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August 8, 2005

FILED²

AUG 08 2005

Missouri Public
Service Commission

The Honorable Colleen M. Dale
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

Re: Complaint of FullTel, Inc. for Enforcement of Interconnection Obligations of CenturyTel of Missouri, LLC

Dear Judge Dale:

Enclosed for filing in the referenced matter please find the original and five copies of a Complaint for Enforcement of Interconnection Obligations and Motion for Expedited Treatment.

A complimentary copy of this filing has been sent to Larry Dority, who has been the attorney for CenturyTel of Missouri, LLC in past dockets.

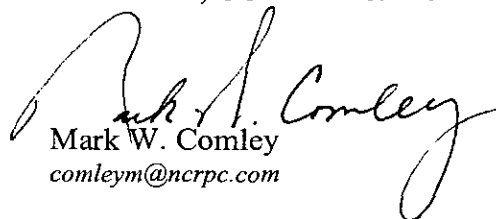
Would you please bring this filing to the attention of the appropriate Commission personnel.

Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:


Mark W. Comley
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MWC:ab
Enclosure

cc: Office of Public Counsel
General Counsel's Office
Andrew M. Klein
Larry Dority

BEFORE THE PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI

FILED²
AUG 08 2005

Missouri Public
Service Commission

Complaint of FullTel, Inc., for Enforcement)
of Interconnection Obligations of CenturyTel)
of Missouri, LLC)

Case No. _____

COMPLAINT FOR ENFORCEMENT OF
INTERCONNECTION OBLIGATIONS

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Counsel to FullTel, Inc.

Dated: August 8, 2005

requiring Respondent CenturyTel to implement the Interconnection Agreement, cease its delay tactics, and adhere to applicable law, so that FullTel may provide a competitive alternative to Missouri consumers.

STATEMENT OF FACT

1. FullTel is an Oklahoma corporation authorized to provide public telecommunications service in the State of Missouri.
2. FullTel seeks to provide voice and data service in Missouri, and to do so must interconnect with CenturyTel. FullTel intends to compete with CenturyTel and its ISP affiliate, CenturyTel.net.
3. CenturyTel is a Louisiana limited liability company, a local exchange telecommunications company and a public utility that provides regulated telecommunications services within its Missouri service area. CenturyTel is a telecommunication company subject to the Commission's jurisdiction.
4. FullTel seeks to interconnect with CenturyTel pursuant to the terms and conditions of the Interconnection Agreement between FullTel and CenturyTel. After CenturyTel improperly denied FullTel's request to adopt an interconnection agreement¹ pursuant to section 252(i) of the federal Communications Act,² FullTel petitioned this Commission for approval of

¹ FullTel adopted the agreement between CenturyTel and Brooks Fiber Communications of Missouri, Inc., approved initially in Case No. CK-2002-1146 (hereinafter, the "Interconnection Agreement").

² 47 U.S.C. §151, *et. seq.*

the adoption. After thoroughly considering the issue, the Commission approved and then on rehearing re-confirmed FullTel's adoption of the interconnection agreement with CenturyTel.³

5. FullTel informed CenturyTel, on April 12, 2005, that FullTel would interconnect via a collocation with CenturyTel at 211 S. 3rd Street central office in Branson, Missouri, and that this collocation would serve as FullTel's single point of interconnection in order to provide service, initially, in the neighboring areas of Ava, Mansfield, Willow Springs and Gainesville.

6. CenturyTel responded by insisting on a forecast and "CLEC profile," before even scheduling an implementation meeting. However, even after those items were submitted, CenturyTel failed to schedule an implementation meeting for over a month.

