

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

Eminent Network Technologies, Inc.)	
d/b/a Interlinc.net,)	
)	
Complainant,)	
)	
v.)	
)	Case No. TC-2005-0356
CenturyTel of Missouri, LLC)	
and)	
Spectra Communications Group, LLC)	
d/b/a CenturyTel,)	
)	
Respondents.)	

**RESPONDENTS' MOTION TO RECONSIDER AND TO MODIFY
NOTICE OF COMPLAINT AND
ALTERNATIVE REQUEST FOR EARLY PREHEARING CONFERENCE,
COMPULSORY MEDIATION AND ORDER REGARDING PAYMENTS**

COME NOW CenturyTel of Missouri, LLC ("CenturyTel") and Spectra Communications Group, LLC d/b/a CenturyTel ("Spectra") (collectively referred to herein as "Respondents"), pursuant to 4 CSR 240-2.070(7), 4 CSR 240-2.080, 4 CSR 240-2.090(4) and 4 CSR 240-2.160(2), and for their Motion to Reconsider and to Modify Notice of Complaint and Alternative Request for Early Prehearing Conference, Compulsory Mediation and Order Regarding Payments respectfully state as follows:

1. On April 7, 2005, Eminent Network Technologies, Inc. d/b/a Interlinc.net ("Eminent" or "Complainant") filed a complaint with the Commission requesting, *inter alia*, that the Commission:

. . . immediately order CenturyTel of Missouri, LLC and/or Spectra Communications Group, LLC d/b/a CenturyTel not to terminate or interrupt the provision of telecommunications services to Eminent

Network Technologies, Inc. d/b/a Interlinc.net, as CenturyTel has threatened to do on or after April 10, 2005, pending the Commission's determination in the instant complaint.

Accompanying the complaint was a motion for expedited treatment, wherein Eminent "requests an expeditious order without hearing directing Respondents not to terminate services to the Complainant, and setting a hearing as soon as practicable after the issuance of such order, pursuant to Section 386.310.1 RSMo."

2. This complaint proceeding represents the latest attempt by Eminent to continue its chronic pattern of conduct in refusing to pay past due, delinquent charges for intrastate and interstate¹ services rendered by Respondents, in addition to not paying current, ongoing charges now due and payable.

3. Nevertheless, on April 8, 2005, the Commission issued its standard Notice of Complaint, with the exception of the following additional language added in bold type: "Pursuant to 4 CSR 240-33.110, pending the resolution of this complaint, Respondent shall not discontinue service to Complainant on the basis of the issues that are the subject matter of this compliant (sic)."

4. Pursuant to 4 CSR 240-2.070(6) and (8), and in conformance with the Commission's Notice of Complaint, Respondents will prepare and timely file their Motions, Answer and Affirmative Defenses, setting forth all grounds of defense, both of law and of fact, and moving to strike the hyperbolic allegations and requests for relief Complainant interjects that are intended to simply confuse and obfuscate the fact that Eminent is seriously delinquent in amounts lawfully

¹ Respondents would point out that many of the charges are for interstate access services provided under tariffs filed with the Federal Communications Commission.

due and owing to Respondents, the vast majority of the amounts owing having never been challenged.

5. In accordance with applicable state and federal tariffs, Respondents provided Complainant with written notices that services were subject to termination if payments were not received by dates certain. In the spirit of good faith and cooperation, those dates were extended by Respondents pursuant to the Memorandum of Understanding and Agreement executed on February 10, 2005 (attached as Exhibit D to Complaint). As set forth in correspondence as recent as April 6, 2005, Complainant once again was notified that payment would have to be received by April 9, 2005, to avoid termination of services. (See April 6, 2005 correspondence from Susan W. Smith to Rich C. Rabah, attached hereto as **Exhibit 1**). Reflecting allowances for two minor items that were purportedly “disputed,” Exhibit 1 recites that the total amount past due for billings from CenturyTel of Missouri, LLC is \$138,589.18, and the total amount past due for billings from Spectra Communications Group, LLC d/b/a CenturyTel is \$55,253.76.² Even if one were to consider all 19 areas where Eminent questioned some aspect of billings during their 30-day audit period as legitimate disputes (which Respondents clearly do not), those items would total \$30,114.27 from the original \$138, 989.76 past due amount owing to CenturyTel of Missouri, LLC. It is disingenuous at best for Complainant to now suggest that it “vigorously disputes” \$154,193.52, and to “magnanimously” come forward a day after the

² As noted previously, these amounts do not include charges that are currently due and owing from recent and continued billings, as Eminent continues to receive services from Respondents. Nor do these amounts reflect the outstanding balance due and owing by CD Telecommunications, LLC, the alleged “CLEC” operating under common ownership and whose sole customer appears to be Complainant Eminent Network Technologies, Inc. d/b/a Interlinc.net.

filing of the complaint with a “Notice of Payment to CenturyTel” of \$40,000, “representing the undisputed billing amounts as explained in the Complaint filed in this matter on April 7, 2005.”³ Quite simply, this is typical of Complainant’s pattern of conduct in refusing to pay for services rendered.

