

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

In the Matter of an Investigation of the)
Actual Costs Incurred in Providing)
Exchange Access Service and the Access) Case No. TR-2001-65
Rates to be Charged by Competitive Local)
Exchange Telecommunications)
Companies in the State of Missouri.)

**REPLY BRIEF OF
CENTURYTEL**

CenturyTel of Missouri, LLC ("CenturyTel of Missouri") and Spectra Communications Group, LLC d/b/a CenturyTel ("Spectra") (collectively referred to as "CenturyTel"), pursuant to the Missouri Public Service Commission's *Order Directing Filing*¹ entered in this matter on December 2, 2002, respectfully submits their Reply Brief in this matter. Although CenturyTel anticipated and responded to most of the arguments raised by other parties in its Initial Brief, a few additional comments need to be made in response to the Initial Briefs filed by other parties:

I. INTRODUCTION

There was virtual unanimity among the parties that the primary public policy issue that should be decided by the Commission in this proceeding is whether the Commission's interim policy of capping the access rates of CLECs at the same level as the access rates of the ILEC in the exchange served by the CLEC is appropriate and in the public interest.² On this issue, there is also substantial agreement among most of the

¹ *Order Directing Filing*, Case No. TR-2001-65, December 2, 2002.

² In its *Order Adopting Procedural Schedule, Clarifying Scope Of This Proceeding, And Concerning Motion To Waive Service Requirement, and Motion To Compel Discovery*, issued on March 14, 2002, (hereinafter referred to as "March 14, 2002 Order"), the Commission specifically stated: "This case derives

parties, including Staff and Public Counsel, that the interim policy should be made permanent, with some flexibility if a CLEC's costs can be demonstrated to exceed the ILEC's costs. (See Initial Briefs of Staff, pp. 20-21; Public Counsel, pp. 11-12; CenturyTel, pp. 2, 5, 17; ALLTEL, p. 12; SBC Missouri, pp. 25-29; Sprint, pp. 35-38; STCG, pp. 34-35; MITG, pp. 22-23; MCI/WorldComm, p. 4 ; AT&T, pp. 46-47)³.

Given the large consensus among the parties on this public policy issue, CenturyTel recommends that the Commission make permanent its interim policy of capping CLEC access rates at the levels of the underlying ILEC's access rates, as modified herein.

Not surprisingly, on the various cost study issues, most of the parties that sponsored specific cost studies recommended that the Commission adopt their respective cost study approach. (See Initial Briefs of Staff, p. 34; SBC, p. 16; Sprint, p. 39; STCG, p. 29) However, several parties also questioned the appropriateness of a "one-size-fits-all" approach. (See Initial Briefs of ALLTEL, p. 10; MITG, p. 24; STCG, p. 29; and CenturyTel, p. 4). Since it is not necessary to develop a "one-size-fits-all" cost study standard that would be utilized by all telecommunications companies in order to resolve the fundamental issue in this case related to the capping of CLEC access charges, CenturyTel believes that the Commission should decline to decide those cost study issues at this time. However, if the Commission discusses these issues at all in its order, it should not require that all ILECs utilize a mandated-cost study approach in the future.

With the exception of AT&T, the parties also agree that it is not appropriate to delve into access rate-related issues for ILECs in this phase of the proceeding. (See

from an earlier case which established an interim cap on CLEC access rates. An express purpose of this case is to gather the information necessary to replace the interim rate cap with a permanent solution."

³ See footnote 4 for a discussion of the Fidelity CLECs' position.

Initial Briefs of Staff, pp. 2, 22; Public Counsel, pp. 2-3; CenturyTel, pp. 3, 17; ALLTEL, p. 12-13; SBC Missouri, pp. 7, 33; Sprint, p. 38; STCG, pp. 36-37; MITG, pp. 23-54; MCI/WorldComm, pp. 10-11). CenturyTel continues to believe that it is more appropriate to focus upon the narrow public policy issue related to the capping of CLEC access charges for which this case was originally established. The record in this proceeding is not sufficient to resolve ILEC access rate issues, and the Commission should not attempt to do so.

II. DISCUSSION OF THE LIST OF ISSUES

This Reply Brief will also briefly respond to arguments presented by various parties in the same order as contained in the List of Issues.