7. Meanwhile, by correspondence dated April 28, 2005, FullTel notified CenturyTel that it would be submitting an application for collocation at 211 S 3rd Street office, in Branson. CenturyTel responded that it would not accommodate the collocation request, indicating that completion of an "expansion project" (with a "soft" completion date of "early fall 2005") might permit CenturyTel to do so.⁴ Even when FullTel suggested virtual collocation as an alternative to address the ostensible lack of space issue, and advised that FullTel needed to collocate only a single DSX panel that would occupy less than seven inches on a rack (*i.e.*, less than 10% of the space on a rack) and that has no power requirement, CenturyTel reiterated its response – that it would not meet the timeframe required by law. Finally, after FullTel notified commission staff, CenturyTel suddenly determined that it could accommodate the collocation request.

³ Petition of FullTel, Inc. for Approval of an Interconnection Agreement Pursuant to Section 252 of the Communications Act of 1934, as Amended, Case No. TK-2005-0079, Orders dated December 21, 2004 and February 22, 2005. ("Interconnection Agreement Approval Orders")

⁴ Correspondence from Mr. Gary Maxwell Cox, CenturyTel, to Michael Tomas, FullTel, dated April 28, 2005.

8. CenturyTel next, however, demanded that FullTel establish multiple POIs – in each individual town, in fact – and asserts that the traffic to be exchanged between the parties is not local and that the interconnection requested by FullTel is somehow outside the scope of the parties' Interconnection Agreement. This latest obstacle has thus far proved insurmountable, triggering the instant Complaint.

9. FullTel has directly contacted CenturyTel regarding the circumstances giving rise to this Complaint, and has repeatedly attempted to resolve these issues without seeking Commission intervention. CenturyTel has, however, failed to address these issues and remains steadfast in its refusal to provide lawful interconnection.

ISSUES

1. RESPONDENT MUST INTERCONNECT WITH FULLTEL AT A SINGLE POINT AS REQUIRED BY THE AGREEMENT AND APPLICABLE LAW.

10. CenturyTel has failed to meet its obligation to interconnect with FullTel. Under the terms of the parties' Interconnection Agreement, and applicable law, CenturyTel must permit FullTel to interconnect its network for the exchange of traffic. Similarly, under the Interconnection Agreement and applicable law, FullTel has the right to interconnect with CenturyTel at one point in each LATA. CenturyTel's failure to meet those obligations and honor FullTel's right – by refusing to establish interconnection and demanding the establishment of multiple POIs – is therefore illegal and improper.⁵ As such, FullTel requests that the

⁵ In addition to violations of other applicable law, CenturyTel's actions are violative of Section 386.390 RSMo 2000, in that CenturyTel has failed to abide by the terms of an interconnection agreement approved by an order of this Commission. See Interconnection Agreement Approval Orders.

Commission act expeditiously to compel CenturyTel to comply with its obligations without further delay.⁶

11. The parties' Interconnection Agreement requires CenturyTel to interconnect with FullTel and to do so at a single POI. More specifically, the Interconnection Agreement states, at page 54, that each party "shall provide to the other Party, in accordance with this Interconnection Agreement and Applicable Law, interconnection with the Providing Party's network for the transmission and routing of Telephone Exchange Service and Exchange Access," and that each party will "provide interconnection of their networks at any technically feasible point (the Point of Interconnection or "POI")." As the Commission is well aware, CenturyTel fought extremely hard to block FullTel's adoption of the Interconnection Agreement and FullTel's entry into the marketplace. Thankfully, the Commission thwarted CenturyTel's anticompetitive objectives by approving the Interconnection Agreement. Now that the Interconnection Agreement is in effect, however, CenturyTel has continued its anticompetitive behavior, through its well-known deny and delay tactics, and has failed to honor the Interconnection Agreement. As a result, FullTel respectfully requests that the Commission ensure that the terms of the Interconnection Agreement are indeed respected and CenturyTel's obligations carried out.

12. In addition to the explicit terms of the parties' Interconnection Agreement, applicable law confirms that FullTel is entitled to interconnect with CenturyTel through the establishment a single POI in each LATA.⁷ In a recent interconnection arbitration, for example,

⁶ In accordance with 4 CSR 240-2.060(16), FullTel requests that this Complaint be handled on an expedited basis for it cannot provide any service in Missouri until this matter is resolved. See Motion for Expedited Treatment, submitted herewith.