6. Respondents object to, and move for reconsideration of, the Commission’s interlocutory directive in its Notice of Complaint that “Pursuant to 4 CSR 240-33.110, pending the resolution of this complaint, Respondent shall not discontinue service to Complainant on the basis of the issues that are the subject matter of this complaint (sic).” Respondents submit that such directive is unlawful, unjust and unreasonable, as fully discussed below. Further, Respondents deny that any good cause existed for the Commission’s ex parte consideration of this matter on an expedited basis, as the evidence will show that any cause for urgency was of the Complainant’s own making.

7. Commission Rule 4 CSR 240-33.110 is not applicable to Eminent’s Complaint and provides no basis for the Commission to issue the directive regarding the discontinuance of service in its Notice of Complaint. Rule 33.110 provides, *inter alia*, as follows:

4 CSR 240-33.110 Commission Complaint Procedures

PURPOSE: This rule sets forth the procedures to be followed in filing formal or informal complaints with the commission regarding matters covered in this chapter.

(1) Any customer aggrieved by a violation of any rules in this chapter or the Public Service Commission laws of Missouri relating to telecommunications companies may file an informal or formal complaint under 4 CSR 240-2.070.

³ Notice of Payment to CenturyTel filed April 8, 2005 by Complainant in Case No. TC-2005-0356.

(2) If a telecommunications company and a customer fail to resolve a matter in dispute, the telecommunications company shall advise the customer of his/her right to file an informal or formal complaint with the commission under 4 CSR 240-2.070.

(3) [Relates to procedures for responding to staff inquiries related to informal complaints.]

(4) If a telecommunications company and a customer fail to resolve a matter in dispute through the informal complaint process, the commission staff shall advise the customer of his/her right to file a formal complaint with the commission under 4 CSR 240-2.070.

(5) Pending the resolution of a complaint filed with the commission, the subject matter of such complaint shall not constitute a basis for discontinuance.

It has long been recognized that this rule establishes the procedures to be followed when a **residential end user customer** files an informal or formal complaint with the Commission. Subsection (1) of this rule provides that any “customer” aggrieved may file either an informal or formal complaint.

8. Chapter 33 of the Commission’s rules is not applicable to Eminent or its Complaint. First, as described in the “purpose” section of Rule 33.110, the provisions of this rule apply only to “matters covered in this chapter.” Nowhere in Eminent’s Complaint does Eminent allege a violation of any rule contained in Chapter 33, nor could Eminent allege any such violation. The rules contained in Chapter 33 address service and billing practices for residential customers, not business customers such as Eminent operating as an ISP. A cursory review of many of the titles of the various sections of Chapter 33 reflects specific references to “Residential Customers.”⁴

⁴ See, Rule 33.040 – “Billing and Payment Standards for Residential Customers;” Rule 33.050 – “Deposits and Guarantees of Payment for Residential Customers;” Rule 33.060 – Residential Customer Inquiries;” Rule 33.070 – “Discontinuance of Service to Residential Customers;” Rule

9. Second, Eminent is not a “customer” of Respondents, as “customer” is defined in Chapter 33. Rule 33.020(9) defines “Customer” as “any **individual** that accepts financial and other responsibilities in exchange for telecommunications service.” (Emphasis added). Eminent is not an “individual,” and thus does not meet the requirements of Chapter 33. As Eminent specifically alleges in Paragraph 5 of its Complaint, Eminent is a Missouri corporation. Eminent may qualify to file a Complaint under Commission Rule 2.070 (addressing Complaints and referenced in the opening paragraph of Eminent’s Complaint), because that rule specifically provides that “any person or public utility” may file a Complaint with the Commission, and Rule 2.010(12) defines “person” to include a “corporation.” The more limited definition of “Customer” set forth in Commission Rule 33.020(9) makes it clear that for purposes of Chapter 33, “Customer” refers only to residential end users, and not to a business customer that is a corporation.

10. Accordingly, the Commission should reconsider and modify its Notice of Complaint by removing the directive that “Pursuant to 4 CSR 240-33.110, pending the resolution of this complaint, Respondent shall not discontinue service to Complainant on the basis of the issues that are the subject matter of this complaint (sic).”

11. In conjunction with the Commission’s Notice of Complaint, the Commission enclosed its standard “Information Sheet Regarding Mediation of Commission Formal Complaint Cases.” As set forth in the Notice of Complaint,

33.080 – “Disputes by Residential Customers,” and Rule 33.090 – “Settlement Agreements with Residential Customers.”

in the alternative to filing an answer (or to file notice that the complaint has been satisfied) 30 days from the date of the Notice, “the Respondent may file a voluntary request that the complaint be referred to a neutral third-party mediator for voluntary mediation of the complaint.” Upon receipt of such a request, the 30-day time period is tolled while the Commission determines if the complainant is also willing to submit to voluntary mediation. If the Complainant agrees, the time period within which an answer is due is suspended pending the resolution of the mediation process. As described in the Information Sheet, “[t]he mediator’s role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who ‘wins.’” All information revealed is “shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information.” If the dispute is not resolved through the mediation process, “neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.”