1. What is the appropriate cost methodology (i.e. TSLRIC, LRIC, embedded, stand alone, etc.) to be used in determining the cost of switched access?

CenturyTel Position: It is CenturyTel's position that this issue does not need to be resolved in this proceeding. CenturyTel otherwise has no additional reply to the position of other parties on this issue.

2. Should the cost methodology (i.e. TSLRIC, LRIC, embedded, stand alone, etc.) for determining switched access costs be uniform and consistent for all Missouri LECs?

CenturyTel Position: There is no necessity for the Commission to adopt a “one-size-fits-all” cost methodology for all Missouri LECs. CenturyTel believes it would be a mistake for the Commission to require all ILECs in Missouri to utilize the same methodology in the preparation of their company-specific access cost studies. CenturyTel otherwise has no additional reply to the position of other parties on this issue.

3. Should loop costs be included in the determination of the cost of switched access, and if so, at what level?

CenturyTel Position: It is CenturyTel's position that this issue does not need to be resolved in this proceeding. CenturyTel otherwise takes no position on this issue. CenturyTel has no additional reply to the position of other parties on this issue.

4. What are the appropriate assumptions and/or the appropriate values for the following inputs?
 - a. Cost of capital
 - b. Switch discounts
 - c. Depreciation
 - d. Maintenance factors
 - e. Common and shared costs
 - f. Fill factors
 - g. Other major assumptions and/or inputs.

CenturyTel Position: It is CenturyTel's position that this issue does not need to be resolved in this proceeding. CenturyTel otherwise takes no position on this issue. CenturyTel has no additional reply to the position of other parties on this issue.

5. Is the current capping mechanism for intrastate CLEC access rates appropriate and in the public interest?

CenturyTel Position: Yes. Based on the Initial Briefs and testimony in this proceeding, there appears to be general consensus that the current capping mechanism is appropriate and in the public interest. As discussed above, there is a general consensus among the parties to this proceeding that this is the primary public policy issue that needs to be resolved by the Commission. There is also substantial agreement among most of the parties, including Staff and Public Counsel, that the interim policy should be made permanent, with some flexibility if a CLEC's costs can be demonstrated to exceed the ILEC's costs. (See Initial Briefs of Staff, pp. 20-21; Public Counsel, pp. 11-12;

CenturyTel, pp. 2, 5, 17; ALLTEL, p. 12; SBC Missouri, pp. 25-29; Sprint, pp. 35-38; STCG, pp. 34-35; MITG, pp. 22-23; MCI/WorldComm, p. 4 ; AT&T, pp. 46-47).⁴

Given the consensus among the parties on this public policy issue, CenturyTel recommends that the Commission make permanent its interim policy of capping CLEC access rates at the levels of the underlying ILEC's access rates, as further clarified and discussed herein.

6. Are there circumstances where a CLEC should not be bound by the cap on switched access rates?

CenturyTel Position: There may be circumstances where a CLEC should not be bound by the cap on switched access rates, such as where a totally facilities-based CLEC can demonstrate that its costs of providing switched access are higher than the rates allowed under the cap. CenturyTel would not oppose a provision that would allow a facility-based CLEC to demonstrate that its company-specific costs exceeded the level of the ILEC's access costs. Otherwise, CenturyTel has no additional reply to the position of other parties on this issue.

⁴ The Fidelity CLECs also suggested that a "rigid cap on CLEC rates is not, however, necessary to protect the public interest." (*See* Initial Brief of Fidelity CLECs, p. 6) However, even the Fidelity CLECs recognized that "the access rates charged by the directly competing ILEC are relevant in determining the reasonableness of rates charged by CLECs, but should not be the only consideration." (*Id.*) As an alternative position, the Fidelity CLECs suggested that the cap should be used as a default, but rebuttable, presumption as to the reasonableness of the access rates charges by a particular CLEC." They also requested that the Commission consider establishing a "rural exemption" and allow CLECs serving rural areas to charge intrastate switched access rates equivalent to those charged by the small ILECs operating in this state. In addition, the Fidelity CLECs requested that the Commission should modify the current capping mechanism to allow every CLEC competing with a price cap ILEC to charge the maximum rate the ILEC is or has been permitted charge." (*Id.*) CenturyTel would not oppose the use of the *maximum* rates of a price cap regulated ILEC as the cap for CLECs in the exchange, as requested by the Fidelity CLECs.

