

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

Petition by CD Telecommunications, LLC for)	
Arbitration of an Interconnection Agreement)	
with CenturyTel, Inc., CenturyTel of)	Case No. XO-2005-0277
Missouri, LLC, and Spectra)	
Communications, LLC, Pursuant to Section)	
252(b) of the Communications Act of 1934,)	
as Amended, and Missouri Law)	

**RESPONSE OF CENTURYTEL OF MISSOURI, LLC AND
SPECTRA COMMUNICATIONS GROUP, LLC D/B/A CENTURYTEL
TO CD TELECOMMUNICATIONS, LLC'S PETITION FOR ARBITRATION**

CenturyTel of Missouri, LLC ("CenturyTel") and Spectra Communications Group, LLC d/b/a CenturyTel ("Spectra") (collectively referred to herein as "Respondents")¹ hereby submit their Response to the Verified Petition for Arbitration ("Petition") filed by CD Telecommunications, LLC ("CD Telecom" or "Petitioner") on February 16, 2005, pursuant to Section 252(b)(3) of the Communications Act of 1934, as Amended (the "Act"), Commission Rule 4 CSR 240-36.040(7) and the Commission's Order Granting Joint Motion To Extend The Procedural Schedule ("Order") issued herein on March 4, 2005.

I. INTRODUCTION AND PROCEDURAL HISTORY

As counsel for CenturyTel and Spectra noted in comments offered during the Initial Arbitration Meeting held on February 28, 2005, to say that the procedural complexities existing in this proceeding are unique would be an

¹ While CenturyTel, Inc., corporate parent of these Respondents, was listed in the caption and introductory paragraph of the Petition (and referenced as part of the "CenturyTel Entities"), CenturyTel, Inc. has not entered an appearance in this matter, is not an incumbent local exchange telecommunications company in Missouri, as defined by the Communications Act, was not an entity with whom Petitioner has requested negotiation of an interconnection agreement, and should not be considered a party to this proceeding.

understatement.² At that point in time, four separate cases involving Respondents had been docketed, three different arbitrators had been appointed, and three initial arbitration meetings had been scheduled originally on three separate dates.³ CD Telecom was the petitioning party in three of those cases, and was seeking to have the additional case filed by separate petitioners consolidated with this one.

While Respondents had provided Petitioner a template agreement for its consideration (along with the requested execution of a non-disclosure agreement so they could provide confidential pricing information to Petitioner) back in December 2004, Respondents never received any response. Indeed, the first time Respondents received any information from the Petitioner was upon the February 16, 2005 filing of the materials initiating this proceeding.

Given this situation, on March 1, 2005, the parties (including the KMC companies in Case No. TK-2005-0276) filed a Joint Motion for Extension of Procedural Schedule and Joint Motion for Expedited Treatment, requesting, *inter alia*, that the deadline for a Commission decision be extended from June 10, 2005, to August 10, 2005; that the arbitrator establish a date by which the parties should file a proposed procedural schedule; and that the date by which

² Transcript, Initial Arbitration Meeting, Volume 1, page 6.

³ In addition to the instant case, the other arbitration proceedings included: Case No. CO-2005-0280, *Petition by CD Telecommunications, LLC, for Arbitration of an Interconnection Agreement with CenturyTel Holdings Missouri, Inc. and CenturyTel of Missouri, LLC, Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, and Missouri Law*; Case No. CO-2005-0281, *Petition by CD Telecommunications, LLC, for Arbitration of an Interconnection Agreement with CenturyTel, Inc. and Spectra Communications, LLC, Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, and Missouri Law*; and Case No. TK-2005-0276, *Petition by KMC Telecom V, Inc., KMC Telecom III LLC and KMC Data, L.L.C., for Arbitration of an Interconnection Agreement with CenturyTel, Inc., CenturyTel of Missouri, LLC, and Spectra Communications, LLC, Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, and Missouri Law*.

Respondents are required to respond to the Petitions be extended to April 15. Having consolidated the two proceedings by order issued on March 3, this relief was granted by the Commission's March 4 Order, wherein the Commission stated:

The arbitrator finds that an extension of the June 10 deadline is appropriate. That is particularly so in this case where the parties acknowledge that they have previously been unable to conduct extensive negotiations. Holding the parties to a tight schedule when they agree that a longer schedule would be more likely to produce an effective and fair interconnection agreement would be unnecessary and inappropriate. (Order, page 2).