12. At the end of the narrative describing the “Nature of the Complaint,” Eminent offers that “Complainant is willing to participate in a mediation process with the goal of resolving its billing disputes with Respondents.” If Complainant is referring to the customary “voluntary mediation” associated with Commission procedures, this should come as no surprise. Such a process builds in additional delays shielded from outside scrutiny, from which Complainant can simply walk away at the end of the process “and, at that point, the formal complaint case will

simply resume in the normal course.” For obvious reasons, Respondents cannot agree to voluntary mediation with this Complainant.

13. However, in the alternative, without waiving their rights to file all motions, answers and affirmative defenses pursuant to Commission Rules, Respondents formally move the Commission, pursuant to 4 CSR 240-2.090(4), to schedule an early prehearing conference as soon as possible, that the Commission order the parties and designated representatives of the Commission Staff to attend, and that the Commission further order the following procedural and substantive matters to aid in the expeditious disposition of the issues presented in the instant complaint. (4 CSR 240-2.090(6)).

14. If the Respondents are not allowed to immediately terminate services to Complainant, the Complainant should be required and ordered to pay current billed amounts⁵ and remain current on all future bills for services rendered. In addition, Complainant should immediately be required and ordered to pay undisputed charges and establish appropriate escrow arrangements for purported disputed amounts. The requirement to escrow disputed charges will provide some protection to Respondents in that it provides assurances of payment if the dispute is resolved in their favor. It is wholly inappropriate to permit Eminent to continue to increase its debt to Respondents without making payment for undisputed and current amounts and immediate escrow arrangements for amounts that it disputes.

⁵ There have been more recent services rendered and amounts billed that are not reflected in the amounts set forth in Paragraph 5, *supra*, that are also owing and clearly undisputed.

15. Respondents are willing to engage in expeditious, binding mediation with designated members of the Commission Staff acting as mediators, the results of such process to aid the Commission in making final determinations herein. Such a process should be completed within a three-week period of time.

16. Respondents welcome the involvement and scrutiny of the Commission's Staff in a process in accordance with the above parameters. If the Complainant is truly "willing to participate in a mediation process with the goal of resolving its billing disputes with Respondents," it should be willing to agree to the above parameters as well.

WHEREFORE, Respondents CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel respectfully move the Commission to reconsider and to modify its Notice of Complaint by removing the directive that "Pursuant to 4 CSR 240-33.110, pending the resolution of this complaint, Respondent shall not discontinue service to Complainant on the basis of the issues that are the subject matter of this complaint (sic);" in the alternative, Respondents request that the Commission order an early prehearing conference in this matter as soon as possible, and that it order compulsory mediation and payments by Complainant, all as specifically set forth herein.

Respectfully submitted,

/s/ Larry W. Dority

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Attorneys for:
CenturyTel of Missouri, LLC and
Spectra Communications Group, LLC
d/b/a CenturyTel

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 Complainant (at wds@wdspsc.com), on this 13th day of April 2005.

/s/ Larry W. Dority

Larry W. Dority

April 6, 2005

CENTURYTEL

Rich C. Rabah
President
Eminent Network Technologies, Inc.
d/b/a Interline.net
607 St. Hwy 165 Suite 5
Branson, MO 65616

Sent Via Fax: 417.336.0829

Dear Mr. Rabah;

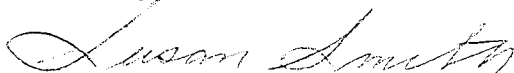
The following is meant to summarize developments pursuant to our Memorandum of Understanding and Agreement dated February 10, 2005 and to emphasize that services are subject to termination if payments are not received by April 9, 2005.

Pursuant to the Memorandum, the 30-day review period began March 10, 2005. Thus far, Eminent, via e-mail from Jason Miller dated March 24, 2005, identified 19 areas where it questioned some aspect of the billings giving rise to the total charges. CenturyTel reviewed the questioned areas and confirmed the billed amounts in their entirety in all but two very minor instances. Response to the questioned items was contained in e-mail from Susan Smith dated April 1, 2005. Therefore, to the extent that the challenges were couched as "disputes," all but Nos. 4 and 11 were, and are denied.

Although Eminent did not quantify dollar amounts associated with any of its "disputes," CenturyTel notes that the vast majority of the amounts owing have never been challenged.

CenturyTel reiterates that payment must be received by April 9, 2005 to avoid termination of services. The total amount past due for billings from CenturyTel of Missouri, LLC is \$138,589.18 (reflecting a \$243.09 allowance for dispute Item No. 11 and \$107.49 for dispute Item No. 4). The total amount past due for billings from Spectra Communications Group, LLC is \$55,253.76.

Sincerely,



Susan W. Smith
Director - External Affairs

Cc: Jason Miller
Larry Dority
Cal Simshaw
Arthur Martinez