, 2007, the Missouri Public Service Commission ("Commission") issued, in a 4-1 vote with written dissent to follow¹, its Report and Order ("Order") bearing an effective date of December 14, 2007. CenturyTel, pursuant to Section 386.500, RSMo. 2000 and 4 CSR 240-2.160 specifically sets forth the reasons warranting a rehearing and respectfully moves the Commission for rehearing of its Order (1) that rejects CenturyTel's tariffs that would grandfather its Remote Call Forward ("RCF") service to existing customers at existing locations, and (2) that finds that CenturyTel is obligated under its existing tariff to fill Socket Internet's February 2007 order for additional RCF service.

2. CenturyTel requests rehearing because the Commission's Order and decision is unlawful, unjust and unreasonable and is arbitrary, capricious, unsupported by substantial and competent evidence, and is against the weight of the evidence considering

¹The Dissenting Opinion of Commissioner Connie Murray was filed in this matter on December 12, 2007.

the whole record, is in violation of constitutional provisions of due process under the Missouri Constitution (1945) Art. I Sec.10 and the Fourteenth Amendment of the United States Constitution, is in violation of the constitutional provisions of equal protection of the law as guaranteed by the Missouri Constitution and the 14th Amendment, U.S. Constitution, is unauthorized by law and discriminatory, made upon an unlawful procedure, constitutes an abuse of discretion, and fails to contain adequate findings of fact and conclusions of law setting forth the basic factual findings that support the conclusions set forth in the Order in a sufficient unequivocal affirmative manner that a reviewing court could properly review the decision to determine if it was reasonable, all as more specifically and particularly described in this joint rehearing application.

3. The Commission erred in its decision “that CenturyTel’s proposed tariffs grandfathering its RCF service are not in the public interest and must be rejected,” and such decision is unlawful, unjust and unreasonable. The Commission overlooked or ignored relevant and material issues of fact and law in reaching such decision. The Public Service Commission “is purely a creature of statute” and its “powers are limited to those conferred by the [Missouri] statutes, either expressly, or by clear implication as necessary to carry out the powers specifically granted.” *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 47 (Mo. banc 1979); *State ex rel. City of West Plains v. Public Service Commission*, 310 S.W.2d 925, 928 (Mo. banc 1958). While early case law provided that the Commission has “plenary power to coerce a public utility corporation into a safe and adequate service,”² no one could reasonably suggest that such an issue is presented in this proceeding, particularly in

² *State ex rel. Missouri Southern R. Co. v. Public Service Commission*, 259 Mo. 704, 168 S.W. 1156, 1163 (banc 1914).

today's competitive telecommunications environment. No party pointed to any authority that prevents CenturyTel from withdrawing, let alone grandfathering, its RCF service. While Staff interjected Section 392.200.1, RSMo. 2000 for the first time in its Brief (as support for its position on this issue), as Commissioner Murray points out in her Dissenting Opinion, it would appear that this statutory section actually limits the authority of the Commission in this regard. (Dissenting Opinion of Commissioner Connie Murray, page 2.) Indeed, the Commission has specifically set forth those technologies or service features constituting the minimum elements necessary for the provision of basic local and interexchange telecommunications service – for all such providers – by Commission Rule. As the substantial and competent evidence clearly shows, RCF service is not a technology or service feature constituting the minimum elements necessary for basic local and interexchange telecommunications service (4 CSR 240-32.100(2)), nor is it a service feature required under the Commission's Eligible Telecommunications Carriers' ("ETC's") service requirements rule (4 CSR 240-3.570(3)). Commissioner Murray notes this obvious point in her Dissenting Opinion, concluding "[t]hus, RCF is not an essential element of 'adequate' service. The commission, therefore, has no authority to require the offering of RCF." (Dissenting Opinion, page 3.)

In addition to the decision's legal infirmities, public policy considerations clearly should dissuade the majority from starting down this "slippery slope." As Commissioner Murray observes: "Actually, the majority's decision may be a disincentive for utilities to offer certain non-essential services when they are unsure of the financial outcome and success of such offerings." (*Id.*)

CenturyTel acknowledges that, in accordance with Section 392.200.1, RSMo. Supp. 2006, it has an obligation to “furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable.” (Order, page 13.) However, the substantial and competent evidence in this proceeding clearly established that CenturyTel is meeting such obligation, and that the lawful and sound management decision, within CenturyTel’s prerogative, to grandfather a non-essential telecommunications service to existing customers at existing locations should have been approved.

