

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

Petition of FullTel, Inc. for Approval of an)	
Interconnection Agreement Pursuant to)	Case No. TK-2005-0079
Section 252 of the Communications Act)	
of 1934, as Amended)	

**APPLICATION FOR REHEARING
OF CENTURYTEL OF MISSOURI, LLC AND
SPECTRA COMMUNICATIONS GROUP, LLC D/B/A CENTURYTEL**

COME NOW CenturyTel of Missouri, LLC ("CenturyTel") and Spectra Communications Group, LLC d/b/a CenturyTel ("Spectra") (collectively "Applicants"), pursuant to Section 386.500, RSMo 2000¹ and 4 CSR 240-2.160(1), and timely file their Application for Rehearing of the Missouri Public Service Commission ("Commission") *Order Recognizing Adoption of Interconnection Agreement* ("Order") issued herein on December 21, 2004, with an effective date of December 31, 2004. In support of their Application for Rehearing, Applicants respectfully state to the Commission that the *Order* is unlawful, unjust, and unreasonable in the following respects:

1. On September 30, 2004, FullTel, Inc. ("FullTel") filed a "Petition of FullTel, Inc., for Confirmation of Interconnection Agreement Adoption ("Petition")." In its Petition, FullTel requested the Commission to approve its unilateral purported adoption of the interconnection agreement between GTE Midwest Incorporated d/b/a Verizon Midwest and Brooks Fiber Communications of Missouri, Inc., and apply the terms of that underlying agreement to CenturyTel and Spectra. On October 25, 2004,

¹ All statutory references are to the Revised Statutes of Missouri 2000, unless otherwise noted.

CenturyTel filed its Motion to Reject Confirmation and/or Notice of Adoption of Interconnection Agreement by Summary Determination on the Pleadings and Alternative Request for Hearing (“Motion”) setting forth the legal analysis and bases upon which the Commission should reject FullTel’s unilateral attempt to “adopt” the terms of an underlying Interconnection Agreement between Brooks Fiber Communications of Missouri, Inc. and GTE Midwest Incorporated d/b/a Verizon Midwest (the “Brooks Agreement”) and apply those terms to CenturyTel and Spectra. The Staff of the Commission filed its Staff Memorandum in this matter on November 5, 2004, wherein the Staff also “recommends that the Commission reject the confirmation of interconnection agreement adoption.” Despite the legal analysis and recommendations of CenturyTel, Spectra and its own Staff to the contrary, by a 3-2 vote, the Commission *Order* of December 21 granted in part the relief requested in FullTel’s Petition.

That FullTel, Inc.’s adoption of the terms and conditions contained in the interconnection agreement between Brooks Fiber Communications of Missouri, Inc. and GTE Midwest Incorporated, d/b/a Verizon Midwest, Case No. CK-2002-1146, is hereby recognized as to CenturyTel of Missouri, LLC, but not Spectra Communications Group LLC, d/b/a CenturyTel, pursuant to Section 252(i) of the Telecommunications Act of 1996. (Ordered Paragraph 2, page 8).

The majority’s recognition of the adoption of the Brooks Agreement as to CenturyTel is unlawful, unjust and unreasonable.

2. As fully set forth in the pleadings of the Applicants and Staff, and as stated at pages 3-4 of the Commission’s *Order*, the adoption of the terms and conditions of a previously approved interconnection agreement is authorized by Federal Statute 47 U.S.C. § 252 (i), which requires:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. (Emphasis added).

As Applicants and the Commission Staff submitted, because neither Spectra nor CenturyTel of Missouri was a party to the Interconnection Agreement between GTE and Brooks Fiber, neither has an obligation under 47 U.S.C. § 252 (i) to provide interconnection to FullTel under that agreement.