7. What, if any, course of action can or should the Commission take with respect to switched access as a result of this case?

CenturyTel Position: Based upon the Initial Briefs of the parties, it appears that there is a general consensus, with the exception of AT&T, that the Commission should not take any action with respect to switched access rates in this phase of the case. (*See* Initial Briefs of Staff, pp. 2, 22; Public Counsel, pp. 2-3; CenturyTel, pp. 3, 17; ALLTEL, p. 12-13; SBC Missouri, pp. 7, 33; Sprint, p. 38; STCG, pp. 36-37; MITG, pp. 23-54; MCI/WorldComm, pp. 10-11). In the event that the Commission wants to review switched access rates in the future, this review should be done in the context of ILEC-specific proceedings or other generic proceedings, consistent with the statutory authority of the Commission, as discussed in CenturyTel's Initial Brief, pp. 7-14).

III. ADDITIONAL ISSUES REQUESTED TO BE BRIEFED BY JUDGE THOMPSON

A. Issues 1-4 Related to Price-Cap Regulated ILECs

1. Whether the Commission has the jurisdiction to direct an ILEC regulated under “price-cap regulation” pursuant to Section 392.245, RSMo 2000, to reduce its switched access rates?
2. Whether the Commission has the jurisdiction to direct an ILEC regulated under “price-cap regulation” pursuant to Section 392.245, RSMo 2000, to restructure its switched access rates?
3. Whether an ILEC regulated under “price-cap regulation” pursuant to Section 392.245, RSMo 2000, may voluntarily reduce its switched access rates?
4. Whether an ILEC regulated under “price-cap regulation” pursuant to Section 392.245, RSMo 2000, may voluntarily restructure its switched access rates?

On these price-cap related issues, there was a general consensus among the parties, with the exception of AT&T and possibly Staff, that the Commission lacks the statutory authority to direct a price-cap regulated company to reduce or restructure its switched access rates, unless the provisions of Section 392.245 RSMo. 2000 are followed. (See CenturyTel, pp. 7-10; ALLTEL, p. 14-18; SBC Missouri, pp. 40-45; Sprint, p. 39-40; STCG, p. 41; MITG, pp. 12-13; MCI/WorldComm, pp. 5-6). In addition, most of the parties believe that a price-cap regulated company may voluntarily reduce or restructure its switched access rates, provided that the switched access rates remain below the maximum allowable prices. However, the consensus analysis indicated that the Commission lacked statutory authority to mandate that price cap companies restructure their access rates. (See Initial Brief of Staff, pp. 27-28; CenturyTel, pp. 7-10; ALLTEL, p. 14-18; SBC Missouri, pp. 46; Sprint, p. 40; STCG, p. 42; MITG, p. 13).

Although the Staff was more hesitant to answer to these questions with certainty, Staff's analysis seemed to support the same conclusion endorsed by most of the other parties:

Even if the Commission were to conclude that a price cap regulated company's access rates were unjust and unreasonable, the exemption from 392.240 appears to preclude the Commission from establishing a new cost based rate. No other provision in the statutes appears to guide the commission on how to establish new rates once the Commission determines that the current rates are unjust and unreasonable. **One may conclude that by exempting 392.240.1 from price cap regulation, that the Commission is precluded from reducing a price cap regulated company's rates.** (Staff Brief at 25)(emphasis added).

Staff also provided an alternative, but more strained, analysis "in favor of the Commission's authority to reduce a price cap regulated ILEC's rates. . . under Section 392.200." (Id.) This statutory section merely declares that all charges must be "just and

reasonable" and every unjust or unreasonable charge is prohibited and unlawful. As the Staff argued in Case No. TT-2002-447, "the legislature appears to have consistently indicated that the rates charged through the price cap mechanism are, by definition, just and reasonable." (*Id.*) It would be arbitrary and capricious for the Commission to declare that an access rate that did not exceed the maximum rate found to be lawful by the legislature, was somehow "unjust and unreasonable." The Commission should not attempt to negate the clear provisions of Section 392.245.1 that "the commission shall have the authority to ensure that rates, charges, tolls and rentals form telecommunications services are just, reasonable and lawful **by employing price cap regulation.**" Section 392.245.1. (*emphasis added*).