⁷ See, e.g., 47 U.S.C. § 251(c)(2); *MCI Metro Access Transmission Services v. BellSouth Telecommunications and North Carolina PUC*, 352 F.3d 872 (2003).

the FCC determined that competitive carriers may choose to interconnect at a single point per LATA, specifically rejecting the ILEC's contrary position (*i.e.*, the same position CenturyTel now stubbornly asserts).⁸ Federal courts have recognized the FCC's holding and confirmed that principle.⁹

13. Ignoring (a) the terms of the Interconnection Agreement, (b) applicable law, and (c) factual circumstances, CenturyTel has denied lawful interconnection and insists instead on forcing FullTel to buy out of access tariffs and establish multiple interconnection points. CenturyTel asserts the long-rejected argument that the calls to be exchanged over the interconnection arrangement to be established are interexchange access,¹⁰ and takes the untenable position that FullTel does not appear to have local customers. As noted above, this argument flies in the face of the Interconnection Agreement and applicable law, and is factually incorrect.

14. In its denial of FullTel's rights, CenturyTel ignores the fact that the interconnection point to be established will be within CenturyTel's service territory. Thus, FullTel will be interconnecting and exchanging traffic with CenturyTel within CenturyTel's territory, not in some other LATA as CenturyTel intimates.

15. The key distinction that CenturyTel overlooks, or ignores, relates to the separation of the physical interconnection of the networks from the traffic that will flow over such interconnection. It is fundamental that local exchange carriers must provide interconnection with

⁸ *Petitions of WorldCom, Inc., Cox Virginia Telecom, Inc., and AT&T Communications of Virginia, Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Arbitration*, [Consolidated] Memorandum Opinion and Order, CC Docket Nos. 00-218, 00-249 and 00-251, July 17, 2002 ("FCC Arbitration Order")

⁹ *See, e.g., MCI Metro Access Transmission Services v. BellSouth Telecommunications and North Carolina PUC*, 352 F.3d 872 (2003).

¹⁰ CenturyTel may, in fact, be the only ILEC who still asserts this absurd position.

their networks¹¹ and that the parties will then compensate one another for the traffic exchanged over such interconnection. CenturyTel must interconnect with FullTel, and bring traffic originating from CenturyTel customers – the service for which CenturyTel bills its customers – to the POI. Following the establishment of such interconnection, the parties will then exchange traffic and appropriate compensation.

2. CENTURYTEL MUST EXCHANGE RECIPROCAL COMPENSATION TRAFFIC AND ISP-BOUND TRAFFIC IN ACCORDANCE WITH THE AGREEMENT AND APPLICABLE LAW

16. The parties' Interconnection Agreement specifically requires that Reciprocal Compensation Traffic and ISP-bound Traffic be treated equally. The terms of the Interconnection Agreement, in fact, reference both forms of traffic at issue here: (1) Reciprocal Compensation Traffic, defined at section 2.83 of the Glossary, and (2) ISP-bound Traffic, defined at section 2.54 and 2.42. The Interconnection Agreement, fortunately, also addresses the manner in which the parties will interconnect and exchange both forms of traffic. Indeed, contrary to CenturyTel's stated position, the Interconnection Agreement clearly provides that both local and ISP-bound traffic will be treated the same.

17. The parties' Interconnection Agreement explicitly states that "[e]ach Party ("Originating Party"), *at its own expense*, shall provide for the delivery to the relevant IP of the other Party ("Receiving Party") *Reciprocal Compensation Traffic and ISP-bound Traffic*["]¹² The Interconnection Agreement further provides that "ISP-bound Traffic shall be governed by the terms of the FCC Internet Order and other applicable FCC orders and FCC regulations"

¹¹ See, e.g., 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305; Interconnection Agreement pages 54-79 (Interconnection Attachment)

¹² FullTel/CenturyTel Interconnection Agreement, at page 54 (*emphasis added*).

