

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

In the Matter of the Application of)	
Time Warner Cable Information Services)	
(Missouri), LLC for a Certificate)	
of Service Authority to Provide Local)	Case No. LA-2004-0133
and Interexchange Voice Service)	
in Portions of the State of Missouri)	
And to Classify said Services and)	
the Company as Competitive.)	

**CENTURYTEL’S RESPONSE
TO ORDER DIRECTING FILING**

COME NOW Spectra Communications Group, LLC d/b/a CenturyTel (“Spectra”) and CenturyTel of Missouri, LLC (“CenturyTel of Missouri”) (collectively referred to herein as “CenturyTel”), pursuant to the Commission’s Order Directing Filing entered in this matter on November 26, 2003, and for its Response to the Staff of the Commission’s Memorandum respectfully states as follows:

1. In Case No. TO-2004-0172, *In the Matter of an Investigation of Voice Over Internet Protocol and Virtual NXX Telephony in the State of Missouri*, the Staff of the Commission filed a motion to open a “generic” case that would have addressed many of the technological and regulatory issues concerning VoIP that have been raised in this proceeding. In its Motion to Open Case in Case No. TO-2004-0172, the Commission’s Staff requested the Commission to open a case to investigate Voice over Internet Protocol (“VoIP”) and Virtual NXX (“VNXX”) telephony, suggesting that a generic case is the proper form of examining the complex issues dealing with this subject matter. The Staff readily identified eight issues

regarding VoIP and VNXX that it suggested should be examined, noting that the Federal Communications Commission (“FCC”) is preparing a major examination of the regulation of VoIP services, and that at least ten states are at various stages of examining similar issues and/or drafting some sort of VoIP telephony regulations.

2. In Case No. TO-2004-0172, CenturyTel filed a pleading strongly supporting Staff’s Motion To Open Case, and encouraged the Commission to promptly grant the relief requested in Staff’s Motion. (*See* Reply of CenturyTel to AT&T's Response And In Support of Staff's Motion To Open Case, filed on October 22, 2003)

3. On November 4, 2003, the Commission issued its Order Denying Motion to Open Case finding, *inter alia*: “The Commission is currently considering some of the issues raised in Staff’s motion in a contested case (Case Number LA-2004-0133). It would be inefficient to examine the same issues in a ‘generic’ case that the Commission is considering in a specific case, and so the Commission will deny Staff’s motion.” During discussions regarding Case No. TO-2004-0172 held during the Commission’s Open Agenda Meeting of October 28, 2003, Commissioners expressed concerns that, should the focus of inquiry regarding VoIP issues be placed in the instant proceeding, interested parties would have the opportunity to participate in such an inquiry.

4. Concurrent with the issuance of its Order in the TO-2004-0172 case, the Commission issued its Order Granting Applications To Intervene And Setting Prehearing Conference in Case No. LA-2004-0133, noting that “The primary interest among the proposed intervenors [in Case No. LA-2004-0133] concerns regulatory treatment of Voice over Internet

Protocol telecommunications services.”¹ (Order at 1). As a result, the Commission determined that this proceeding would be the forum to address important public policy issues related to the classification and regulatory treatment of VoIP services, which are of significant concern to CenturyTel. As stated in the Commission’s Order entered in this matter on November 4, “Inclusion of the proposed intervenors in an examination of VoIP can only serve to address more fully issues surrounding VoIP. Consequently, the public interest would be better served by a full examination of this service. The Commission will therefore grant intervention to the proposed intervenors.” (Order at 4-5).

5. Once again, referencing the Commission’s intent to address more fully the issues surrounding VoIP, the Commission’s November 13 Order granted the additional requests to intervene in Case No. LA-2004-0133 filed by various parties interested in VoIP issues:

The parties proposing to intervene. . . make reference to Case No. TO-2004-0172. In that matter, the Commission entertained a motion filed by the Staff of the Commission. In its motion, Staff proposed that the Commission open a generic case to examine issues regarding Voice over Internet Protocol. On November 4, 2003, the Commission denied the motion, preferring to examine issues surrounding VoIP in the above styled case. Because the proposed intervenors were interested in Case No. TO-2004-0172, they now seek intervention in this matter. . . .

