

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

MCImetro Access Transmission Services, LLC,	)	
Brooks Fiber Communications of Missouri, Inc.,	)	
and Intermedia Communications, Inc.	)	
	)	
Complainants,	)	
	)	
	)	
vs.	)	<b>Case No. LC-2005-0080</b>
	)	
	)	
CenturyTel of Missouri, Inc.,	)	
	)	
Respondent.	)	

**RESPONSE OF MCIMETRO ACCESS TRANSMISSION SERVICES, LLC,  
BROOKS FIBER COMMUNICATIONS OF MISSOURI, INC. AND  
INTERMEDIA COMMUNICATIONS, INC. TO CENTURYTEL'S MOTION TO  
DISMISS, ANSWER, AND AFFIRMATIVE DEFENSES**

COME NOW MCImetro Access Transmission Services, LLC ("MCImetro"), Brooks Fiber Communications of Missouri, Inc. ("Brooks"), and Intermedia Communications, Inc. ("Intermedia")(herein collectively "MCI")<sup>1</sup> pursuant to 4 CSR 240-2.080(15) and the Commission's Order dated November 4, 2004, and for their Response to the Motion to Dismiss, Answer and Affirmative Defenses filed by CenturyTel of Missouri, Inc. ("CenturyTel"), state to the Commission:

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<sup>1</sup> MCImetro is the successor in interest by merger of Brooks, as approved in Case No. TM-2004-0146. That transaction was recently completed and the Commission cancelled the certificates and tariffs of Brooks by its Order which will be effective on November 22, 2004. MCImetro will likewise be the successor in interest by merger of Intermedia, as presented to the Commission in Case No. TM-2005-0129. See also Section 39 of the Interconnection Agreements. The Complaint properly pleads that MCImetro is the successor in interest to Brooks. (Complaint, para. 2). The Intermedia transaction is a new development that has arisen since the Complaint was filed, that can be addressed once the merger has occurred, by amendment of the Complaint under 4 CSR 240-2.080(20). MCI's reorganizations do not have any impact on the substance of the Complaint or CenturyTel's ability to respond thereto, contrary to footnote 1 of CenturyTel's pleading.

1. CenturyTel has distinguished itself among incumbent local exchange carriers (“ILECs”) both in Missouri and nationwide as being the only ILEC to refuse to interconnect with MCI in the manner requested, thereby leading to the complaint filed herein. MCI has requested interconnection in Columbia and in Branson—both of which are CenturyTel exchanges—in order to continue to provide service to customers in Columbia and Branson.<sup>2</sup> MCI’s switches, which will process local calls originating in Columbia and Branson, are located in St. Louis and Springfield, respectively. MCI has submitted its orders to CenturyTel in order to bring more MCI traffic onto its own network, rather than continuing to lease portions of CenturyTel’s network. In short, MCI has submitted legitimate interconnection orders to CenturyTel in order to become even more of a facilities-based competitor in the Missouri local exchange market. CenturyTel stands to lose money - in the form of the payments made by MCI for leasing various parts of CenturyTel's local network and in the form of lost revenue from customers - as a result of MCI expanding its facilities-based presence in Missouri. It is for that reason and that reason alone, that CenturyTel refuses to process MCI’s orders.

2. CenturyTel asserts that the interconnection agreements<sup>3</sup> cover “services in the service territory of Verizon in the state of Missouri.” (CenturyTel Motion, pg. 5).

The service arrangement MCI currently obtains from CenturyTel is the same as it would

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<sup>2</sup> Contrary to CenturyTel's assertion at page 6 of its pleading (and as evinced by its failure to make any citation), MCI has not admitted that its customers are not located in the local calling area.

<sup>3</sup> Brooks and Intermedia both adopted the agreement between Verizon and ICG Telecom Group. See Case Nos. CK-2002-1145 and CK-2002-1146. There was nothing "attempted" about these approved adoptions, contrary to CenturyTel's assertion at page 3 of its pleading. CenturyTel became subject to the agreements in place of Verizon pursuant to Case No. TM-2002-232. (Complaint, para. 7-8). CenturyTel admits that it is subject to the agreements (Answer, para. 6-7), so it injects the matters stated in its footnote 2 purely for purposes of confusion. The reference in the Complaint to "MCI's adoption" of the agreements is a reference to adoption by Brooks and Intermedia (identified collectively as "MCI" as stated in the introductory section of the Complaint). As stated in the Complaint at paragraph 14, the effect of CenturyTel's purported notice of termination regarding the Brooks agreement is a matter of dispute between the parties.

be if CenturyTel had provisioned MCI's interconnection orders as requested. That is, customers in Columbia currently dial a Columbia exchange local number for dial up access. Those same customers would still dial a Columbia exchange local number for such access if CenturyTel had provisioned MCI's orders. The notion espoused by CenturyTel that MCI is somehow expanding CenturyTel's local calling area is simply not true. Instead, CenturyTel is thwarting MCI's efforts to move existing local traffic from CenturyTel's network to MCI's network.

