

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

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

**CENTURYTEL OF MISSOURI, LLC'S
PRETRIAL BRIEF, LIST OF WITNESSES, AND
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

COMES NOW CenturyTel of Missouri, LLC ("CenturyTel"), pursuant to the Commission's Order¹ issued in this matter on September 12, 2005, and respectfully submits its Pretrial Brief, List of Witnesses, and Proposed Findings of Fact and Conclusions of Law.

Pretrial Brief

Paragraph (C) of the Commission's September 12, 2005 Order places the parties on notice that "the Commission will require pretrial briefs that address all the issues in dispute and all the relevant prefiled testimony."² (Emphasis added.) As the evidence submitted in the Application and the prefiled testimony of CenturyTel and the Staff of the Commission reveal, there are no remaining issues between CenturyTel and the Staff in this 30-day proceeding.³ Reflected in Schedule 1 to Staff Witness John Van Eschen's Direct Testimony, Staff recommends that competitive status be granted to CenturyTel in the following exchanges for residential services: Dardenne, O'Fallon, St. Peters and

¹ Order Directing Notice, Establishing Procedural Schedule, and Reserving Hearing Date, Case No. IO-2006-0109, September 12, 2005, at pp. 2-4.

² *Id.*, p. 2.

³ As Staff is still "unable to resolve" the issue regarding competitive classification for business services in the Dardenne exchange and is, therefore, recommending denial of that specific request, CenturyTel has decided not to contest Staff's recommendation at this time, and is withdrawing its request for competitive classification of business services in the Dardenne exchange. CenturyTel will be filing substitute tariff sheets to effectuate this action.

Wentzville; Staff recommends that competitive status be granted to CenturyTel in the following exchanges for business services: Bourbon, Columbia, Cuba, O'Fallon, St. James, St. Peters, and Wentzville. (Martinez Direct Testimony, p.14, Van Eschen Direct Testimony, pp. 10-11). In its Objections to Application filed on September 20, 2005, Fidelity Communications Services II, Inc. stated that it objects to competitive classification of CenturyTel's business and residential services in the Bourbon exchange. As noted above, there is no issue remaining regarding residential services in the Bourbon exchange, as CenturyTel is withdrawing its request at this time. However, as Staff's support indicates, CenturyTel clearly has met the criteria for obtaining competitive status for the provisioning of business services in the Bourbon exchange.

CenturyTel filed its Application for Competitive Classification on September 9, 2005, pursuant to Section 392.245.5 RSMo. (2005), requesting that the Commission conduct a 30-day competitive classification review pursuant to Section 392.245.5(6) RSMo. and approve CenturyTel's Application for Competitive Classification for all its residential services, other than exchange access service, for the following exchanges: (a) Bourbon, (b) Branson, (c) Columbia, (d) Dardenne, (e) O'Fallon, (f) St. Peters and (g) Wentzville; and for all of its business services, other than exchange access services, in the following exchanges: (a) Bourbon, (b), Columbia (c) Cuba, (d) Dardenne, (e) O'Fallon, (f) St. James, (g) St. Peters and (h) Wentzville. Concurrent with the filing of the Application, CenturyTel filed proposed tariffs, with thirty-day effective dates, reflecting grants of the requested competitive classification. Copies of illustrative tariffs were attached to the Application as Exhibit H.

Missouri statute Section 392.245.5 RSMo. (2005) allows carriers subject to Price Cap Regulation to seek competitive classification for each telecommunications service

offered to business and residential customers, other than exchange access service, in any exchange in which at least two non-affiliated entities are providing basic local telecommunications service to customers within the exchange. Section 392.245.5 RSMo. (2005) states as follows:

5. Each telecommunications service offered to business customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in any exchange in which at least two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to business customers within the exchange. Each telecommunications service offered to residential customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in an exchange in which at least two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to residential customers within the exchange. For purposes of this subsection:

(1) Commercial mobile service providers as identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing basic local telecommunications service, provided that only one such non-affiliated provider shall be considered as providing basic local telecommunications service within an exchange;

(2) Any entity providing local voice service in whole or in part over telecommunications facilities or other facilities in which it or one of its affiliates have an ownership interest shall be considered as a basic local telecommunications service provider regardless of whether such entity is subject to regulation by the commission. A provider of local voice service that requires the use of a third party, unaffiliated broadband network or dial-up Internet network for the origination of local voice service shall not be considered a basic local telecommunications service provider. For purposes of this subsection only, a broadband network is defined as a connection that delivers services at speeds exceeding two hundred kilobits per second in at least one direction;

(3) Regardless of the technology utilized, local voice service shall mean two-way voice service capable of receiving calls from a provider of basic local telecommunications services as defined by subdivision (4) of section 386.020, RSMo;

(4) Telecommunications companies only offering prepaid telecommunications service or only reselling telecommunications service

as defined in subdivision (46) of section 386.020, RSMo, in the exchange being considered for competitive classification shall not be considered entities providing basic telecommunications service; and

(5) Prepaid telecommunications service shall mean a local service for which payment is made in advance that excludes access to operator assistance and long distance service;

(6) Upon request of an incumbent local exchange telecommunications company seeking competitive classification of business service or residential service, or both, the commission shall, within thirty days of the request, determine whether the requisite number of entities are providing basic local telecommunications service to business or residential customers, or both, in an exchange and if so, shall approve tariffs designating all such business or residential services other than exchange access service, as competitive within such exchange.

As set forth above, the 30-day track under this new statutory provision establishes a competitive “trigger” that focuses solely on whether the requisite number of carriers are providing “basic local telecommunications service” within an exchange. For the purpose of the 30-day investigation, the statute provides that one commercial mobile radio service (“CMRS” or “wireless”) provider is to be considered an entity providing “basic local telecommunications services” in an exchange. It also requires the Commission to consider as a “basic local telecommunications service provider” any entity providing “local voice”⁴ service “in whole or in part” over facilities which it or one of its affiliates has an ownership interest.

The statute defines “telecommunications facilities” very broadly to include, among other items, “lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used, operated, controlled or owned by any

⁴ Section 392.245.5(3) RSMo (2005) defines “local voice service” as meaning “[r]egardless of the technology used . . . two-way voice service capable of receiving calls from a provider of basic local telecommunications services as defined by subdivision (4) of section 386.020, RSMo.”

telecommunications company to facilitate the provision of telecommunications service.”⁵

CenturyTel respectfully submits that all the exchanges listed above meet the requisite criteria set out in Section 392.245.5 RSMo. Specifically, at least one non-affiliated wireless carrier is providing service in all the exchanges. In addition, CenturyTel’s primary wireline competitors in these exchanges are CLECs or cable operators that are providing local phone service in whole or in part over facilities they own.

Section 392.245.5(1) RSMo. (2005) states that commercial mobile service providers shall be considered as entities providing basic local telecommunications service, provided that only one such non-affiliated provider shall be considered as providing basic local telecommunications service within an exchange. CenturyTel has numerous non-affiliated wireless providers operating in its exchanges providing local service. Exhibit A of CenturyTel’s Application identifies wireless carriers, including (a) Cingular, (b) Verizon, (c) T-Mobile, (d) Alltel, (e) US Cellular, (f) Nextel and (g) Sprint providing local service in the above CenturyTel exchanges. (Martinez Direct Testimony, p. 7). As discussed in the Direct Testimony of Staff Witness John Van Eschen at Page 6, the Staff agrees that CenturyTel has met the criteria regarding the presence of wireless providers in the exchanges where competitive status is sought.

Section 392.245.5(2) RSMo. (2005) allows any wireline carrier providing local phone service in whole or in part over telecommunications facilities it owns to be considered as entities providing basic local telecommunications service, including cable operators that are also providing local phone service. As specifically set forth in

⁵ Section 386.020(52), RSMo.