3. After simply reciting that “On May 21, 2002, the Commission granted CenturyTel a certificate of service authority in Case No. TM-2002-232” and that the Commission had approved the Brooks Fiber Agreement in Case No. CK-2002-1146 on August 5, 2002 (*Order* at 2), the Commission announces the erroneous, conclusory finding that “The Commission further finds that CenturyTel adopted the agreement and that the agreement is still in operation.” (*Order* at 3). In addition, the Commission erroneously finds as follows:

The Commission further finds that CenturyTel is Verizon Midwest’s successor-in-interest. When CenturyTel bought Verizon Midwest’s exchanges, CenturyTel filed tariffs virtually identical to Verizon Midwest’s tariffs. On September 1, 2002, after those purchases, Verizon Midwest stopped doing business in Missouri. [Footnote 1 referencing Order dated August 29, 2002, Case No. TM-2002-232] The Commission finds the combination of the asset purchase, the similar tariffs, and the cancellation of Verizon Midwest’s tariffs made CenturyTel Verizon Midwest’s successor-in-interest. As a successor-in-interest, CenturyTel is obligated to fulfill Verizon Midwest’s contracts. The Commission further finds that CenturyTel was obligated to honor the Brooks Fiber agreement upon its purchase of the Verizon Midwest exchanges. (*Id.*).

The above findings of fact are unlawful, unjust, unreasonable, not supported by competent and substantial evidence, arbitrary and capricious, constitute an abuse of

discretion, and conclusory so as to be wholly inadequate to permit the Commission's decision to be adequately reviewed on appeal. In addition, such findings constitute an unlawful collateral attack on the Commission's Report and Order issued in Case No. TM-2002-232, and the Commission should be estopped from preventing CenturyTel from relying on that conclusive order.

4. In its Conclusions of Law, the Commission erroneously concludes that CenturyTel is a party to the Brooks Fiber agreement.

The Commission concludes that CenturyTel is a party to the Brooks Fiber agreement. The Brooks Fiber agreement specifically provided that it would be binding on and inure to the benefit of the parties and their respective legal successors and permitted assigns. [Footnote 3 omitted.] The Brooks Fiber agreement also contains a clause allowing a party to opt out of the agreement upon giving 90 days, written notice to the other party. [Footnote 4 omitted.] The record contains no mention of CenturyTel giving such notice. As the agreement is still in operation, CenturyTel is thereby bound to offer its terms pursuant to 47 U.S.C. § 252(i). (*Order* at 4).

. . . . The Commission further concludes that as a successor-in-interest, CenturyTel takes on Verizon Midwest's liability on the Brooks Fiber agreement [Footnote 8 omitted.] (*Order* at 6).

The above conclusions of law erroneously construe, and directly contravene, 47 U.S.C. § 252(i), and are unlawful, unjust, unreasonable, not supported by competent and substantial evidence, arbitrary and capricious, constitute an abuse of discretion, and conclusory so as to be wholly inadequate to permit the Commission's decision to be adequately reviewed on appeal. In addition, such conclusions of law constitute an unlawful collateral attack on the Commission's Report and Order issued in Case No. TM-2002-232, and the Commission should be estopped from preventing CenturyTel from relying on that conclusive order.

5. As the pleadings of Applicants and Commission Staff specifically set forth, the Commission's Report and Order entered in Case No. TM-2002-232, *inter alia*, granted CenturyTel of Missouri, LLC a certificate of service authority to provide basic local exchange telecommunications service and authorized GTE Midwest, Inc., doing business as Verizon Midwest, to transfer and sell its remaining 96 exchanges to CenturyTel of Missouri, LLC. The Report and Order provided that the certificate of service authority shall become effective when the company's tariff becomes effective. CenturyTel of Missouri, LLC's proposed tariff was subsequently approved for service rendered on and after September 1, 2002. Language contained in the Nonunanimous Stipulation and Agreement, Attachment 1 to the Commission's Report and Order in that proceeding, specifically set forth the responsibilities of CenturyTel concerning existing interconnection agreements that Verizon had in place with other carriers.

