BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

STAFF'S REPORT

COMES NOW the Staff of the Missouri Public Service Commission and for its report states:

1. This case involves FullTel Inc.'s complaint that CenturyTel of Missouri, LLC, is in breach of the interconnection agreement between the two companies.

2. In the attached Staff Report, authored by Staff members William Voight and Natelle Dietrich, the Staff reports on its investigation in this matter.

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 electronically mailed to all counsel of record this 13th day of September 2005.

/s/ William K. Haas

When reviewing the issues in this complaint, three sources provide significant guidance toward the appropriate resolution: the interconnection agreement between CenturyTel of Missouri, LLC (CenturyTel) and FullTel, Inc. (FullTel), the FCC's ISP Remand Order and the Arbitration Order in Case No. TO-2005-0336 (M2A order).

Point of Interconnection

In its complaint, FullTel requests a single point of interconnection (POI) via collocation with CenturyTel in Branson. This POI will serve those CenturyTel customers in Ava, Mansfield, Willow Springs and Gainesville wanting to access the internet via FullTel. CenturyTel disagrees that current law mandates that CenturyTel carry all traffic to a single FullTel POI. Looking first to the interconnection agreement, Section 2.1.1 on seriatim page 69, states, "in accordance with, but only to the extent required by, Applicable Law, the Parties shall provide interconnection of their networks at any technically feasible point (the Point of Interconnection or "POI") as specified in this Agreement. Section 2.1.2 states, "Each Party ("Originating Party"), at its own expense, shall provide for delivery to the relevant IP of the other Party ("Receiving Party") Reciprocal Compensation Traffic and ISP-bound Traffic that the Originating Party wishes to deliver to the Receiving Party." Seriatim page 48 of the interconnection agreement defines IP (Interconnection Point) for reciprocal compensation traffic as, "the point at which a Party who receives Reciprocal Compensation Traffic originating on the network of the other Party assesses Reciprocal Compensation charges for the further transport and termination of that Reciprocal Compensation Traffic".

Turning to the M2A arbitration, Charter Communications, Inc. asked the Commission to address the "single" POI issue (Charter NIM Issue 1). The Commission, in the M2A order stated, "The Arbitrator [ ] held that CLECs may establish a single, LATA-wide POI to exchange all traffic with SBC. He also noted that, under [section 251] interconnection must be 'technically feasible'". In the M2A order (Sprint ITR Issue 6), the Commission also found that each party is responsible for the facilities on its side of the POI, but that each party must be financially responsible for its own outgoing traffic.

<u>Classification of Traffic</u>

CenturyTel states that the interconnection agreement does not apply because the traffic is not local. The definition of reciprocal compensation at section 2.83 on seriatim page 52 of the interconnection agreement notes that the determination of whether telecommunications traffic is exchange access or information access shall be based upon Verizon's (now CenturyTel's) local calling areas in effective tariffs and in applicable Commission and FCC orders.

When addressing the question as to whether ISP-bound traffic is local, the FCC applied an "end-to-end" analysis, determining Internet communications originate with the ISP's end-user customer and continue beyond the local ISP server to websites or other servers and routers that are often located outside the state. Therefore, the FCC found that ISP-bound traffic is not local because it does not "originate[] and terminate[] within a local area", but instead is jurisdictionally mixed and largely interstate {par. 14}. Although the FCC found that ISP-bound traffic was not local, it also found that parties could voluntarily include ISP-bound traffic in interconnection agreements under sections

251 and 252 of the Act.{par. 15} Although the parties had a dispute about the adoptability of the instant agreement by FullTel, the Commission ultimately approved the agreement. As such, the ISP-bound traffic provisions of the interconnection agreement are applicable to the instant complaint.

CenturyTel claims that the traffic in question is clearly IXC traffic as it involves calls between customers who are not located in the same calling area. CenturyTel characterizes the traffic as "virtual NXX" because traffic originates from CenturyTel customers in Ava, Mansfield, Willow Springs and Gainesville and terminates to FullTel customers in Oklahoma City, OK. When reexamining the grounds for its conclusion that ISP-bound traffic falls outside the scope of section 251(b)(5) traffic, the FCC described the service in question as follows: "[S]ervice provided by LECs to deliver traffic to an ISP constitutes, at a minimum, 'information access' under section 251(g) and, thus, compensation for this service is not governed by section 251 (b)(5), but instead by the Commission's policies for this traffic and the rules adopted under its section 201 authority." {par. 30}. In the footnote related to this analysis, the FCC found that ISP-bound traffic falls outside the scope of section 251(b)(5) and within the FCC's access charge jurisdiction under section 201(b).

