

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

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

**JOINT RESPONSE TO ORDER DIRECTING FILING
OF CENTURYTEL OF MISSOURI, LLC AND
SPECTRA COMMUNICATIONS GROUP, LLC D/B/A CENTURYTEL**

COME NOW CenturyTel of Missouri, LLC (“CenturyTel”) and Spectra Communications Group, LLC d/b/a CenturyTel (“Spectra”), pursuant to the Missouri Public Service Commission’s (“Commission”) *Order Directing Filing* (“*Order*”) entered in this matter on November 18, 2004, and for their Joint Response respectfully state as follows:

1. In its November 18, 2004 *Order*, the Commission states:

The parties have not addressed whether the FCC’s recent Interim Rules prevent FullTel from adopting the agreement.¹ Those rules state that the rules’ goal is to maintain the status quo, and to not allow new carriers to opt into contract provisions frozen in place as of June 15, 2004.² The Commission will order the parties to file pleadings on this issue no later than November 29, 2004.

2. On October 25, 2004, CenturyTel filed its Motion to Reject Confirmation and/or Notice of Adoption of Interconnection Agreement by Summary Determination on the Pleadings and Alternative Request for Hearing (“*Motion*”) setting forth the legal analysis and bases upon which the Commission should reject FullTel’s attempt to “adopt”

¹ 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).

² Interim Rules at ¶ 22.

the terms of an underlying Interconnection Agreement between Brooks Fiber Communications of Missouri, Inc. and GTE Midwest Incorporated d/b/a Verizon Midwest (the “Brooks Agreement”) and apply those terms to CenturyTel and Spectra. The Staff of the Commission filed its Staff Memorandum in this matter on November 5, 2004, wherein the Staff also “recommends that the Commission reject the confirmation of interconnection agreement adoption.”

3. As fully set forth in those pleadings, Federal Statute 47 U.S.C. § 252 (i) requires:

A local exchange carrier shall make available any interconnection, service, 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. (Emphasis added).

Because neither Spectra nor CenturyTel of Missouri was a party to the Interconnection Agreement between GTE and Brooks Fiber, neither has an obligation under 47 U.S.C. § 252 (i) to provide interconnection to FullTel under that agreement.

Furthermore, FullTel did not have an interconnection agreement with GTE in 2000 when Spectra acquired its exchanges from GTE; nor did FullTel have an interconnection agreement with GTE in 2002 when CenturyTel of Missouri acquired its exchanges from GTE; FullTel was not even certificated to provide telecommunications service until 2004. Therefore, despite the revisionist history espoused by FullTel in its pleadings in this matter³, Spectra’s agreement in Case No. TM-2000-182 and CenturyTel of Missouri’s agreement in Case No. TM-2002-232 were not applicable to FullTel.

³ FullTel mischaracterizes the Joint Recommendation in Case No. TM-2000-182 as well as the Nonunanimous Stipulation and Agreement in Case No. TM-2002-232 (the pertinent sections of those agreements are fully set forth in the pleadings of CenturyTel, Spectra and Staff).

CenturyTel and Spectra stand by their previous pleadings, continue to support the Staff's Memorandum filed herein, and respectfully submit that FullTel's purported adoption can, and should, be rejected for the reasons stated therein.

4. Having considered the Commission's directive set forth in its November 18 *Order*, CenturyTel and Spectra respectfully submit that the FCC's recent Interim Rules also would prevent FullTel from unilaterally adopting the subject agreement. Paragraph 22 of the Federal Communications Commission's Interim Rules provides:

We also hold that competitive LECs may not opt into the contract provisions "frozen" in place by this interim approach. The fundamental thrust of the interim relief provided here is to maintain the status quo in certain respects without expanding unbundling beyond that which was in place on June 15, 2004. This aim would not be served by a requirement permitting new carriers to enter during the interim approach.

As the Commission Staff explained in a recent filing in a separate proceeding, "The FCC's reference to 'new carriers' demonstrates how allowing a carrier to opt-in during the interim period would be contrary to maintaining the status quo because an opt-in would expand unbundling obligations beyond what was in place on June 15, 2004."⁴ In that pleading, the Staff further points out that the FCC recently determined that CLECs could only adopt entire agreements⁵ and, therefore, since a CLEC may only opt into an interconnection agreement in its entirety, a CLEC is prevented from adopting any agreement if it contains contract provisions frozen by the FCC. It is important to note, however – as Staff explicitly recognizes in that pleading – that under the FCC's Interim

⁴ Staff Response to Order Directing Filing, page 1, *In the Matter of the Adoption of an Interconnection Agreement with Sprint Missouri, Inc. by Socket Telecom, LLC*, Case No. CO-2005-0039.

⁵ *Id.*, pages 2-3, referencing Footnote 3 of the pleading: "The FCC's Second Report and Order, *In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, released July 13, 2004, amended 47 C.F.R. 51.809 to state that 'an incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement.' [emphasis added]."

Rules, voluntarily negotiated agreements are not subject to the freeze.⁶ But as the pleadings in this matter reflect, FullTel's attempted unilateral adoption was specifically rejected by CenturyTel and there is no "voluntarily negotiated agreement" before the Commission in this proceeding.

WHEREFORE, CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel respectfully file their Joint Response herein, and again move that the Commission reject FullTel's proposed adoption and application of the GTE and Brooks Fiber Interconnection Agreement to CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel.

Respectfully submitted,

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⁶ Interim Rules, at ¶ 21.

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 29th day of November, 2004, to:

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