On that same date, Petitioner dismissed the additional two cases (Case Nos. CO-2005-0280 and CO-2005-0281) that had been filed on February 17, 2005.⁴

Thereafter, on March 21, 2005, the KMC entities filed a notice voluntarily dismissing their petition for arbitration, with prejudice. Accordingly, on March 23, the Commission issued its Order Dividing Previously Consolidated Cases, and on March 29, 2005, Case No. TK-2005-0276 was closed.

On April 5, 2005, Petitioner and Respondents filed a jointly proposed procedural schedule in this proceeding, which was adopted by the Commission by Order of April 7.

II. SCOPE AND PURPOSE OF RESPONSE

As discussed above, although Respondents provided Petitioner a template agreement for its consideration and review back in December 2004, at

⁴ This action comported with that expressed by Counsel for Petitioner during the Initial Arbitration Meeting: "We have more petitions pending than necessary, and it would be my hope that the two cases involved in this joint initial arbitration meeting would be consolidated and would be the vehicles that proceed forward. As soon as that's established, we would be pleased to withdraw the other two petitions." Tr. 29.

no time during the negotiation period did Petitioner indicate objections to specific language, nor was any proposed language forthcoming. Again, it was not until the filing of the arbitration petition that Petitioner, for the first time, proposed agreement language that differs from that presented by CenturyTel and Spectra. As a result, Petitioner has attached as Exhibit B to its petition an Issue Matrix that purports to set forth the unresolved issues between the parties. Representing what appears to be a mechanical comparison of differing text between CD Telecom's proposed interconnection agreement and language purportedly attributed to Respondents (although Petitioner did not utilize the template agreement provided by the Respondents), the "Master List of Issues Between CD Telecom and CenturyTel" comprising Exhibit B reflects 426 issues covering 109 pages! This sheer volume of disputed contract language manifests the non-existent negotiations between the parties. And while Respondents, in good faith efforts to address this untenable situation not of their making, have attempted to narrow the magnitude of this chasm, the parties have made little progress in the limited time available.

As a result, in keeping with the Act and the provisions of Commission Rule 36.040(7), the attachments to this Response set forth CenturyTel and Spectra's understanding of the parties' competing contract language as of the date of this Response, as well as identifying the resulting arbitration issues presented by the competing language. This information is set forth in attached **Exhibit A** and incorporated herein by reference. Attached hereto and incorporated herein by reference as **Exhibit B** is the Interconnection Agreement prepared by

Respondents, that reflects Respondents' positions on the currently identified unresolved issues. CenturyTel and Spectra specifically state that, while they are willing to jointly participate in this arbitration process should it proceed, any resulting Interconnection Agreement must be entered into and executed on an individual company basis.⁵ **Exhibits C (NP) and D (NP)**, attached hereto and incorporated herein by reference, contain Respondents' proposed cost-based rates to be incorporated into the Exhibit B Interconnection Agreement. At this point, Respondents must reflect the parties' positions by the associated contract language attached hereto. To the extent that the parties are unable to narrow the issues through their continuing negotiations, Respondents will fully demonstrate in their testimony and briefs why the issues to be arbitrated in this proceeding should be resolved in their favor.

While Petitioner portrays additional language in the body of the Petition as representing a "summary of the key issues in dispute" (pp. 14-27), this is identified as groupings of the specific issues more fully set forth in Petitioner's Issue Matrix (Exhibit B). Accordingly, Respondents will not address these issues separately from their own attachments to this Response, except to the extent they may be addressed in the Threshold Issues identified in Section III, *infra*.

Whereas much of the information and averments contained in CD Telecom's Petition are in error, and contain representations or interpretations of previous Commission decisions, facts and law with which Respondents strongly

⁵ Accordingly, while Exhibit B reflects the name CenturyTel of Missouri, LLC, a separate Interconnection Agreement reflecting Spectra Communications Group, LLC also would be entered into.

disagree, CenturyTel and Spectra hereby deny the allegations contained therein unless specifically admitted.

To the extent that the parties are able to resolve additional disputed issues after the filing of this Response, CenturyTel and Spectra will work with Petitioner so that the parties' jointly filed revised statement of unresolved issues reflects the elimination of these unresolved issues. To that end, and in order to provide the parties a meaningful opportunity to accomplish that goal, Respondents may seek support from Petitioner to request a brief extension of the current filing date of April 22, 2005, pursuant to Commission Rule 4 CSR 240-36.040(15).