CenturyTel's Application, CenturyTel identified Charter Fiberlink-Missouri, LLC as providing both residential and business phone service, using facilities it owns in part or whole, in the following CenturyTel exchanges: (a) Dardenne, (b) O'Fallon, (c) St. Peters, and (d) Wentzville. (Exhibit B to Application). (Martinez Direct Testimony, pp. 8-10). See also, Commission Report and Order in Case No.TA-2001-346; Charter's 2004 MoPSC Annual Report; Exhibit C HIGHLY CONFIDENTIAL of the Application. Based upon Mr. Van Eschen's Direct Testimony, Staff has confirmed the information provided by CenturyTel regarding Charter's provisioning of residential service, and Charter is depicted on Schedule 1 to his testimony as a wireline company providing residential local voice service on a full facility basis in the CenturyTel exchanges of Dardenne, O'Fallon, St. Peters and Wentzville. However, based upon their independent investigation, Staff is recommending competitive status for the exchanges of O'Fallon, St. Peters and Wentzville for business services based on AT&T providing local voice business services in these exchanges, rather than Charter. As stated by Mr. Van Eschen: "Our records and recent discussions with AT&T officials indicate AT&T is providing business local voice service in these exchanges on a full facility basis. In contrast to CenturyTel's claims, Charter is not providing local voice service to business customers." (Van Eschen Direct Testimony, page 11). As previously noted, *supra* Footnote 3, CenturyTel has decided not to contest Staff's recommendation at this time, and is withdrawing its request for competitive classification of business services in the Dardenne exchange. CenturyTel will be filing substitute tariff sheets to effectuate this action.

Fidelity Communications Services II, Inc. ("Fidelity") is providing local phone service to business customers in direct competition with CenturyTel in the following CenturyTel exchanges: (a) Bourbon, (b) Cuba and (c) St. James. (Martinez Direct Testimony, pp. 10-11; Van Eschen Direct Testimony, p. 14). *See also*, Report and Order, Case No. TA-222-229; Fidelity's 2004 MoPSC Annual Report (Exhibit D to Application). Based upon Mr. Van Eschen's Direct Testimony, Staff has confirmed the information provided by CenturyTel regarding Fidelity, and Fidelity is depicted on Schedule 1 of his testimony as a wireline company providing business local voice service in the Cuba, Bourbon and St. James exchanges on a full facility basis. However, based upon Staff's further investigation and representations by Fidelity officials, Mr. Van Eschen has testified that the residential line in the Bourbon exchange is a Fidelity employee, and that Fidelity indicates it is not offering residential service within the Bourbon exchange. Mr. Van Eschen concludes his analysis by stating, "Although it may be argued that one line is sufficient to meet the criteria for competitive status, Staff questions the appropriateness of granting competitive status under these circumstances." (Direct Testimony, page 12). CenturyTel has agreed not to contest Staff's recommendation at this time, and is withdrawing its request for competitive status for residential service in the Bourbon exchange. Accordingly, CenturyTel will file substitute tariff sheets removing Bourbon from the list of competitive exchanges for residential services. Regarding Fidelity's objection to competitive classification of business services in the Bourbon exchange, by its own admission Fidelity provides local voice service to business customers in the Bourbon exchange in whole or in part over telecommunications facilities or other facilities in which it or one of its affiliates have an ownership interest, and thereby clearly meets the criteria set forth in Section 392.245.5(2). Its attempts to re-

write the statute and strained statutory construction notwithstanding, Fidelity confirms that it holds itself out to serve business customers in the Bourbon exchange, it presently serves business customers in that exchange utilizing its own facilities, and it intends to do so in the future. (Martinez Direct Testimony, p. 11).