<u>Intercarrier Compensation</u>

Discussing the appropriate compensation for the traffic in question, neither party suggests reciprocal compensation as the appropriate compensation. FullTel notes that on pages 54 and 67 through 68 of the interconnection agreement, the parties agree to deliver traffic at their own expense and follow FCC Internet and other FCC orders. In the ISP Remand Order, the FCC concluded that Congress, through section 251(g), expressly limited the reach of section 251(b)(5) to exclude ISP-bound traffic and affirmed its conclusion that ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5) {par. 3}. The interconnection agreement defines reciprocal compensation traffic at section 2.83 on seriatim page 52. The definition states that reciprocal compensation traffic does not include any Internet traffic.

When CLECs establish operations, they do not typically duplicate the legacy ILEC network, but rather establish a POI, usually with one switch that serves an entire LATA or even an entire state. The switch may not even be located in the state being served. This is accomplished by using the NXX blocks assigned to the various areas the CLECs want to serve. All calls placed to these NXX blocks are delivered to the CLEC switch via the POI. LECs can assign a telephone number in a location even if the customer has no physical presence in that location. Calls that physically terminate in a location other than the exchange are associated with the NXX used are known as virtual NXX (VNXX) calls. CenturyTel claims that this VNXX scenario applies in the instant case, and as such FullTel is shifting costs to CenturyTel that are more appropriately incurred by FullTel.

According to the M2A order, "The FCC rules require each party to assume the costs associated with its originating traffic. [Specifically] 47 C.F.R. 51.709(b) states 'the rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of the trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network.' In addition, 47 C.F.R. 51.703(b) states that 'a LEC may not assess charges on any other telecom carrier for telecom traffic that originates on the

LEC's network.' These two FCC rules make clear that the FCC's intent is not for [CLEC] to be burdened with 100% of transport costs relating to interconnection facilities used to carry both parties' originating traffic even though that facility is physically located on [CLEC's] side of the POI." {page 49} The order goes on to say, "The Commission concurs with the Arbitrator's finding that, in general, each party is solely responsible for the facilities on its side of the POI. Nonetheless, the Commission agrees with [CLEC] that each party must be financially responsible for its own outgoing traffic." {page 52}

The FCC determined in its ISP Remand order that a "hybrid mechanism" was the most appropriate interim approach to resolve problems associated with compensation for ISP-bound traffic. The FCC introduced a graduated scale for compensation whereby the current compensation for ISP-bound traffic would be $.0007 per minute of use {par. 78}. The FCC applied a different rule to those carriers not exchanging traffic pursuant to an interconnection agreement prior to the adoption of its ISP Remand Order in April 2001. For those carriers (which presumably includes CenturyTel and FullTel), the FCC found carriers shall exchange ISP-bound traffic on a bill-and-keep basis {par. 81}. The FCC adopted this mechanism to address and curtail regulatory arbitrage and distortion in the operation of competitive markets. Further, the FCC stated that "for ISP-bound traffic, however, state commission will no longer have authority to address this [compensation] issue." {par. 82}

In WorldCom, Inc. v. F.C.C., 288 F.3d 429 (D.C. Cir 2002), the DC Circuit found the FCC's reading of section 251(g) too broad and stated the FCC provided no basis for the FCC's rules requiring bill-and-keep for ISP-bound traffic. The DC Circuit did not vacate the order, but simply remanded it back to the FCC. The DC Circuit suggested that the FCC has the authority to require bill-and-keep, perhaps under sections 251(b)(5) and 252(d)(2)(B)(i). The FCC's ISP Remand Order remains in effect pending the FCC's proceedings on remand. It appears these issues are being addressed as part of the FCC's larger unified intercarrier compensation investigation. (see, Core, FCC 04-241, footnote 49)

Conclusion

FullTel requests a single POI to serve Ava, Mansfield, Willow Springs and Gainseville. With respect to this request and only addressing these four exchanges, federal rules and the Commission in its M2A order indicate FullTel can establish one POI within CenturyTel's service territory as long as it is "technically feasible". CenturyTel would have the burden to show why it is technically infeasible for FullTel to only establish one POI. Again, with respect to only the four exchanges at issue, according to the M2A order, each party is financially responsible for its outgoing traffic. However, proper compensation, according to the FCC, would be bill-and-keep for CenturyTel and FullTel since the parties presumably did not exchange traffic prior to the release of the FCC's ISP Remand Order. As further stated in the FCC's ISP Remand Order, the MoPSC may not have jurisdiction to address the compensation issues in this case.