III. ADDITIONAL THRESHOLD ISSUES FOR DETERMINATION

Respondents respectfully submit that the examination and resolution of the following threshold issues will result in the dismissal of CD Telecom's Petition:

A. Is CD Telecommunications, LLC operating as a telecommunications carrier in accordance with its Missouri Public Service Commission certificates of service authority, and is it entitled to obtain interconnection under the Act and pursuant to 4 CSR 240-36.020(2), to-wit:

(2) Only telecommunications carriers, as defined in the Act, providing or in the process of enabling their provision of telecommunication service, as defined in the Act, in the state of Missouri may file petitions under this chapter.

This will involve an examination as to whether CD Telecom's CLEC certificate is a façade, enabling it to obtain uncompensated or undercompensated interconnection to the incumbents' telecommunications networks at the expense of other telecommunications companies or the end-user

customers. The interconnection required under the federal act is intended to promote local exchange competition and is for the direct benefit of CLECs, not ISPs.

It would appear that CD Telecom was formed for the sole purpose of “serving” itself, i.e. its affiliated ISP. To CenturyTel and Spectra’s knowledge, CD Telecom has no other customers. Having zero, or a minimal number of, unaffiliated customers does not qualify an entity as a competitive local exchange carrier eligible for interconnection under section 47 U.S.C. sections 251 and 252, or 4 CSR 240-36.020

B. VNXX Traffic. Respondents submit that CD Telecom proposes to enter into an interconnection agreement, reviewable by the Missouri Public Service Commission under Section 252 of the Act, for the transport and termination of traffic destined to an Internet Service Provider (“ISP”) through the use of Virtual NXX codes. Virtual NXX Codes are central office codes that correspond, in this case, with a particular geographic area assigned to CD Telecom’s affiliated (under common ownership) ISP located outside the CenturyTel or Spectra customer’s local calling area. In other words, CD Telecom assigns to its affiliated ISP, telephone numbers that do not correspond to the location of its ISP but instead correspond to the location of the calling parties who are not located in the same local calling area. Despite the fact that calls from CenturyTel and Spectra’s customers to CD Telecom’s ISP leave the local calling area, CD Telecom maintains that such calls should be treated as local based merely on the manner in which CD Telecom has assigned numbers to its ISP affiliate.

In an effort to avoid paying CenturyTel or Spectra transport, switching and other access charges for use of CenturyTel and Spectra's networks in provisioning these calls, CD Telecom maintains that such calls are local in nature and therefore governed by Sections 251 and 252 of the Act. Respondents maintain that such traffic is not subject to the reciprocal compensation provisions of Section 251(b)(5) of the Act or the interconnection obligations of Section 251(c) of the Act because it is not local. Similarly, this traffic is not subject to Section 252(b) review because CD Telecom's ISP-bound traffic terminates outside the CenturyTel or Spectra customer's local calling area.

C. Points of Interconnection (POI). CD Telecom maintains in its Petition that it should be allowed to establish a single point of interconnection outside of the local calling area of CenturyTel and Spectra's customers and that CenturyTel and Spectra should bear the cost of transporting traffic to that distant point. As has already been noted, CD Telecom does not qualify as a competitive local exchange carrier entitled to points of interconnection under Section 251 of the Act. It is also the case that the traffic CD Telecom desires to provision (VNXX dial-up ISP-bound) is not local traffic and again does not qualify for points of interconnection under Section 251 of the Act. In any event, CD Telecom is incorrect when it asserts that Section 251 of the Act has been interpreted as allowing CLECs to establish a single point of interconnection outside of the ILEC's local calling areas with the ILECs being forced to bear the costs of transporting traffic to that distant point.

IV. CONCLUSION

Respondents will set forth in full in their testimony and briefs the facts, policy considerations and legal arguments that support the dismissal of CD Telecom's Petition or, in the alternative, the positions reflected in Respondents' proposed language for the parties' interconnection agreements. CenturyTel and Spectra respectfully request the Commission to dismiss CD Telecom's Petition or, in the alternative, to rule in their favor on the disputed issues in this proceeding and to approve Respondents' proposed language.

Respectfully submitted,

/s/ Larry W. Dority

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Certificate of Service

I hereby certify that the undersigned has caused a complete copy of the attached document to be electronically filed and served on the Commission's Office of General Counsel (at gencounsel@psc.mo.gov), the Office of Public Counsel (at opcservice@ded.mo.gov) and counsel for Petitioner (at wds@wdspsc.com; Andrew.Klein@DLAPiper.com), on this 15th day of April 2005.

/s/ Larry W. Dority

Larry W. Dority