Socket Telecom, LLC (“Socket”) provides local phone service to business customers in direct competition with CenturyTel in CenturyTel’s Columbia exchange. (Martinez Direct Testimony, p. 11-13). (Van Eschen Direct Testimony, pp. 2, 14). *See also*, Report and Order Case No. TA-2001-671; Tr. pp. 266-267, Case No. CO-2005-0066; Exhibit E to Application; Socket’s MoPSC 2004 Annual Report (HC); Exhibit F HC to Application). Based upon Mr. Van Eschen’s Direct Testimony, Staff has confirmed the information provided by CenturyTel regarding Socket, and Socket is depicted on Schedule 1 of his testimony as a wireline company providing business local voice service in the Columbia exchange on a full facility basis. Although former residential customers of CenturyTel have been ported to Socket in the Columbia exchange, based upon the representations of both Staff and Socket that Socket “...is not offering residential services with in the [Columbia] exchange,” and the lines in question are “employee” lines and may be used for testing or other such purposes, CenturyTel has agreed not to contest Staff’s recommendation regarding residential services in the Columbia exchange at this time, and is withdrawing its request for competitive status for residential services in the Columbia exchange. (Van Eschen Direct Testimony, Page 13). Further, CenturyTel will submit a substitute tariff reflecting this action.

CD Telecom’s original 2004 MoPSC Annual Report on file with the Commission at the time of filing CenturyTel’s Application reflects that CD Telecom is providing full

facilities based services to residential customers in direct competition with CenturyTel in the Branson exchange. (See, Exhibit G to Application). However, based on Staff's recommendation and CD Telecom's recent submission of a revised annual report, CenturyTel has agreed to withdraw its request for competitive status for the Branson exchange at this time, and will be filing substitute tariff sheets to reflect such action. (Martinez Direct Testimony, p. 13).

CenturyTel has demonstrated, and the Commission Staff's independent verification supports: (1) that at least two non-affiliated entities are providing residential basic local telecommunications service to customers within the CenturyTel exchanges of Dardenne, O'Fallon, St. Peters, and Wentzville; and (2) that at least two non-affiliated entities are providing business basic local telecommunications service to customers within the CenturyTel exchanges of Bourbon, Columbia, Cuba, O'Fallon, St. James, St. Peters and Wentzville.

List of Witnesses

CenturyTel intends to call Mr. Arthur P. Martinez as its witness in this proceeding.

Proposed Findings of Fact

1. CenturyTel is a Louisiana limited liability corporation that is duly authorized to do business in the state of Missouri. CenturyTel is a "local exchange telecommunications company" and a "public utility," and is duly authorized to provide "telecommunications service" within the State of Missouri as each of those terms are

defined in Section 386.020, RSMo. 2000. Pursuant to the Commission's Report and Order issued in Case No. TM-2002-232, CenturyTel is a large incumbent local exchange carrier subject to Price Cap Regulation under Section 392.245 RSMo.

2. CenturyTel filed its Application for Competitive Classification on September 9, 2005, pursuant to Section 392.245.5 RSMo. (2005), requesting that the Commission conduct a 30-day competitive classification review pursuant to Section 392.245.5(6) RSMo. and approve CenturyTel's Application for Competitive Classification for all its residential services, other than exchange access service, for the following exchanges: (a) Bourbon, (b) Branson, (c) Columbia, (d) Dardenne, (e) O'Fallon, (f) St. Peters and (g) Wentzville; and for all of its business services, other than exchange access services, in the following exchanges: (a) Bourbon, (b), Columbia (c) Cuba, (d) Dardenne, (e) O'Fallon, (f) St. James, (g) St. Peters and (h) Wentzville. Concurrent with the filing of the Application, CenturyTel filed proposed tariffs, with thirty-day effective dates, reflecting grants of the requested competitive classification.

3. In support of its request, CenturyTel filed eight Exhibits with its verified Application, which were incorporated by reference therein. CenturyTel's Director of Government Relations Arthur P. Martinez filed Direct Testimony on September 22, 2005, further supporting CenturyTel's Application for Competitive Classification.