CenturyTel shall use the same rates, terms and conditions of service as Verizon on the date of the closing of the transaction. CenturyTel shall, in good faith, negotiate interconnection agreements with all carriers who currently have interconnection agreements with Verizon and who desire to interconnect with CenturyTel. Where technically feasible, the new agreement will have the same terms and conditions as did the agreement with Verizon. These agreements will differ from the Verizon agreements only with respect to technical differences to reflect the way CenturyTel interfaces with the interconnecting carrier. In cases in which services are being provided under these interconnection agreements, CenturyTel will cooperate with the interconnecting carriers to secure expeditious approval of a replacement interconnection agreement and to ensure continuity of service for their customers. CenturyTel shall provide local interconnection services as set out in the interconnection agreement between Verizon and Intervenor AT&T, and adopted by Intervenor Fidelity, for a period of one year following the closing of the proposed transaction. Any interconnection agreement not replaced within one year shall continue in force on a month-to-month basis until replaced.

(Report and Order, page 6, emphasis added).

6. FullTel did not have an agreement with Verizon when CenturyTel acquired its exchanges from Verizon; as set forth in its own petition, FullTel's application for a CLEC certificate in Missouri was still pending in Case No. LA-2005-0055 when this case was initiated. To any extent CenturyTel was to "honor" existing interconnection agreements with those carriers who currently had interconnection agreements with Verizon, there was no requirement or suggestion whatsoever that CenturyTel would "offer the same terms and conditions to others," as erroneously stated by FullTel in its petition. Nor was there any requirement or suggestion that CenturyTel would be the successor-in-interest to Verizon and obligated to fulfill Verizon Midwest's contracts. As an asset sale, and not a merger or assumption of interests, the Asset Purchase Agreement governed the responsibilities of the parties, and there is absolutely nothing in the record of this proceeding to suggest or support in any way the erroneous findings and conclusions of the majority decision. Section 386.550, RSMo 2000, states that "In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive." The Report and Order issued in Case No. TM-2002-232 became effective on May 31, 2002. The Report and Order provided that CenturyTel's certificate of service authority shall become effective when the company's tariff becomes effective. CenturyTel of Missouri, LLC's proposed tariff was subsequently approved for service rendered on and after September 1, 2002. The Commission's findings and conclusions in this collateral proceeding that CenturyTel was a successor-in-interest to Verizon and obligated to fulfill Verizon Midwest's contracts constitute an impermissible collateral attack on those conclusive orders. CenturyTel of Missouri, LLC was not a party to the Interconnection Agreement between Brooks Fiber

Communications of Missouri, Inc. and GTE Midwest Incorporated, d/b/a Verizon Midwest, approved by this Commission on August 5, 2002, and CenturyTel of Missouri, LLC has no obligation under 47 U.S.C. 252(i) to provide interconnection to FullTel under that agreement. The Commission's findings of fact and conclusions of law to the contrary are unlawful, unjust and unreasonable.

7. In its *Order Directing Filing* entered in this matter on November 18, 2004, the Commission stated:

The parties have not addressed whether the FCC's recent Interim Rules prevent FullTel from adopting the agreement.² Those rules state that the rules' goal is to maintain the status quo, and to not allow new carriers to opt into contract provisions frozen in place as of June 15, 2004.³ The Commission will order the parties to file pleadings on this issue no later than November 29, 2004.

In their responsive pleadings, both the Applicants and the Commission Staff first reiterated that under 47 U.S.C. § 252(i), neither CenturyTel nor Spectra were "parties to the agreement" and, therefore, FullTel's purported adoption should be rejected. Both the Applicants and Commission Staff also advocated that the FCC's interim rules would, indeed, prevent FullTel from unilaterally adopting the subject agreement. Paragraph 22 of the Federal Communications Commission's Interim Rules provides, in part:

We also hold that competitive LECs may not opt into the contract provisions "frozen" in place by this interim approach. The fundamental thrust of the interim relief provided here is to maintain the status quo in certain respects without expanding unbundling beyond that which was in place on June 15, 2004. This aim would not be served by a requirement permitting new carriers to enter during the interim period.