4. As discussed above, the Commission’s finding that approval of the grandfathering of CenturyTel’s RCF tariffs “would limit the availability of a service that is necessary to provide adequate and just and reasonable service to CenturyTel’s customers” (Order, page 13) is unlawful, unreasonable and unjust. The Order does not contain, as required by law, findings that are “sufficiently definite and certain under the circumstances of the case to enable the court to review the decision intelligently and ascertain if the facts afford a reasonable basis for the order without resorting to the evidence.” *State ex rel. U.S. Water/Lexington v. P.S.C.*, 795 S.W.2d 593, 595 (Mo. App. W.D. 1990). The Commission’s Order is not supported by substantial and competent evidence on the whole record. *State ex rel. Midwest Gas Users’ Association v. P.S.C.*, 976 S.W.2d 470 (Mo. App. 1998). The Commission’s decision to require CenturyTel to continue offering such a non-essential service to new customers at new locations is discriminatory, arbitrary, capricious, an abuse of discretion, in violation of the constitutional provisions of due process under the Missouri Constitution (1945) Art. I Sec.10 and the Fourteenth Amendment of the United States Constitution, is in violation

of the constitutional provisions of equal protection of the law as guaranteed by the Missouri Constitution and the 14th Amendment, U.S. Constitution. The Commission's imposition of a discreet obligation upon CenturyTel contrary to the Commission's own rules is made upon an unlawful procedure. If the Commission is going to expand the requirements of 4 CSR 240-32.100(2) and 4 CSR 240-3.570(3), it must do so by invoking the lawful rulemaking process which, of course, would include notice, and participation afforded, to all affected telecommunications providers.

5. Again, the Commission overlooked or ignored relevant and material issues of fact and law in reaching its decision on this issue. At page 12 of the Order, the Commission acknowledges that "a unique feature of RCF service is that customer premise equipment is not required to make the service function properly." The Commission then states that it "accepts the expert opinion of Staff's witness that '[t]his unique characteristic of Remote Call Forwarding makes the service indispensable for emergency and disaster contingency planning purposes.' Based on Voight's impartial expert opinion, the Commission finds that 'there is no substitute for Remote Call Forwarding telephone service.'"

6. First, the Commission's ostensible "standard" of "no substitute for RCF service" is nothing more than a "general approach utilized by Staff in addressing requests to grandfather services." As acknowledged by Staff Witness Voight -- "In all instances that I am aware of, if customers have viable alternatives, the Staff would recommend approval of grandfathering." (Ex. 5, p. 4.) As fully discussed in CenturyTel's Joint Brief, at the time Mr. Voight filed his single piece of testimony in this proceeding, he qualified his opinion "absent further explanation" of other alternatives to RCF that might

be available. At that point in time, Mr. Voight did not have the rebuttal and surrebuttal testimony of CenturyTel's witnesses that provide the "further explanation" he appeared to be seeking.

In responding to the question of whether CenturyTel's RCF service is the only means available for business customers who want to appear to have a presence in a location for customers to make local calls, CenturyTel Witness Teasley explained:

No. While the RCF Service is useful in these rare instances, there are other alternatives. A business customer could easily set up FX Service or establish a physical line with the Call Forward, No Answer option. In fact, RCF Service may not be most attractive option for businesses as it can only handle one call at a time; and for a busy enterprise, the per minute toll charges can be more expensive than the flat-rated FX circuit. (Ex. 6, p. 4.)

Customers clearly have viable alternatives to the RCF services that CenturyTel seeks to grandfather in this proceeding. And as the record evidence and the Commission's Order acknowledges, only one-half of one percent of CenturyTel's customers purchase its RCF service, and these customers will not be losing their existing service.

7. Second, the purported need for RCF service as "indispensable for emergency and disaster contingency planning purposes" was totally rebutted by the expert testimony of CenturyTel's witnesses. As noted above, of the more than 420,000 customers served by CenturyTel in Missouri, less than 1,300 of those customers (less than one half of one percent), scattered throughout Missouri, purchase RCF service. In the event of a disaster, it is likely that most, if not all, of the affected customers would not be subscribed to RCF service. However, CenturyTel is grandfathering the service – not withdrawing the service. As the features of the service remain a functioning part of the

network, the service could be provided instantaneously with the emergence of a disaster situation. (As CenturyTel's witnesses point out, one should assume that the Company and the Commission would take immediate action to ensure RCF, or any other possible service configuration, would receive the appropriate, expedited regulatory treatment as a result of a catastrophe.) (Ex 7, pp. 10-12; Ex. 9, pp. 7-8.)

As CenturyTel expert witness Ralph Teasley, Manager of Network Support Centers for CenturyTel Service Group, points out, CenturyTel has other means of readily providing service in the event of an emergency or disaster.

I would agree that assisting customers who are affected by emergencies or disasters to reestablish communications is very important. But there are other means to meet this need. For example, CenturyTel could activate a fixed call-forwarding service on the customer's line on the customer's behalf rather than using the RCF Service. I personally have a great deal of experience in dealing with outages caused by disasters during my 36-year career. I have no doubt, based on first hand experience with dealing with the aftermath of hurricanes Rita and Katrina, that CenturyTel will use all possible tools available to meet customer needs during an emergency or disaster. (Ex. 6, p. 4.)