4. The Staff of the Commission filed its Staff Recommendation and Objection on September 20, 2005, and also filed the Direct Testimony of John Van Eschen, Manager of the Telecommunications Department of the Commission, that same date. Mr. Van Eschen's testimony states that, in this 30-day proceeding, Staff

recommends the Commission grant competitive status to CenturyTel in four exchanges for the provisioning of residential services and seven exchanges for the provision of business services. The specific exchanges for the provisioning of residential service are Dardenne, O'Fallon, St. Peters and Wentzville, as identified in Schedule 1 to Mr. Van Eschen's direct testimony. The specific exchanges for the provisioning of business services are Bourbon, Columbia, Cuba, O'Fallon, St. James, St. Peters and Wentzville. Again, these exchanges are identified in Schedule 1 to Mr. Van Eschen's direct testimony.

5. Fidelity Communications Services, II, Inc. was granted intervention in this proceeding, and the Direct Testimony of David N. Beier was filed on September 22, 2005, in opposition to CenturyTel's request for competitive classification of the Bourbon exchange for both residential and business services.

6. By its *Order Adding Parties and Directing Response* issued on September 22, 2005, the Commission added the following wireline carriers to this case: Charter Fiberlink -- Missouri, LLC; Socket Telecom, LLC; and CD Telecommunications, LLC. The Commission also added the following wireless carriers as parties: Cingular, Verizon, T-Mobile, Alltel, US Cellular, Nextel and Sprint PCS.

7. During the course of the proceeding, CenturyTel advised the Commission and the parties that it was withdrawing its request for competitive classification at this time for residential services in the Bourbon, Branson and Columbia exchanges, as well as its request for competitive classification of business services in the Dardenne Exchange.

8. The Commission finds that the evidence presented in this proceeding satisfies the 30-day criteria in the statute, Section 392.245.5, because it shows for residential services in the CenturyTel exchanges of Dardenne, O'Fallon, St. Peters and Wentzville, and for business services in the CenturyTel exchanges of Bourbon, Columbia, Cuba, O'Fallon, St. James, St. Peters and Wentzville, that:

- a. There is at least one non-affiliated entity providing local voice service in whole or in part over facilities in which it or one of its affiliates has an ownership interest so as to constitute the provision of basic local telecommunications within the meaning of Section 392.245.5(3); and
- b. There is at least one non-affiliated wireless carrier providing basic local telecommunications service within the meaning of Section 392.245.5(1).

9. Specifically, based on the verified pleadings and the testimony, the Commission finds the following:

- a. Charter Fiberlink-Missouri, LLC is providing local voice service to residential customers on a full-facility basis to residential customers in the Dardenne, O'Fallon, St. Peters and Wentzville exchanges.
- b. Fidelity Communications Services II, Inc. is providing local voice service to business customers on a full-facility basis in the Bourbon, Cuba and St. James exchanges.
- c. Socket Telecom, LLC is providing local voice service to business customers on a full-facility basis in the Columbia exchange.
- d. AT&T is providing local voice service to business customers on a full-facility basis in the O'Fallon, St. Peters and Wentzville exchanges.

- e. In addition, the Commission finds that there is at least one non-affiliated CMRS carrier providing service to each customer class in each exchange for which CenturyTel now seeks competitive classification.

Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to Section 392.245.5, RSMo (2005), which provides as follows:

5. Each telecommunications service offered to business customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in any exchange in which at least two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to business customers within the exchange. Each telecommunications service offered to residential customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in an exchange in which at least two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to residential customers within the exchange. For purposes of this subsection:

(1) Commercial mobile service providers as identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing basic local telecommunications service, provided that only one such non-affiliated provider shall be considered as providing basic local telecommunications service within an exchange;

