

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 23rd day
of August, 2005.

FullTel, Inc.,)	
)	
Complainant,)	
)	
v.)	<u>Case No. TC-2006-0068</u>
)	
CenturyTel of Missouri, LLC,)	
)	
Respondent.)	

**ORDER DENYING MOTION FOR RECONSIDERATION
AND CHANGING PROCEDURAL DATES**

Issue Date: August 23, 2005

Effective Date: August 23, 2005

Syllabus: This order denies CenturyTel of Missouri, LLC's motion to reconsider expediting this matter. However, the order allows CenturyTel of Missouri, LLC, seven additional days to file its answer, Staff five additional days to file its report, and sets a prehearing conference for September 16, 2005.

Background

In a separate case, the Commission approved the interconnection agreement between FullTel, Inc. and CenturyTel of Missouri, LLC, on December 21, 2004. On August 8, 2005, FullTel filed this complaint against CenturyTel alleging that CenturyTel is in breach of the interconnection agreement. With its complaint, FullTel filed a motion for

expedited treatment. Among other things, FullTel moved that CenturyTel be directed to file its answer within 15 days, rather than the usual 30 days.

On August 9, the Commission issued its Notice of Complaint directing that CenturyTel file its answer by August 24. On August 10, the Commission granted FullTel's motion for expedited treatment. The Commission issued the order with a ten-day effective date, which allowed CenturyTel to file its motion for reconsideration on August 11.

CenturyTel argued that FullTel's motion does not satisfy the Commission's standard for expedited treatment, emphasizing that it should be afforded a full 30 days to respond to the complaint. To more specifically address FullTel's need for expedited treatment, the Commission issued an order directing FullTel to set "forth the specific harm, other than the general economic harm of not being able to provide service due to a delay in interconnection, that will occur if CenturyTel is allowed 30 days to file its response [to the complaint]." FullTel filed its response and CenturyTel filed a reply in opposition.

Discussion

The Motion for Expedited Treatment

One of the elements that must be pled when requesting expedited treatment is that the motion was filed as soon as it could have been or an explanation of why it was not.¹

CenturyTel argues that FullTel did not satisfy this element of the Commission's rule.

FullTel asserts in its motion that on April 12 it informed CenturyTel that it would establish a point of interconnection with CenturyTel. The parties, however, have not interconnected. Upon realizing that it would not be interconnected, FullTel could have immediately filed this complaint. Attached to CenturyTel's motion for reconsideration is a

¹ Commission rule 4 CSR 240-2.080(16).

letter dated June 23, from CenturyTel to FullTel. The letter shows continued efforts to resolve the companies' dispute. In light of this last communication, CenturyTel argues that FullTel could have filed its complaint long before August 8. However, CenturyTel adds that it and FullTel have had continued discussions over of the last several months. Lastly, in its Motion for Expedited Treatment, FullTel stated that "despite efforts to resolve these issues outside of the regulatory arena, these CenturyTel-created roadblocks have proven insurmountable, and FullTel was forced to file the accompanying [c]omplaint."

Although it is not clear that FullTel filed its complaint as soon as it could, it is apparent that the parties have been in ongoing discussions. The Commission finds that FullTel has provided an explanation of why the complaint was not filed as soon as it could have been.

CenturyTel's Motion for Reconsideration

The basis for CenturyTel's motion for reconsideration is that FullTel did not comply with the Commission's rule. CenturyTel, however, does not argue that it will not be able to file an answer by August 24, 2005. Having found that FullTel's motion satisfies the Commission's rule, the Commission will deny CenturyTel's motion for reconsideration. However, for the reasons set out below, the Commission will grant CenturyTel additional time to file its answer.

To better address the issue of CenturyTel having to file an answer in 15 rather than 30 days, the Commission issued an order directing FullTel to state what specific harm, other than the general economic harm, would result from allowing CenturyTel to file its

answer in 30 days. In its response, FullTel stated that it “faces **very specific and tangible economic harm** with each day this situation remains unresolved.” It did not further identify that harm.

As CenturyTel points out in its reply to FullTel’s pleading, FullTel has not answered the question posed by the Commission. FullTel’s reference to economic harm as “specific” does not, in and of itself, make the harm specific. Furthermore, even though the parties were in discussion, FullTel could have filed its complaint 15 days earlier, affording CenturyTel 30 days to respond and allowing the Commission to expeditiously resolve the complaint in the time that FullTel requested. Because FullTel has not specifically shown why it is necessary for CenturyTel to file an answer by August 24, the Commission will grant CenturyTel additional time to answer.

Conclusions

The Commission’s rule with regard to answering complaints requires the respondent to set forth “[a]ll grounds of defense, both law and of fact”² The rule further provides that if the respondent does not have enough information about a particular issue it can generally deny that averment. Because the parties have wrestled with this matter for a number of months, it is reasonable to conclude that they both are knowledgeable about the relevant law and facts. The Commission therefore does not expect CenturyTel to respond with general denials. However, while this conflict goes unresolved, customers in Missouri have one less option for telephone service. Because the parties should be knowledgeable about the law and facts of this matter and because the Commission wishes to foster competition in the state of Missouri, this case will continue expeditiously.

² Commission rule 4 CSR 240-2.070(8).

However, because CenturyTel's primary concern appears to be that it needs more time to answer, the Commission will allow more time for CenturyTel's answer and will change other procedural dates accordingly. Rather than hold an evidentiary hearing on September 23 as requested by FullTel, the Commission will, in a later order, will set the matter for an evidentiary hearing on September 28, 2005. The parties should be mindful that there will be no prefiled testimony. Rather, the parties will be expected to file prehearing briefs setting forth arguments, controlling law, the witnesses to be called at the hearing and what each witness' testimony will show. Lastly, the parties will be allowed to make closing arguments and file post-hearing briefs.

IT IS THEREFORE ORDERED:

1. That CenturyTel of Missouri, LLC's Motion for Reconsideration is denied.
2. That CenturyTel shall file its answer to FullTel, Inc.'s complaint no later than August 31, 2005.
3. That the Staff of the Commission, having previously been directed to file its report no later than September 8, 2005, is now directed to file its report no later than September 13, 2005.
4. That a prehearing conference shall be held on September 16, 2005, beginning at 10:00 a.m. at the Governor Office Building, Room 305, 200 Madison Street, Jefferson City, Missouri. This prehearing conference will be held in a building that meets accessibility standards required by the American with Disabilities Act. If you need additional accommodations to participate in the conference, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 prior to the conference.

5. That this order shall become effective on August 23, 2005.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur.

Jones, Regulatory Law Judge