

Exhibit No.: 10

Issue: Competitive Classification
of Bourbon Exchange
Witness: David N. Beier
Type of Exhibit: Direct Testimony
Sponsoring Party: Fidelity Communication
Services II, Inc.
Case No. IO-2006-0109
Date: September 22, 2005

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

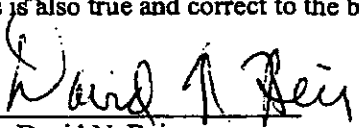
In the Matter of CenturyTel of Missouri, LLC's)
Request for Competitive Classification Pursuant) Case No. IO-2006-0109
to Section 392.245.5 RSMo (2005).)

AFFIDAVIT OF DAVID N. BEIER

STATE OF MISSOURI)
) SS
CITY OF SULLIVAN)

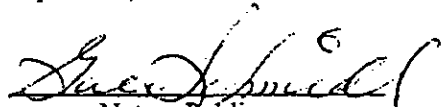
David N. Beier, of lawful age, being duly sworn, deposes and states as follows:

1. My name is David N. Beier. I am employed by Fidelity Communications Co. and all of its subsidiaries, including Fidelity Communication Services II, Inc., as Vice President-Regulatory.
2. Attached hereto and made a part hereof for all purposes is my direct testimony consisting of Pages 1 through 8.
3. I hereby affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief and that the information contained in the attached schedules is also true and correct to the best of my knowledge and belief.


David N. Beier

Subscribed and sworn to before me this 22nd day of September, 2005.

GALE S. SCHMIDT
Notary Public - Notary Seal
STATE OF MISSOURI
Crawford County
My Commission Expires: July 17, 2008


Notary Public

1 **Q. WOULD YOU PLEASE STATE YOUR NAME AND ADDRESS?**

2 A. My name is David N. Beier and my business address is 64 N. Clark, Sullivan, MO 63080.

3 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

4 A. I am employed as Vice President-Regulatory with Fidelity Communications Co. and all
5 subsidiaries, including Fidelity Communication Services II, Inc. ("Fidelity" or the
6 "Company").

7 **Q. BRIEFLY DESCRIBE THE NATURE OF YOUR DUTIES AND**
8 **RESPONSIBILITIES FOR FIDELITY.**

9 A. I am responsible for all regulatory affairs, tariff matters, compliance reporting and
10 revenue accounting for the Company.

11 **Q. ARE YOU AUTHORIZED TO TESTIFY ON BEHALF OF FIDELITY?**

12 A. Yes.

13 **Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATION AND WORK**
14 **BACKGROUND.**

15 A. I obtained a B.S.B.A. degree from St. Louis University with a double major in
16 Accounting and Finance in 1985. Between 1985 and 1991, I worked for Baird, Kurtz &
17 Dobson ("BKD"), a CPA firm, performing audit, tax and consulting services. I passed
18 the CPA exam in November 1985. While at BKD, I served clients in various industries,
19 including Fidelity Telephone Company. I joined the Accounting Department of Fidelity
20 Telephone Company in December 1991 and performed various accounting, tax and
21 management functions. I left in 1993 for a Controller position with Reliant Care Group,
22 a group of eight nursing homes. In 1995, I moved on to another Controller position at
23 Universal Sewing Supply, a wholesaler of sewing machine parts and supplies. In May

24 1999, I returned to Fidelity Telephone Company as Director of Regulatory. In December
25 2000, I was promoted to my current position, Vice President of Regulatory for Fidelity
26 Communications Co. and all of its subsidiaries, including the Company.

27 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY**
28 **PROCEEDINGS?**

29 A. Yes, in Case No. TC-2002-1077, before the Missouri Public Service Commission.

30 **Q. WOULD YOU PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY?**

31 A. The purpose of my testimony is to provide the Commission with an overview of the
32 Company's operations in the Bourbon exchange, and to explain why the Company
33 opposes CenturyTel of Missouri, LLC's ("CenturyTel's") request for competitive
34 classification of its business and residential services in such exchange.

35 **Q. PLEASE PROVIDE RELEVANT BACKGROUND INFORMATION**
36 **CONCERNING THE COMPANY, ITS OWNERSHIP, AFFILIATES AND**
37 **OPERATIONS.**

38 A. Fidelity was granted a certificate to provide basic local telecommunications service in the
39 areas now served by CenturyTel in Case No. TA-2000-229 on November 30, 1999.
40 Fidelity is one of three Competitive Local Exchange Companies ("CLECs") which are
41 wholly-owned subsidiaries of Fidelity Communications Co. Fidelity Communication
42 Services I, Inc., is certified to operate in Sprint exchanges and Fidelity Communication
43 Services III, Inc. is certified to operate in SBC exchanges. Fidelity Communications Co.
44 also owns Fidelity Telephone Company, an ILEC headquartered in Sullivan, Missouri,
45 and Fidelity Long Distance, Inc., an interexchange carrier. Other holdings include
46 Fidelity Networks, Inc., an internet access service and long distance provider, and

47 Fidelity Systems Plus, an equipment retailer, a cellular partnership interest in RSAs 11
48 and 12 with Cingular, and Fidelity Cablevision, Inc., which provides cable TV service in
49 Rolla and Sullivan, Missouri.