AT&T seemed to be the primary proponent of the contrary view that Commission has statutory authority to reduce the access rates of price cap companies. By merely citing the broad purposes language of Section 392.185, AT&T argued that the broad purposes of Chapter 392 somehow override the specific provisions of Section 392.245 to reach a conclusion that the Commission may require price cap regulated companies to reduce or restructure their access rates. (Initial Brief of AT&T, pp. 13-19). AT&T's analysis should be rejected since it ignores the General Assembly's conclusion that price cap regulation ensures that rates are "just, reasonable and lawful." Section 392.245.1. Instead, AT&T would have the Commission utilize some unstated, nebulous standard for finding that existing access rates established pursuant to the specific provisions of Section 392.245 are somehow "unjust and unreasonable", and then proceed to order that the access rates for price cap companies should be reduced, even though the General Assembly has specifically found rates based upon price cap formulas to be "just,

reasonable and lawful." This analysis is illogical and contrary to law. The Commission should not venture down this slippery slope.

B. Issues 5-8 Related to Rate of Return Regulated ILECs

5. Whether the Commission has the jurisdiction to direct an ILEC that is regulated under rate of return regulation to reduce its switched access rates without conducting a full rate case?

CenturyTel Position: As discussed in CenturyTel's Initial Brief, pp. 11-13, the Commission lacks the statutory authority to direct a rate of return regulated company to reduce its access rates, without conducting a hearing, pursuant to Section 392.230 RSMo. 2000. Since the Commission is required to take "all relevant factors" into consideration, CenturyTel believes that it would be unlawful for the Commission to order that access rates be reduced for a rate of return regulated company without conducting a rate case.

Since no party expressed a contrary view, CenturyTel will not comment further on this issue.

6. Whether the Commission has the jurisdiction to direct an ILEC that is regulated under rate of return regulation to restructure its switched access rates without conducting a full rate case?

CenturyTel Position: CenturyTel believes that it would be lawful for the Commission to review a rate of return regulated company's access rates in the context of a rate design proceeding (not a full blown rate case), provided that the Commission maintained the overall level of the Company's revenues. Since no party expressed a contrary view, CenturyTel will not comment further on this issue.

7. Whether an ILEC that is regulated under rate of return regulation may voluntarily reduce its switched access rates without filing a full rate case?
8. Whether an ILEC that is regulated under rate of return regulation may voluntarily restructure its switched access rates without filing a full rate case?

CenturyTel Position: CenturyTel believes that a rate of return regulated company may voluntarily reduce or restructure its switched access rates with the approval of the Commission, pursuant to the "file and suspend" method of changing its rates. *See* Section 392.230(3). No party to this proceeding expressed disagreement with this position.

C. Issues 9-10 Related to CLECs

9. Whether the Commission has jurisdiction to direct a CLEC to reduce its switched access rates?
10. Whether the Commission has jurisdiction to direct a CLEC to restructure its switched access rates?

CenturyTel Position: CenturyTel believes that the Commission has the statutory authority to adopt its interim policy of capping CLEC access rates at the level of the ILEC access rates on permanent basis. CenturyTel takes no position on whether the Commission has the jurisdiction to direct a CLEC to reduce its switched access rates, or restructure its switched access rates, if they are otherwise below the Commission-mandated rate cap.

CONCLUSION

In summary, the parties are largely in agreement that the primary public policy issue that should be decided by the Commission in this proceeding is whether the Commission's interim policy of capping the access rates of CLECs at the same level as

the access rates of the ILEC in the exchange served by the CLEC is appropriate and in the public interest. CenturyTel recommends that the Commission make permanent its interim policy of capping CLEC access rates at the levels of the underlying ILEC's access rates. Since it is not necessary to develop a cost standard that would be utilized by all telecommunications companies to resolve the fundamental issue in this case related to CLEC access charges, CenturyTel believes that the Commission should decline to resolve the other technical "cost study" issues at this time. Similarly, the Commission should leave "access reform" issues for another time and proceeding.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record this 24th day of January, 2003.

/s/ James M. Fischer
