

ANDERECK, EVANS, MILNE, PEACE & JOHNSON, L.L.C.

EUGENE E. ANDERECK
TERRY M. EVANS
ERWIN L. MILNE
JACK PEACE
CRAIG S. JOHNSON
RODRIC A. WIDGER
GEORGE M. JOHNSON
BEVERLY J. FIGG
WILLIAM S. LEWIS
VICTOR S. SCOTT
COREY K. HERRON
MATTHEW M. KROHN

ATTORNEYS AT LAW
700 EAST CAPITOL AVENUE
COL. DARWIN MARMADUKE HOUSE
P.O. BOX 1438
JEFFERSON CITY, MISSOURI 65102-1438
TELEPHONE 573-634-3422
FAX 573-634-7822

LANETTE R. GOOCH
SHAWN BATTAGLER
JOSEPH M. PAGE
LISA C. CHASE
JUDITH E. KOEHLER
ANDREW J. SPORLEDER
REBECCA L. SELLERS
JASON A. PAULSMEYER
BRYAN D. LADE
CONNIE J. BURROWS
OF COUNSEL
MARVIN L. SHARP
GREGORY C. STOCKARD (1904-1993)
PHIL HAUCK (1924-1991)
PHIL HAUCK (1924-1991)
PHIL HAUCK (1924-1991)

December 2, 2003

FILED

DEC 02 2003

Missouri Public
Service Commission

Secretary
Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

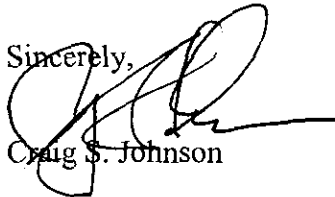
Re: LA-2004-0105

Dear Secretary:

Enclosed please find an original and eight copies of the MITG Response to Staff Recommendation and to CenturyTel.

Thank you for seeing this filed.

Sincerely,



Craig S. Johnson

CSJ:lw

Encl.

CC: Mike Dandino
Dan Joyce
Larry Dority

Trenton Office
9th And Washington
Trenton, Missouri 64683
660-359-2244
Fax 660-359-2116

Springfield Office
1111 S. Glenstone
P.O. Box 4929
Springfield, Missouri 65808
417-864-6401
Fax 417-864-4967

Princeton Office
207 North Washington
Princeton, Missouri 64673
660-748-2244
Fax 660-748-4405

Smithville Office
119 E. Main Street
P.O. Box. 654
Smithville, Missouri 64089
816-532-3895
Fax 816-532-3899

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED

DEC 02 2003

Missouri Public
Service Commission

In the Matter of the Application of CenturyTel)
Solutions, LLC, for Certificate of Service)
Authority to Provide Basic Local Exchange,)
and Local Exchange Telecommunications)
Service in the State of Missouri and for)
Competitive Classification)

Case No. LA-2004-0105

MITG RESPONSE TO STAFF RECOMMENDATION
AND TO CENTURYTEL

Comes now the MITG and submits the following response to Staff's November 26, 2003 Recommendation, and to CenturyTel's Response to MITG Notice re Intervention:

1. On November 18, 2003, the MITG, as directed by the Commission, placed all parties on notice of its continued intervention in opposition to the relief requested herein, even though Applicant had abandoned the request to obtain basic local certification in its parent/affiliate ILEC exchanges.

2. The MITG continues to oppose Applicant being granted interexchange service authority in its parent/affiliate (CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel, respectively) service areas. It is one thing for an ILEC to utilize a CLEC to compete in new service areas. It is quite another for an ILEC to form a CLEC to compete with the ILEC in its own exchanges.

3. The MITG finds it hard to believe that CenturyTel truly wants to compete with itself for its own toll business. CenturyTel has amended its local service authority

to delete authority in its parent company exchanges. CenturyTel should do the same with respect to its toll authority.

4. If a CLEC affiliate of an ILEC providing interexchange service, as Applicant is here, is granted interexchange authority in the parent ILEC exchanges, this creates the ability for the CLEC to provide interexchange services, in the parent ILECs' exchanges, that the ILEC itself would be unable to lawfully provide. This would not be consistent with the public interest.

5. Such essential public interest principles as the prohibition against special rates (392.200.2 RSMo), the prohibition against special rates based upon person, corporation or locality (392.200.3 RSMo), the prohibition against defining a service as different based upon geographic area (392.200.4.1 RSMo), the prohibition against charging a different price per minute for the same, substitutable, or equivalent interexchange service (392.200.5 RSMo), and the prohibition against geographic rate deaveraging (392,230.1 RSMo and 392.230.2 RSMo), could all be circumvented by the use of an CLEC affiliate providing toll services in the parent ILEC's exchanges.

6. As a real world example particularly pertinent here, Applicant could, by limiting services to areas "where facilities are available", a common method for toll providers to limit where their services are offered, offer a toll calling plan limited to customers in Macon, Missouri. It would be improper for Spectra/CenturyTel the ILEC to offer special toll calling plans in only one exchange. See Case No. IT-2004-0141, in which Spectra/CenturyTel actually proposed a Macon toll calling plan which, prior to its being withdrawn, would have only been available in the Macon exchange, not in all exchanges in which Spectra/CenturyTel provided toll service. The MITG believes that

the public interest, as manifested by current statutes and rules, could be thwarted by allowing an ILEC's wholly owned CLEC to obtain toll authority in the parent ILEC exchanges.