50 **Q. HOW MANY RESIDENTIAL CUSTOMERS AND RESIDENTIAL LINES IS**
51 **THE COMPANY SERVING IN THE BOURBON EXCHANGE?**

52 A. Fidelity currently provides residential service—on what is commonly considered a UNE-
53 L basis—to only one individual, representing one access line, in the Bourbon exchange.
54 This individual is an employee of a Fidelity affiliate and was initially connected to test
55 the Company's ability to provide service in the Bourbon exchange, but, after the
56 conclusion of the initial tests, this employee retained and currently pays the Company for
57 such service. This employee may be used in the future to conduct further testing in the
58 Bourbon exchange.

59 **Q. HOW MANY BUSINESS CUSTOMERS AND BUSINESS LINES IS THE**
60 **COMPANY SERVING IN THE BOURBON EXCHANGE?**

61 A. Fidelity currently provides business services to a minimal number of business customers
62 and business lines in the Bourbon exchange. Specifically, aside from affiliated entities
63 using a few business lines for testing purposes (2 lines) and to transport ISP-traffic (6
64 lines), Fidelity currently provides business service to only 2 customers in the Bourbon
65 exchange, representing a total of 17 voice lines and 2 data lines.

66 **Q. THROUGH WHAT MEANS IS THE COMPANY SERVING THESE BUSINESS**
67 **AND RESIDENTIAL CUSTOMERS IN THE BOURBON EXCHANGE?**

68 A. Fidelity is not a full facility based provider in the Bourbon exchange. In fact, Fidelity has
69 no loop facilities located in the Bourbon exchange at all. Although Fidelity provides the

switching functionality required to serve its few customers located in Bourbon—via an affiliate’s switch located outside the exchange—the facilities (i.e., the local access lines) located in the exchange and used to serve such customers are owned wholly by a third-party, unaffiliated broadband provider and are part of an unaffiliated fiber network.

Moreover, in order to serve additional customers in Bourbon, Fidelity would have to either (i) build its own facilities in Bourbon, (ii) lease facilities from CenturyTel, (iii) request its existing third-party provider to extend its network, which, as far as I am aware, it is under no contractual obligation to do, or (iv) lease additional facilities, if any such even exist, from a different third party.

Q. ARE THESE ACCESS LINE NUMBERS AND TYPES OF SERVICES THE SAME AS ARE REFLECTED IN YOUR MOST RECENT ANNUAL REPORT FILED WITH THE COMMISSION?

A. No. They differ in the following respects: Fidelity’s 2004 Annual Report filed with the Commission indicated that, as of the date of filing, Fidelity served 1 “full facility based” residential line and 32 “full facility based” business lines. The residential line was erroneously designated in the Annual Report as “full facility based” when, in fact, it is and still remains “UNE-L,” because Fidelity is leasing the local loop from CenturyTel. Although Staff, in its direct testimony, suggests that the term “UNE-L” can “potentially” be used to describe the situation where a competitor leases the local loop facility from a non-incumbent third party, Fidelity, at the time it submitted its Annual Report, did not recognize that view, and, accordingly, designated the business lines as “full facility based.” Either way, Fidelity is leasing the local loop from a third party provider to serve these business lines.

93 Q. DO YOU AGREE WITH COMMISSION STAFF'S RECOMMENDATION THAT
94 CENTURYTEL'S RESIDENTIAL SERVICES SHOULD NOT BE CLASSIFIED
95 AS COMPETITIVE IN THE BOURBON EXCHANGE?

96 A. Yes.

97 Q. WHY DO YOU AGREE WITH THAT RECOMMENDATION?

98 A. Fidelity objects to competitive classification of residential services in the Bourbon
99 exchange on the grounds that Fidelity does not currently provide service to "residential
100 customers within the exchange" within the meaning of § 392.245.5. Specifically, Fidelity
101 currently provides residential service to only one individual in the Bourbon exchange;
102 however, by any interpretation, § 392.245.5, through the use of the term "customers,"
103 requires that service be provided to more than one customer. Moreover, this individual is
104 an employee of an affiliate of Fidelity and, as such, should not be considered a
105 "customer" within the meaning of § 392.245.5. Finally, as more specifically discussed
106 below in the context of Staff's recommendation regarding business services, Fidelity's
107 presence, both in terms of number of recipients of residential service and the quantity of
108 facilities in the Bourbon exchange, is so *de minimus* that it should not be considered
109 "providing" service over its own or affiliated facilities as required under the 30-day track
110 contemplated by § 392.245.5.