The record evidence clearly shows that CenturyTel has demonstrated that it meets the standards of the Commission's own rules setting forth the requirements for all telecommunications carriers in the case of emergency situations. Commission Rule 4 CSR 240-32.060, Engineering and Maintenance, Subsection (5) provides, "Each company shall make reasonable provisions to meet emergencies resulting from lightning or power service failures, unusual and prolonged increases in traffic, absence of personnel, fire, storm or other natural disasters and shall inform its employees of procedures to be followed in the event of emergency in order to prevent or minimize interruption or impairment of telecommunications service. . . ." The Commission's ETC Rule requires that each applicant include "[a] demonstration of the carrier's ability to

remain functional in emergency situations, including a demonstration that the carrier has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations.” (4 CSR 240-3.570(2)(A)(4).)

The substantial and competent evidence reveals that there are no additional requirements imposed on all carriers relating to emergency situations and, as the testimony in this proceeding clearly shows, CenturyTel has demonstrated its ability to meet the requirements of the rule for some time, most recently in 2006 during the wind and ice storms that left tens of thousands of Missourians without power and, in some instances, without water. (Ex. 9, pp. 8-9).

8. Thus, the Commission failed to address the real question of what does the competent and substantial evidence in this proceeding support. The Order does not explain and fails to recognize the above-referenced overwhelming evidence in this case supporting the grandfathering of RCF service. The Commission’s findings are unlawful, unreasonable and unjust, are arbitrary and capricious, represent an abuse of discretion, and are unconstitutional.

9. As CenturyTel’s evidence and the complete record herein fully support, the subject tariff filings are necessary to stem abuse and violations of the RCF tariff provisions that specifically restrict RCF service to one voice call at a time (as compared to data calls) and prohibit the use of RCF service for toll bypass. The RCF service offered by CenturyTel specifically restricts a customer’s ability to use the service as a means to bypass toll charges, and this restriction is described in detail in CenturyTel’s tariff. (Ex. 2, Schedule APM-1; Ex. 3, p. 5.) In addition, CenturyTel’s RCF service

specifically restricts a customer's ability to use the number for more than one telephone call at a time. Again, this restriction is described in detail in CenturyTel's tariff. RCF numbers are programmed to forward one call at a time because each forwarded call is tying up an individual call path on the network. (*Id.*) However, the Commission's Order only briefly references the fraudulent avoidance of toll charges and totally fails to address the overwhelming evidence regarding the serious implications of using RCF for dial-up Internet access, an express violation of the RCF tariff terms. Accordingly, the Commission's decision is not based upon substantial and competent evidence and is unlawful, unjust and unreasonable.

10. The Commission erred in its decision "that CenturyTel is obligated under its existing tariff to fill Socket Internet's February 2007 order for additional RCF service," and such decision is unlawful, unjust and unreasonable.

As the competent and substantial evidence in the record clearly supports, and as the Order itself appears to acknowledge, Socket Internet's attempt to purchase CenturyTel's RCF service **in conjunction with** a subsequent Socket Telecom porting order is simply a scheme by Socket to take advantage of regulatory arbitrage, whereby it uses RCF service for multiple simultaneous calls, toll by-pass and data traffic, all in violation of CenturyTel's tariff. Based on the tariff restrictions for RCF Service, as well as general tariff provisions that allow CenturyTel to refuse to provision services because of fraud and abuse, CenturyTel may legitimately refuse to grant the 61 additional RCF service numbers requested by Socket. (Ex. 2, pages 12-13; Ex. 3, pages 6-10, 11; Ex. 7, pages 2-4; Ex. 9, pages 2, 3, 4-5, 6-7; Ex. 10, page 4.)

In filing its request to suspend/reject the proposed tariffs and to require CenturyTel to fulfill Socket's post-tariff filing orders, Socket simply wants to shift the cost of transport and facility augmentation (*i.e.*, its costs of doing business) to CenturyTel, so that CenturyTel inappropriately bears the burden of providing service to Socket ISP customers. CenturyTel's testimony details the problems with placing ISP-bound traffic on the common trunk group and how ISP-bound traffic causes network congestion. (Ex. 2, pages 15-16; Ex. 3, pages 6-10, 11; Ex. 7, pages 2-4, 8; Ex. 9, pages 2, 3; Ex. 10, pages 2-4.)

11. As the Order acknowledges at page 8, Socket Internet, to the extent that it needs Remote Call Forward services, has the ability to purchase such services from Socket Telecom's tariffed services. The competent and substantial evidence in the record shows that the claimed need for CenturyTel numbers because there would be less confusion for its customers is unfounded. CenturyTel routinely introduces new NPA/NXXs to its customers without any resulting confusion. (Ex. 2, pages 13-16; Ex. 3, page 6; Ex. 7, pages 5-6.)

WHEREFORE, CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, d/b/a CenturyTel respectfully request that the Commission grant rehearing of its Report and Order, as fully discussed herein.

Respectfully submitted,

/s/ Larry W. Dority

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 13th day of December, 2007.

/s/ Larry W. Dority

Larry W. Dority