

1. On August 8, 2005, FullTel filed its Complaint against CenturyTel of Missouri, LLC (CenturyTel) and on the same date filed its Motion to Expedite the Commission's consideration and disposition of that Complaint. By Order dated August 10, 2005, the Commission granted FullTel's motion to expedite in order to efficiently proceed toward resolution of the business-affecting dispute. CenturyTel subsequently moved for reconsideration of the Order expediting the proceeding. The Commission denied that CenturyTel motion, and modified the procedural schedule by permitting

additional time for CenturyTel to respond to the Complaint. In its Answer, CenturyTel then included a motion to dismiss, which is addressed herein.

2. It is becoming clear that CenturyTel will employ almost any procedural device to prevent Commission consideration of the merits of this action – and a determination that FullTel is indeed entitled to interconnect with and compete against CenturyTel. For the reasons stated herein, the Commission should ignore CenturyTel’s procedural subterfuge, reject its motion to dismiss, and instead proceed with its expeditious consideration of the meritorious Complaint.¹

3. As the Commission is well aware, CenturyTel fought extremely hard to block FullTel’s adoption of the Interconnection Agreement and FullTel’s entry into the marketplace. Thankfully, the Commission thwarted CenturyTel’s anticompetitive objectives by approving the Interconnection Agreement.² Now that the Interconnection Agreement is in effect, however, CenturyTel has continued its anticompetitive behavior, through its well-known deny and delay tactics, and has failed to honor the Interconnection Agreement. As a result, FullTel brought this action for one simple purpose: to enlist the Commission’s assistance in ensuring that the terms of the Interconnection Agreement are respected and that CenturyTel meets some of the most basic obligations.

4. Fundamentally, CenturyTel’s purported motion to dismiss is nothing more than an additional recitation of its defense to the Complaint. CenturyTel argues that it should be able to avoid its legal obligations, as set forth in the Commission-approved

¹ In light of the significant and adverse impact that CenturyTel’s conduct is having on FullTel and its ability to compete, FullTel must likewise reject the suggestion (CenturyTel Answer, page 2) that voluntary mediation may somehow force CenturyTel to honor the law, and instead respectfully requests that the Commission move forward with expeditious consideration on the merits.

² Orders dated December 21, 2004 and February 22, 2005.

interconnection Agreement, by misconstruing the coverage of the agreement and applicable law. Repetition of the same argument, however, fails to remedy its inherent lack of merit.

5. As the Commission (and now CenturyTel) is aware, FullTel faces *very specific and tangible economic harm* with each day that CenturyTel is able to deny it competitive entry.³ CenturyTel no doubt wants to drag out this proceeding as long as possible, and force FullTel to incur as much cost as possible, before CenturyTel is forced to obey the law. The Commission took appropriate action in granting FullTel's request for expedited treatment, to limit the continuing harm and promote competition, and there are no grounds for the Commission to reverse its decision to proceed with consideration of the merits in an expeditious fashion.

6. FullTel therefore respectfully requests that the Commission summarily reject CenturyTel's motion in favor of an expeditiously complete evaluation of the case – more than can be undertaken in this brief response to the unsupported motion.⁴ What will be clear (and is likely already so) is that the Parties' Interconnection Agreement requires the interconnection of the two networks so that FullTel may enter the market and exchange traffic between its and CenturyTel's customers.

7. Substantively, there is no doubt but that the Interconnection Agreement covers the traffic to be exchanged between the Parties. Even CenturyTel's citation of

³ As noted in prior pleadings,:

FullTel seeks to enter Missouri in order to provide service to customers who have expressed an interest in being served. Each day that FullTel is unable to interconnect with CenturyTel is a day that FullTel loses money, since FullTel loses revenue and at the same time incurs expenses for the collocation that now stands idle due to CenturyTel's wholly unreasonable delay.

⁴ It is noteworthy that the purported motion to dismiss contains no affidavits or other supporting factual material, and contains citation to a mere one page of the Parties' Interconnection Agreement (which addresses *compensation*, not interconnection).

language outside the scope of the agreement, that has no bearing on the relationship between the Parties, fails to support in any way CenturyTel's arguments.

8. Under the terms of the parties' Interconnection Agreement, and applicable law, CenturyTel must permit FullTel to interconnect its network for the exchange of traffic. Similarly, under the Interconnection Agreement and applicable law, FullTel has the right to interconnect with CenturyTel at one point in each LATA. CenturyTel's failure to meet those obligations and honor FullTel's right – by refusing to establish interconnection and demanding the establishment of multiple POIs – is therefore illegal and improper.⁵

9. The parties' Interconnection Agreement requires CenturyTel to interconnect with FullTel and to do so at a single POI. More specifically, the Interconnection Agreement states, at page 54, that each party “shall provide to the other Party, in accordance with this Interconnection Agreement and Applicable Law, interconnection with the Providing Party's network for the transmission and routing of Telephone Exchange Service and Exchange Access,” and that each party will “provide interconnection of their networks at any technically feasible point (the Point of Interconnection or “POI”).”

10. In addition to the explicit terms of the parties' Interconnection Agreement, applicable law confirms that FullTel is entitled to interconnect with CenturyTel through the establishment a single POI in each LATA, and to exchange both voice and ISP

⁵ In addition to violations of other applicable law, CenturyTel's actions are violative of Section 386.390 RSMo 2000, in that CenturyTel has failed to abide by the terms of an interconnection agreement approved by an order of this Commission. *See* Interconnection Agreement Approval Orders.

traffic.⁶ In a recent interconnection arbitration, for example, the FCC determined that competitive carriers may choose to interconnect at a single point per LATA, specifically rejecting the ILEC's contrary position (*i.e.*, the same position CenturyTel now stubbornly asserts).⁷ Federal courts have recognized the FCC's holding and confirmed that principle.⁸

11. Ignoring (a) the terms of the Interconnection Agreement, (b) applicable law, and (c) factual circumstances, CenturyTel stubbornly asserts the long-rejected argument that the calls to be exchanged over the interconnection arrangement to be established are interexchange access and takes the untenable position that FullTel does not appear to have local customers. As noted above, this argument flies in the face of the Interconnection Agreement and applicable law, and is factually incorrect.