111 Q. DO YOU AGREE WITH COMMISSION STAFF'S RECOMMENDATION THAT
112 CENTURYTEL'S BUSINESS SERVICES SHOULD BE CLASSIFIED AS
113 COMPETITIVE IN THE BOURBON EXCHANGE?

114 A. No.

115 Q. WHY DO YOU DISAGREE WITH THAT RECOMMENDATION?

116 A. Staff's recommendation is based on an erroneous reading of S.B. 237. Staff states that,
117 because Fidelity uses the switch of an affiliated entity to serve its business customers in
118 Bourbon, Fidelity provides service "in whole or in part over telecommunications
119 facilities or other facilities in which it or one of its affiliates have an ownership interest"
120 , and, therefore, counts under § 392.245.5(2) as one of the two entities required for
121 competitive classification under the 30-day track. Staff, however, ignores the General
122 Assembly's apparent intent to exclude from the 30-day track analysis those entities that
123 serve only minimal lines through minimal facilities located in the exchange.

124 This legislative intent is manifest in several provisions of S.B. 237. First, §
125 392.245.5 speaks in terms of non-affiliated entities providing "services" to "customers."
126 Although the statute no longer requires a finding by the Commission of "effective
127 competition," it does not preclude the Commission from concluding that a company
128 provides services to so few customers that it is not "providing" services to customers
129 within the meaning of § 392.245.5. Secondly, § 392.245.5(2) expressly excludes
130 providers that use a "third party, unaffiliated broadband network." Third, § 392.245.5(4)
131 excludes telecommunications companies "only reselling telecommunications service as
132 defined in subdivision (46) of section 386.020." Section 386.020(46) defines the "resale
133 of telecommunications service" as "the offering or providing of telecommunications
134 service *primarily* through the use of services or facilities owned or provided by a separate
135 telecommunications company...." Clearly, the General Assembly, by referencing this
136 definition of "resale," recognized that a company's *de minimus* or marginal use of its own
137 facilities for the provision of service does not rise to the level of competition sufficient
138 for such company to count as one of the two entities required under the 30-day track.

139 The quantity of business customers served by Fidelity in the Bourbon exchange,
140 and the facilities owned by Fidelity or an affiliate and located in the exchange (and used
141 to provide such services) are so *de minimus* as to not constitute “providing” service over
142 owned “facilities” within the meaning of § 392.245.5. Fidelity is providing business
143 service to only 2 unaffiliated customers, and residential service to 1 employee, using no
144 owned loop facilities located in the Bourbon exchange. Fidelity maintains that this
145 marginal level of services falls within the general intent, if not the express language, of
146 the exceptions for “resellers” and other insubstantial competitors set forth in S.B. 237.
147 As such, Fidelity objects to competitive classification of business services in the Bourbon
148 exchange under the 30-day track. Fidelity submits that, at the very least, CenturyTel’s
149 request for competitive classification in the Bourbon exchange should be governed by the
150 60-day track in § 392.245.5(6) as opposed to the 30-day track under § 392.245.5,
151 generally, and that the Commission should exercise its discretion to determine that such
152 competitive classification is contrary to the public interest.

153 **Q. WHAT EFFECT WOULD THE COMMISSION’S DESIGNATING**
154 **CENTURYTEL’S BUSINESS SERVICES AS COMPETITIVE IN THE**
155 **BOURBON EXCHANGE HAVE?**

156 **A. If the Commission designates, as competitive, CenturyTel’s business services in the**
157 **Bourbon exchange, both CenturyTel and Fidelity would have the right, pursuant to §**
158 **392.200.8(3), to price any business service in such exchange on a customer-specific**
159 **basis.**

160 **Q. WHAT IS THE COMPANY'S POSITION WITH RESPECT TO CENTURYTEL'S**
161 **REQUEST FOR COMPETITIVE CLASSIFICATION OF BUSINESS SERVICES**
162 **IN THE ST. JAMES AND CUBA EXCHANGES?**

163 **A.** The Company does not, at this time, oppose CenturyTel's request for competitive
164 classification of business services in the St. James and Cuba exchanges; however,
165 CenturyTel bears the burden of proving that all statutory requirements for such
166 classification are met, and, accordingly, the Company requests strict proof thereof.

167 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

168 **A.** Yes, it does. Thank you.