7. Staff's Recommendation suggests that Mid-Missouri Telephone Company is certificated to provide interexchange service throughout the State of Missouri, including the exchanges served by Mid-Missouri. Staff references TA-2000-290. Staff fails to mention the difference between private line service/non-switched local and basic interexchange service, and fails to set forth the context in which Mid-Missouri sought such certification.

8. Prior to TA-2000-290, private line service was rendered by Mid-Missouri under the auspices of the PTC Plan. After the PTC Plan was terminated, Mid-Missouri filed the request for certificate, and tariffs, approved in TA-2000-290, to enable Mid-Missouri to continue to provide private line services to customers resident in Mid-Missouri exchanges. Private Line is a service providing dedicated, non-switched capacity in a Mid-Missouri facility, either to another Mid-Missouri end user location, or to an end user of another LEC reached by use of Mid-Missouri facilities in conjunction with similar facilities and services of other LECs needed to complete a private line circuit. Mid-Missouri does not use private line non-switched local services to provide basic interexchange service to Mid-Missouri customers.

9. The MITG is also concerned as to whether Applicant would use its own facilities in parent Spectra/CenturyTel exchanges, or whether it would be allowed by Spectra/CenturyTel to use the parent's facilities. The MITG is opposed to IXCs being allowed the use of intraLATA toll feature group C facilities and protocols with which to

originate and transmit toll traffic. In a similar proceeding, ILEC Alltel agreed not to do so. See TT-2000-268.

10. Applicant should not be allowed to originate traffic on a feature group C basis in its parent company exchanges. Feature group C does not provide for Carrier Identification Codes specific to each IXC originating traffic. Instead it only uses a default "OOOO" code, which can be assigned only to a single ILEC toll provider. If Applicant is allowed to utilize FGC facilities to originate traffic, its traffic will be indistinguishable from its parent company's traffic. The MITG believes this to be in violation of its tariffs, which provide that, after Feature Group D is made available, Feature Group C will no longer be provided. Allowing Applicant to use Feature Group C protocols in its parent company exchanges would not only continue to tolerate a violation of the MITG company tariffs, it would expand the ongoing violation to a new carrier that is not even an ILEC toll provider.

11. CenturyTel suggests that Staff's proposed Enhanced Record Exchange Rule will alleviate MITG concerns regarding Applicant's use of FGC facilities. CenturyTel is not correct.

12. Staff's Enhanced Record Exchange rule has been a work in progress for 2 years or more. It is unknown to the MITG as to whether or when it will be promulgated. It appears to the MITG that industry support for the rule has waned. It appears to the MITG that the large ILEC strategy now is to continue to delay promulgation of the rule in order to continue to delay Commission attention to the "business relationship" issue that has been undecided in TO-99-593 for over 4 years after termination of the PTC Plan.

13. When the MITG opposes an application or agreement on the grounds it will be inconsistent with Staff's Enhanced Record Exchange Rule, the MITG opponents (which sometimes include Staff) points out the rule is not in effect. At other times, when the MITG opposes an application or agreement on the grounds that traffic will be passed without meeting existing billing and compensation processes set forth in the MITG tariffs, the MITG opponents (which sometimes include Staff) states the rule already addresses these concerns.

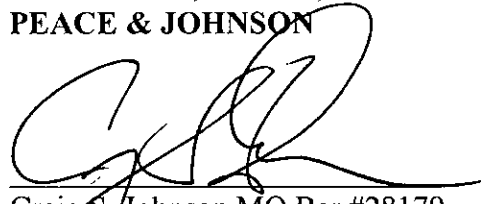
14. The Commission should no longer give credence to any party's suggestion that Staff's Enhanced Record Exchange Rule will have any bearing whatsoever on any application or agreement that is filed. In this case such a possible rule has no bearing on whether Applicant should be granted toll authority in its parent ILEC exchanges. Until the Rule is published, commented upon, and made effective the Commission should afford no consideration to a rule that is not in existence.

15. The MITG respectfully suggests that the foregoing establishes that there are questions of fact and/or law with respect to whether the public interest is served by allowing a wholly-owned or controlled CLEC to obtain toll authority in its parent ILEC exchanges. There are sufficient questions of fact, law, and policy to merit intervention being granted, and this case set for further proceedings.

WHEREFORE, the MITG requests that its Motions to Intervene be Granted, and that this matter be scheduled for further proceedings.

**ANDERECK, EVANS, MILNE
PEACE & JOHNSON**

By:



Craig S. Johnson, MO Bar #28179
Lisa Cole Chase, MO Bar #51502
Col. Darwin Marmaduke House
700 East Capitol
P.O. Box 1438
Jefferson City, MO 65102
Telephone: 573/634-3422
Facsimile: 573/634-7822
email: CJohnson@aempb.com
email: lisachase@aempb.com

**ATTORNEYS FOR MISSOURI
INDEPENDENT TELEPHONE
GROUP**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, U. S. Mail, postage pre-paid, this 2nd day of December, 2003, to:

Dan Joyce
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Mike Dandino
Office of the Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102

Larry Dority
Fischer & Dority, P.C.
101 Madison, Suite 400
Jefferson City, MO 65101



Craig S. Johnson