(which treat local and ISP-bound traffic the same for IP purposes), and that “the IP of a Party (“Receiving Party”) for ISP-bound Traffic delivered to the Receiving Party by the other Party *shall be the same* as the IP of the Receiving Party for Reciprocal Compensation Traffic[.]”¹³

Thus, the Interconnection Agreement addresses and unambiguously resolves these issues.

18. As is the case with the physical interconnection itself, Applicable Law also eviscerates the distinction CenturyTel is attempting to create with regard to traffic.¹⁴ In fact, the FCC’s Internet Order addressed and resolved – over four years ago – the very issue CenturyTel is now raising. In that order, the FCC determined that ISP-bound Traffic, since its end point is often distant (*i.e.*, outside the local calling area), will be subject to a compensation scheme distinct from that which applies to Reciprocal Compensation Traffic.¹⁵ FullTel seeks only to exchange traffic pursuant to that Order and other applicable law.

19. In light of the foregoing, it cannot be reasonably disputed that CenturyTel must establish a single interconnection point for both reciprocal compensation and ISP-bound traffic, and that FullTel and CenturyTel will compensate one another for the traffic exchanged in accordance with the FCC’s Internet Order.

3. CENTURYTEL MUST IMPLEMENT THE AGREEMENT WITHOUT FURTHER DELAY

20. As noted in the Statement of Facts, above, CenturyTel has consistently delayed implementation of the Interconnection Agreement – and has as a result successfully blocked FullTel’s entry into the market. CenturyTel refused to schedule implementation meetings, and

¹³ *Id.* at pages 67-68 (*emphasis added*).

¹⁴ *See, e.g.*, 47 C.F.R. § 51.703; FCC Internet Order; *MCImetro v. Bellsouth*, 352 F.3d 872; *FCC Arbitration Order*.

¹⁵ *See, e.g.*, Internet Order at paras. 1-8, 14, and fn. 6.

denied FullTel's requests for lawful collocation¹⁶ (until FullTel notified Commission staff).

CenturyTel has, more recently, claimed it lacks facilities for the DS1s requested and has refused to provide APOT information regarding the collocation space. The Interconnection Agreement and applicable law both require that CenturyTel provide sufficient facilities to enable CenturyTel to meet its fundamental obligation to interconnect with FullTel, and deliver CenturyTel-originated traffic to the point of interconnection.¹⁷ In order to interconnect and compete for customers, FullTel must have some level of good faith cooperation from CenturyTel and requests the Commission's assistance in that regard. Due to the serious delays already encountered, FullTel respectfully requests that the Commission act expeditiously in granting the requested relief.

¹⁶ See 47 C.F.R. §§ 51.321 and 232.

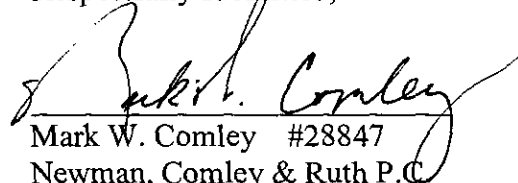
¹⁷ See, e.g., 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305; Interconnection Agreement pages 54-79 (Interconnection Attachment).

CONCLUSION

While FullTel does not expect that CenturyTel and CenturyTel.net would welcome it as a competitor with open arms, FullTel and the Commission must insist that CenturyTel meet its lawful obligations. Those obligations require that CenturyTel establish interconnection, and exchange both ISP-bound and Reciprocal Compensation traffic through the single point of interconnection in accordance with the parties' Interconnection Agreement and applicable law. Since FullTel has asserted its lawful right to interconnect and exchange traffic, and CenturyTel has no basis to deny such requests, FullTel respectfully request that the Commission compel Respondent CenturyTel to provide such interconnection and comply with its obligations without further delay.

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Counsel to FullTel, Inc.

Dated: August 8, 2005

*Not admitted to practice in the State of Missouri

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 8th day of August, 2005, to General Counsel's Office at gencounsel@psc.mo.gov; and Office of Public Counsel at opcservice@ded.mo.gov.

