

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4
5
6 TRANSCRIPT OF PROCEEDINGS
7 Prehearing Conference
8 September 16, 2005
9 Jefferson City, Missouri
Volume 1

10

11

12 FullTel, Inc.,)
13 Complainant,)
14 vs.) Case No. TC-2006-0068
15 CenturyTel of Missouri, LLC,)
16 Respondent.)

17

18

19 KENNARD L. JONES, Presiding,
REGULATORY LAW JUDGE.

20

21

22 REPORTED BY:

23 KELLENE K. FEDDERSEN, CSR, RPR, CCR
24 MIDWEST LITIGATION SERVICES

25

26

1 APPEARANCES:

2 MARK W. COMLEY, Attorney at Law
3 Newman, Comley & Ruth
4 601 Monroe, Suite 301
5 P.O. Box 537
6 Jefferson City, MO 65102
7 (573) 634-2266

8 FOR: FullTel, Inc.

9 LARRY W. DORITY, Attorney at Law
10 Fischer & DORITY
11 101 Madison, Suite 400
12 Jefferson City, MO 65101
13 (573) 636-6758

14 FOR: CenturyTel of Missouri, LLC.

15 MARC D. POSTON, Senior Counsel
16 P.O. Box 360
17 200 Madison Street
18 Jefferson City, MO 65102
19 (573) 751-3234

20 FOR: Staff of the Missouri Public
21 Service Commission.

22

23

24

25

1 P R O C E E D I N G S

2 JUDGE JONES: This is a prehearing
3 conference for Case No. TC-2006-0068, FullTel,
4 Incorporated vs. CenturyTel of Missouri, LLC. My name is
5 Kennard Jones. I'm presiding judge over this matter.

6 At this time we'll take entries of
7 appearance, beginning with Mr. Comley.

8 MR. COMLEY: Thank you, Judge. Let the
9 record reflect the entry of appearance of -- let the
10 record reflect the entry of appearance of Mark W. Comley,
11 Newman, Comley & Ruth, 601 Monroe, Suite 301,
12 Jefferson City, Missouri 65101, on behalf of the
13 complainant FullTel, Inc.

14 JUDGE JONES: Mr. Dority?

15 MR. DORITY: Thank you, your Honor.
16 Appearing on behalf of Respondent CenturyTel of Missouri,
17 LLC, Larry W. Dority, Fischer & Dority, PC. Our address
18 is 101 Madison, Suite 400, Jefferson City, Missouri 65101.

19 JUDGE JONES: And for the Staff of the
20 Commission?

21 MR. POSTON: Marc Poston appearing for the
22 Staff, P.O. Box 360, Jefferson City, Missouri 65101.

23 JUDGE JONES: Are there any attorneys that
24 have joined us on the phone?

25 MR. DORITY: Mr. Cline or Mr. Shimshaw,

1 have you joined us?

2 MR. SHIMSHAW: Yes, your Honor. This is
3 Cal Shimshaw. I'm in-house counsel with CenturyTel.

4 JUDGE JONES: Would you like to enter your
5 appearance?

6 MR. DORITY: We have not formally entered
7 his appearance at this point, your Honor. I think he is
8 going to join us primarily for the discussions that we
9 hope that will take place off the record.

10 JUDGE JONES: That will be fine.

11 MR. COMLEY: And that is similar with
12 Mr. Cline. At this stage we have not formally moved for
13 his appearance pro hoc vice in this proceeding, but he may
14 be calling in to participate later.

15 JUDGE JONES: Okay. Well, first let's deal
16 with CenturyTel's request for voluntary mediation. How
17 does FullTel feel about that?

18 MR. COMLEY: Judge, and I think we should
19 have probably highlighted it a little bit more, but in a
20 footnote to our recent response to CenturyTel's pleading,
21 we did note that at this stage, no, we would not consent
22 to voluntary mediation, and on the record we'll not
23 consent to voluntary mediation.

24 JUDGE JONES: And I'll issue a motion
25 regarding your motion to dismiss early next week.

1 One thing I wanted to bring up, and this is
2 just from my cursory review of your interconnection
3 agreement, in Section 14 there's a section called dispute
4 resolution. Have you-all looked at that and abided by its
5 terms? Here, you can have my copy to look at.

6 MR. COMLEY: My response to the Court's
7 request would be that, yes, I think that the parties have
8 examined paragraph 14 of the agreement and, so far as I
9 understand it, have resolved in -- have resolved the
10 questions of dispute resolution raised in that paragraph
11 in favor of the complaint that's before the Commission.
12 Mr. Dority may have another idea about that.

13 MR. DORITY: I'm not sure I understand,
14 Mark, what you just said.

15 MR. COMLEY: I'm thinking that so far
16 there's been no objection raised to the complaint filed in
17 this Commission based upon provisions of paragraph 14.

18 MR. DORITY: That is correct, your Honor.
19 We have not raised the dispute resolution clause contained
20 in paragraph 14.1 at this stage. We have not.