(2) Any entity providing local voice service in whole or in part over telecommunications facilities or other facilities in which it or one of its affiliates have an ownership interest shall be considered as a basic local telecommunications service provider regardless of whether such entity is subject to regulation by the commission. A provider of local voice service that requires the use of a third party, unaffiliated broadband network or dial-up Internet network for the origination of local voice service shall not be considered a basic local telecommunications service provider. For purposes of this subsection only, a broadband network is defined as a connection that delivers services at speeds exceeding two hundred kilobits per second in at least one direction;

(3) Regardless of the technology utilized, local voice service shall mean two-way voice service capable of receiving calls from a provider of basic local telecommunications services as defined by subdivision (4) of section 386.020, RSMo;

(4) Telecommunications companies only offering prepaid telecommunications service or only reselling telecommunications service as defined in subdivision (46) of section 386.020, RSMo, in the exchange being considered for competitive classification shall not be considered entities providing basic telecommunications service; and

(5) Prepaid telecommunications service shall mean a local service for which payment is made in advance that excludes access to operator assistance and long distance service;

(6) Upon request of an incumbent local exchange telecommunications company seeking competitive classification of business service or residential service, or both, the commission shall, within thirty days of the request, determine whether the requisite number of entities are providing basic local telecommunications service to business or residential customers, or both, in an exchange and if so, shall approve tariffs designating all such business or residential services other than exchange access service, as competitive within such exchange.

2. As set forth above, the 30-day track under this new statutory provision establishes a competitive “trigger” that focuses solely on whether the requisite number of carriers are providing “basic local telecommunications service” within an exchange. For the purpose of the 30-day investigation, the statute provides that one commercial mobile radio service (“CMRS” or “wireless”) provider is to be considered an entity providing “basic local telecommunications services” in an exchange. It also requires the Commission to consider as a “basic local telecommunications service provider” any entity providing “local voice”⁶ service “in whole or in part” over facilities which it or one of its affiliates has an ownership interest.

⁶ Section 392.245.5(3) RSMo (2005) defines “local voice service” as meaning “[r]egardless of the technology used . . . two-way voice service capable of receiving calls from a provider of basic local telecommunications services as defined by subdivision (4) of section 386.020, RSMo.”

3. In addition, Subsection (6) of the above statutory section required the Commission to maintain and consider its own records concerning the methods carriers whom it regulates use to provide local voice services in an exchange; and that the Commission consider such records in reviewing an ILEC's request for competitive status. This subsection also requires the Commission to go beyond the data carriers provide it in the ordinary course of business and pro-actively seek other necessary and appropriate data from carriers it regulates as part of its investigation.

4. The Commission concludes that the evidence presented, discussed in the Findings of Fact above, satisfies the 30-day criteria in the statute because it shows for residential services in the CenturyTel exchanges of Dardenne, O'Fallon, St. Peters and Wentzville, and for business services in the CenturyTel exchanges of Bourbon, Columbia, Cuba, O'Fallon, St. James, St. Peters and Wentzville, that:

- a. There is at least one non-affiliated entity providing local voice service in whole or in part over facilities in which it or one of its affiliates has an ownership interest so as to constitute the provision of basic local telecommunications within the meaning of Section 392.245.5(3); and
- b. There is at least one non-affiliated wireless carrier providing basic local telecommunications service within the meaning of Section 392.245.5(1).

IT IS THEREFORE ORDERED:

1. That the business services, other than exchange access, of CenturyTel of Missouri, LLC are designated competitive in the exchanges of Bourbon, Columbia, Cuba, O'Fallon, St. James, St. Peters and Wentzville.

2. That the residential services, other than exchange access, of CenturyTel of Missouri, LLC are designated competitive in the exchanges of Dardenne, O'Fallon, St. Peters and Wentzville.

3. That the tariffs filed concurrently with the Application for Competitive Classification, as substituted by CenturyTel in conformance with its withdrawal of certain requests for classification as discussed herein, are hereby approved.

Respectfully submitted,

/s/ Larry W. Dority

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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 23rd day of September, 2005, to:

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