12. In its denial of FullTel's rights, CenturyTel ignores the fact that the interconnection point to be established will be within CenturyTel's service territory, and that FullTel will therefore be interconnecting and exchanging traffic with CenturyTel within CenturyTel's territory – not in some other LATA as CenturyTel intimates.

13. CenturyTel is also incorrect when it comes to identification of the scope of the Parties' agreement. In direct contradiction to the irrelevant language cited by CenturyTel, the Parties' Interconnection Agreement specifically includes the obligation of the parties to exchange the traffic at issue here. Simple reference to pages 32-33 of the

⁶ See, e.g., 47 U.S.C. § 251(c)(2); *MCI Metro Access Transmission Services v. Bellsouth Telecommunications and North Carolina PUC*, 352 F.3d 872 (2003).

⁷ *Petitions of WorldCom, Inc., Cox Virginia Telecom, Inc., and AT&T Communications of Virginia, Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Arbitration*, [Consolidated] Memorandum Opinion and Order, CC Docket Nos. 00-218, 00-249 and 00-251, July 17, 2002 ("FCC Arbitration Order")

⁸ See, e.g., *MCI Metro Access Transmission Services v. Bellsouth Telecommunications and North Carolina PUC*, 352 F.3d 872 (2003).

Interconnection Agreement (for definitions of "FCC Internet Order" and "ISP-bound Traffic") and page 54 (identifying the fundamental interconnection obligations, including delivery of ISP-bound Traffic by CenturyTel to the POI) should be enough to overcome the specious motion to dismiss.

14. The key distinction that CenturyTel omits relates to the separation of the physical interconnection of the networks from the traffic that will flow over such interconnection.⁹ It is fundamental that local exchange carriers must provide interconnection with their networks¹⁰ and that the parties will then compensate one another for the traffic exchanged over such interconnection. CenturyTel must interconnect with FullTel, and bring traffic originating from CenturyTel customers – the service for which CenturyTel bills its customers – to the POI. Following the establishment of such interconnection, the parties will then exchange traffic and appropriate compensation.

15. The parties' Interconnection Agreement specifically requires that Reciprocal Compensation Traffic and ISP-bound Traffic be treated uniformly for the purpose of establishing interconnection. The terms of the Interconnection Agreement, in fact, reference both forms of traffic at issue here: (1) Reciprocal Compensation Traffic, defined at section 2.83 of the Glossary, and (2) ISP-bound Traffic, defined at section 2.54 and 2.42. The Interconnection Agreement, fortunately, also addresses the manner in which the parties will interconnect and exchange both forms of traffic. Indeed, contrary

⁹ CenturyTel's motion deals solely, and ineffectively, with the issue of local calling areas and compensation for traffic exchange.

¹⁰ See, e.g., 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305; Interconnection Agreement pages 54-79 (Interconnection Attachment)

to CenturyTel's stated position, the Interconnection Agreement clearly provides that both local and ISP-bound traffic will be treated the same.

16. The parties' Interconnection Agreement explicitly states that "[e]ach Party ("Originating Party"), *at its own expense*, shall provide for the delivery to the relevant IP of the other Party ("Receiving Party") ***Reciprocal Compensation Traffic and ISP-bound Traffic***["]."¹¹ The Interconnection Agreement further provides that "ISP-bound Traffic shall be governed by the terms of the FCC Internet Order and other applicable FCC orders and FCC regulations" (which treat local and ISP-bound traffic the same for IP purposes), and that "the IP of a Party ("Receiving Party") for ISP-bound Traffic delivered to the Receiving Party by the other Party *shall be the same* as the IP of the Receiving Party for Reciprocal Compensation Traffic["]."¹² Thus, the Interconnection Agreement addresses and unambiguously includes both forms of traffic.

17. As is the case with the physical interconnection itself, Applicable Law also eviscerates the distinction CenturyTel is attempting to create with regard to traffic.¹³ In fact, the FCC's Internet Order addressed and resolved – over four years ago – the very issue CenturyTel is now raising. In that order, the FCC determined that ISP-bound Traffic, since its end point is often distant (*i.e.*, outside the local calling area), will be subject to a compensation scheme distinct from that which applies to Reciprocal Compensation Traffic.¹⁴ FullTel seeks only to exchange traffic pursuant to that Order

¹¹ FullTel/CenturyTel Interconnection Agreement, at page 54 (*emphasis added*).

¹² *Id.* at pages 67-68 (*emphasis added*). As noted below, the FCC's Internet Order also recognizes that ISP-Bound Traffic often terminates at some distant point, outside of the local calling area.

¹³ See, e.g., 47 C.F.R. § 51.703; FCC Internet Order; *MCImetro v. Bellsouth*, 352 F.3d 872; *FCC Arbitration Order*.

¹⁴ See, e.g., Internet Order at paras. 1-8, 14, and fn. 6.

and other applicable law. Once the Commission reviews the merits of this case, FullTel hopes that it will permit such lawful interconnection and traffic exchange.

WHEREFORE, FullTel prays that the Commission reject CenturyTel's motion to dismiss and instead proceed with its expeditious consideration of this matter.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 12th day of September, 2005, to General Counsel's Office at gencounsel@psc.mo.gov ; Office of Public Counsel at opcservice@ded.mo.gov; and Larry W. Dority at lwdority@sprintmail.com.

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