3. CenturyTel's assertion that the local number portability rules are inapplicable to MCI's request is likewise inapposite. Section 15 of the interconnection agreement requires the parties to comply with the North American Numbering Council ("NANC") and the Ordering and Billing Forum ("OBF") rules regarding number portability. MCI has complied with the rules contained in the OBF Number Portability Form Preparation Guide. CenturyTel, on the other hand, is disregarding the OBF rules by examining the purported motives of the requesting carrier (*i.e.* MCI) in placing its orders. MCI is requesting number portability consistent with its rights under the agreements in order to provide service in a more efficient and cost-effective manner. As noted above, the local numbers and interconnection currently do and will continue to be Columbia and Branson local exchange numbers. CenturyTel apparently asserts that competitive local carriers must have a switch in each and every exchange of the incumbent local carrier for the call to be considered "local." That onerous, expensive, and anti-competitive position is not required under the Federal Telecommunications Act. CenturyTel's tactics should not be condoned by this Commission.

4. CenturyTel has not identified any legitimate basis for dismissal of the Complaint. The Complaint alleges that CenturyTel has violated the agreements and describes the violations (para. 17 specifically and remainder of Complaint). CenturyTel does not even assert that it has not violated the agreements, but rather argues that they do not apply. Such a dispute cannot be resolved by review of the pleadings, but rather requires a hearing, the development of an evidentiary record, and legal argument based thereon.

5. Likewise, the Complaint alleges that MCI has in fact pursued dispute resolution (para. 15), without success. CenturyTel indicates that it disputes these allegations. Again, such a dispute cannot be resolved by review of conflicting pleadings. Nonetheless, MCI is certainly willing to document that both Brooks and Intermedia requested dispute resolution (see Exhibits A and B attached hereto), contrary to CenturyTel's assertion that only Intermedia did so (Motion, p. 7). Further, the evidence at hearing will show that CenturyTel compelled MCI to withdraw its orders for services from CenturyTel because CenturyTel indicated it would only provision the facilities in a different manner than requested by MCI in an attempt to impose different (substantially higher) charges on MCI. The evidence will show that MCI did invoke and pursue dispute resolution, that such efforts were unsuccessful, that MCI did not abandon its orders, and that such matters do not stand in the way of the Commission addressing the merits of the Complaint. But more importantly, at this time there would be no basis for the Commission to dismiss the Complaint simply because CenturyTel has endeavored to contradict the averments of the Complaint.

6. As the Commission is well aware, when it examines a complaint pursuant to a motion to dismiss for failure to state a claim, it must accept all the averments of the complaint as true. See, e.g., Eastwood v. North Cent. Missouri Drug Task Force, 15 S.W.3d 65 (Mo. App. 2000). CenturyTel has not identified any deficiency in MCI's Complaint, but rather has merely sought to contradict its averments. The Complaint plainly states a claim on its face and the case should proceed to hearing.

7. No formal reply is required regarding CenturyTel's Answer and Affirmative Defenses, but out of an abundance of caution, MCI hereby denies all averments of the Motion to Dismiss and Answer except to the extent CenturyTel admits averments of the Complaint and except to the extent CenturyTel corrects its contact information in paragraph 5 of its Answer. Furthermore, MCI specifically denies all averments of CenturyTel's Affirmative Defenses, including but not limited to CenturyTel's assertion that it somehow has the ability to convert this Complaint proceeding into some type of generic investigation into issues regarding VNXX.

WHEREFORE, MCI prays the Commission to deny CenturyTel's Motion to Dismiss and take such other and further actions as may be required to move this proceeding on towards hearing, such as setting a prehearing conference.

CURTIS, HEINZ,  
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

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Attorneys for MCImetro Access Transmission  
Services, LLC, Brooks Fiber Communications  
of Missouri, Inc. and Intermedia Communications,  
Inc.

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 15th day of November, 2004, by placing same in the U.S. Mail, postage paid.

/s/ Carl J. Lumley

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P.O. Box 2230  
Jefferson City, MO 65102

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June 4, 2004

Guy Miller  
Director Carrier Relations  
CenturyTel  
100 CenturyTel Drive  
Monroe, LA

**VIA OVERNIGHT AND EMAIL**

**RE: Notice of Dispute**

Dear Guy:

Pursuant to Section 14.1 of the General Terms and Conditions of the interconnection agreement between CenturyTel and Brooks Fiber for the State of Missouri, I am writing to notify you of a dispute between our respective companies, and to request negotiations to resolve the dispute. I have left several messages for Susan Smith to discuss CenturyTel's issues with me and MCI network personnel. To date, I have not heard from her.

The nature of the dispute is CenturyTel's refusal to provision interconnection trunks validly ordered by Brooks Fiber pursuant to Section 2 of the Interconnection Attachment. We are aware of no basis for CenturyTel's refusal to provision such trunks, as required by the Interconnection Attachment.

We are, therefore, requesting that our respective companies negotiate this dispute, as required by Section 14.1 of the General Terms and Conditions. Our designated representative for the negotiations will be me. Please advise as to when I can expect a call to begin these negotiations. I would like to begin these discussions by mid next week.

Sincerely,

Dayna Garvin

Cc: MCI: Peter Reynolds, John Monroe, John Anderson, Don Grieco, Darren Dickson, T.D. Huynh

CenturyTel: Susan Smith

**EXHIBIT A**





*Dayna Garvin*

*Senior Manager – Carrier Agreements*

*2678 Bishop Drive, Suite 200, San Ramon, CA 94583*

*Phone: (925) 824-2078 Fax: (925) 244-1334*

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Sincerely,

Dayna Garvin

Cc: MCI: Peter Reynolds, John Monroe, John Anderson, Don Grieco, Darren Dickson, T.D. Huynh

CenturyTel: Susan Smith

**EXHIBIT B**