² In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 69 Fed. Reg. 55,111, 55,112 (effective September 13, 2004) (to be codified at 47 C.F.R. pt. 51) (hereafter referred to as Interim Rules).

³ Interim Rules at ¶ 22.

Coupled with the FCC's recent decision determining that CLECs could only adopt entire agreements,⁴ therefore, a CLEC is prevented from adopting any agreement if it contains contract provisions frozen by the FCC. CenturyTel noted that under the FCC's Interim Rules, voluntarily negotiated agreements are not subject to the freeze.⁵ But as the pleadings in this matter reflect, FullTel's attempted adoption was specifically rejected by CenturyTel and there was no "voluntarily negotiated agreement" before the Commission in this proceeding.

Staff summarized its position as follows:

The Staff maintains that CenturyTel of Missouri and Spectra are not parties to that agreement. . . . The Staff recommends that the Commission should reject FullTel's adoption of the interconnection agreement regardless of whether CenturyTel of Missouri and Spectra are determined to be parties to the agreement. If the Commission ultimately determines that CenturyTel and Spectra are parties to the GTE Midwest/Brooks Interconnection Agreement, then the Commission should still reject, pursuant to the Interim Rules, FullTel's confirmation of the interconnection agreement adoption.⁶

8. However, the Commission erroneously and unlawfully concludes that the FCC's Interim Rules do not prevent FullTel from adopting the Brooks Fiber agreement.

The Commission further concludes that the FCC's Interim Rules do not prevent FullTel from adopting the Brooks Fiber agreement. [Footnote 6 omitted.] The rule states that the FCC " . . . conclude(s) that the appropriate interim approach here is to require incumbent LECs to continue providing unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms and conditions that applied under their interconnection agreements as of June 15, 2004."

⁴ The FCC's Second Report and Order, *In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, released July 13, 2004, amended 47 C.F.R. 51.809 to state that "an incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. [emphasis added]."

⁵ Interim Rules, at ¶ 21.

⁶ Staff's Brief on Interim Rules, November 29, 2004, page 4.

[Footnote 7 omitted.] While those rules may temporarily freeze ILECs obligations to offer unbundled network elements, those rules do not freeze adoptions of interconnection agreements in their entirety. The Brooks Fiber agreement has provisions beyond UNE's, including resale. Furthermore, the Commission notes that the issue of whether the unbundling portions of the agreement are unenforceable under the Interim Rules is not before us in this case. (*Order* at 5.)

For the reasons stated above, the Commission's erroneous and conclusory decision regarding the FCC's Interim Rules is unlawful, unjust and unreasonable, not supported by competent and substantial evidence on the whole record, arbitrary and capricious, and wholly inadequate to permit such decision to be adequately reviewed on appeal.

9. By its "Order Directing Notice and Making CenturyTel of Missouri, LLC A Party" issued on October 5, 2004, the Commission, *inter alia*, found "that proper persons should be allowed 20 days from the issuance of this order to file a motion for hearing." Accordingly, Ordered Paragraph 3 provided "That any party wishing to request a hearing shall do so by filing a pleading no later than October 25, 2004, . . ." On October 25, 2004, CenturyTel timely filed its Motion To Reject Confirmation and/or Notice of Adoption of Interconnection Agreement by Summary Determination on the Pleadings and Alternative Request for Hearing, wherein it specifically requested, in the alternative, a hearing in this matter. The Commission's failure to address such request and to grant a hearing in this matter is unlawful, unjust and unreasonable, and violates CenturyTel's due process rights under the United States and Missouri Constitutions.

WHEREFORE, for all the foregoing reasons, CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel respectfully request the Commission to grant this Application for Rehearing.

Respectfully submitted,

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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 30th day of December, 2004, to:

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