21 JUDGE JONES: Seems like you'd have to do
22 that before we were even involved, before the Commission
23 has anything to say. It seems like you have to look to
24 how the agreement deals with disputes. That's just
25 something for you-all to consider. What I'm thinking is

1 September 28th I believe is a date that I was looking at
2 for a hearing.

3 MR. DORITY: Yes, your Honor.

4 JUDGE JONES: Are you all amenable to that
5 date? Is that a good date for you all?

6 MR. COMLEY: Yes. We're ready to go.

7 MR. DORITY: Judge --

8 JUDGE JONES: And I ask that just so I can
9 put it on the calendar.

10 MR. DORITY: As you know, your Honor, we
11 have voiced our objections to the expedited treatment
12 that's been afforded this matter, and I do want to take a
13 moment and thank your Honor for the additional time you
14 did give us for responding in your Order that was issued
15 on August 23rd.

16 We, of course, have filed our request for
17 voluntary mediation, which the Complainant has denied both
18 in their earlier pleading and then this morning Mr. Comley
19 reiterated that on the record. Of course, we filed our
20 motion to dismiss answering affirmative defenses on
21 August 31st.

22 We would anticipate that to the extent
23 possible if we can go off the record this morning and
24 engage in some discussions with Mr. Comley and to the
25 extent that Mr. Cline may be able to join us, we are

1 hopeful that those discussions will be fruitful and we
2 would be able to dispense with having to go to a formal
3 evidentiary hearing that you've now set on the 28th.

4 I guess, Judge, in your earlier Order you
5 had also indicated that all of the hearing itself would be
6 conducted with live testimony, no prefiling.

7 JUDGE JONES: That's correct.

8 MR. DORITY: And I think you're
9 anticipating that we would be filing prehearing briefs as
10 well. And I know that you have not at this point
11 scheduled a due date for those. The Respondent was going
12 to request, Judge, that we be given until perhaps one day
13 midweek next week -- I have my calendar here -- I think
14 Wednesday, the 21st.

15 We would suggest that the parties be
16 allowed to report back to your Honor the status at that
17 point, and to the extent that we're not able to reach a
18 resolution, then perhaps we can be looking at prehearing
19 briefs either that Friday or the Monday of the following
20 week looking at a hearing on that Wednesday the 28th.

21 That's a long response to your question of
22 is the 28th a good date. Yes, to the extent --

23 JUDGE JONES: It's necessary.

24 MR. DORITY: -- that it's necessary, as far
25 as I know, we would be able to have our witnesses here and

1 be prepared to participate.

2 JUDGE JONES: Mr. Comley, is that good for
3 you, Staff report next Wednesday, briefs on the 23rd and
4 then a hearing on the 28th?

5 MR. COMLEY: Yes, that's perfectly fine.

6 JUDGE JONES: As far as the briefs are
7 concerned, I mean, and this is not a slight on attorneys,
8 but attorneys tend to be long-winded. I've got a feeling
9 this disagreement can be very specific. I think this is a
10 contract dispute. There's a clause in the contract that
11 you-all are having a dispute about. So clearly point that
12 out, and any law or statutory rules and case law that
13 supports your position.

14 Does Staff have anything to add to the
15 schedule that we're discussing?

16 MR. POSTON: No.

17 JUDGE JONES: All right. What kind of
18 witnesses do you expect to call, if necessary?

19 MR. COMLEY: I think we've probably
20 identified only two, and I think the documents won't be --
21 they won't be too much of a burden. Our exhibit list may
22 not be like some of the monuments that we've seen in other
23 cases.

24 JUDGE JONES: Mr. Dority?

25 MR. DORITY: I think we would anticipate

1 two witnesses as well, your Honor.

2 JUDGE JONES: So this is something we can
3 do in one day?

4 MR. DORITY: I believe we could. I do.

5 MR. POSTON: We're going to have two
6 witnesses as well.

7 MR. COMLEY: We may be looking at a day and
8 a half, two days maybe.

9 JUDGE JONES: The 28th is a Wednesday.
10 We'll try to get started early, then.

11 MR. DORITY: I would note that we're
12 involved in a prehearing conference on the afternoon of
13 the 29th.

14 JUDGE JONES: Is there anything else I can
15 do for you-all this morning?

16 MR. DORITY: I guess, Judge, to the extent
17 that through our discussions we may not -- if we're not
18 able to ultimately resolve the whole proceeding, but to
19 the extent that we could at least agree on the underlying
20 facts, that might shorten the time required for the
21 hearing, and I would hope that you might be willing to
22 entertain a stipulated facts and --

23 MR. COMLEY: Certainly.

24 MR. DORITY: That might move things along.

25 JUDGE JONES: Can you-all file that on the

1 21st?

2 MR. DORITY: That might be a little tough,
3 your Honor. I have a feeling most of our time is going to
4 be directed to trying to get all of the folks that are
5 necessary on the telephone and move through the issues.
6 Could that be part and parcel of what would be filed on
7 the 23rd?

8 JUDGE JONES: That's fine. Does Staff
9 have anything to add?

10 MR. POSTON: No, we don't.

11 JUDGE JONES: Okay. Anything else from
12 you-all? I've got --

13 MR. DORITY: I don't believe so, your
14 Honor.

15 JUDGE JONES: Are you waiting on someone
16 else to join you?

17 MR. DORITY: Yeah. I think we're hoping
18 that Mr. Cline will be able to join us. Maybe Mark can
19 check with him off line and see what his status is.

20 JUDGE JONES: Okay. With that, then, we'll
21 go off the record and I'll leave you-all to try to work
22 this out.

23 WHEREUPON, the recorded portion of the
24 prehearing conference was concluded.

25