For the same reasons stated in the Commission’s Order Granting Applications to Intervene and Setting Prehearing Conference issued on November 4, 2003, and because the Commission declined to examine VoIP in the generic case, the Commission will grant intervention to those parties presently seeking intervention. (Order at 2).

¹ CenturyTel [and numerous other parties] had filed for intervention in Case No. LA-2004-0133, expressing concerns that Time Warner had announced in its application that it intended to utilize "IP-based voice services." More specifically, CenturyTel observed that "Time Warner reserves its rights regarding the appropriate classification and regulatory treatment of such Voice over IP services. As a result, this proceeding may address important public policy issues related to the classification and regulatory treatment of Voice over IP services which are of significant concern to the Applicants." (See Application To Intervene of Spectra Communications Group, LLC d/b/a CenturyTel And CenturyTel of Missouri, LLC, p. 3, filed in Case No. LA-2004-0133 on October 6, 2003.)

6. In conjunction with the granting of intervenor status, CenturyTel and other parties were directed to comply with the Commission's earlier Order of November 10, 2003, requiring that parties to this matter file briefs, setting forth their positions with respect to the Commission's jurisdiction over VoIP. On November 21, 2003, CenturyTel filed its Brief supporting the Commission's jurisdictional authority with regard to VoIP.

7. The Staff Memorandum in this proceeding, in response to "Prehearing Discussion Items," notes that "The Type of service Time Warner proposes to offer has not been addressed by the Federal Communications Commission," and references its review of all Briefs submitted by the parties regarding regulatory jurisdiction of VoIP. "In reviewing the briefs, Staff has not found any reason to suggest a lack of Commission jurisdiction over real-time, dial tone telephone service. . . . Again, it is the Staff's opinion that such services have not been preempted by the FCC." (¶ 5, pp. 9-10). At Paragraph 6 of its Memorandum, Staff references the Commission's denial of its motion to open a generic proceeding, and the Commission's stated intent to address those issues in this proceeding. However, Staff "notes that numerous questions and issues pertaining to VoIP technology are not being raised in the instant Time Warner case. For example, Virtual NXX code assignments, access charges, certification requirements, E-9-1-1 service requirements, and universal service obligations are issues raised by the Staff that are not being addressed in Time Warner's application." (¶6, p. 10).

8. Time Warner and other VoIP providers may use this new technology to avoid paying lawfully imposed network access charges. CenturyTel does not want to stand in the way of technological improvements and the cost savings that may result from such improvements. However, as recent as yesterday, newspaper articles are touting that, "an advantage of the technology is that it can cut costs by *eliminating some network-access charges* paid to [local

exchange] carriers.”² (Emphasis supplied) CenturyTel is not aware of this Commission *eliminating* network access charges. When the cost savings that accrue to VoIP providers are the direct result of arbitrage rather than from the technological improvements themselves such arbitrage should not be allowed. Rather, the Commission should treat all providers of basic local exchange equitably regardless of technology and look for just and reasonable ways to reform the current access mechanisms and rates the FCC, this Commission and the industry have put in place.

9. Such issues, and others previously identified in the Staff’s Motion to Open Case in Case No. TO-2004-0172, should be examined by this Commission as soon as possible. Should the Commission make the decision not to address these important issues in the context of this proceeding, the Commission, in fairness to all parties who have intervened, should open the generic docket sought by Staff in the TO-2004-0172 case, prior to taking any other action herein.

10. Finally, CenturyTel is concerned that Time Warner is apparently requesting a "local exchange" certificate of service authority, and not a "basic local exchange" certificate which is traditionally granted to CLECs in the state of Missouri. According to the Staff Recommendation, "Time Warner maintains that it is not holding itself out to be a provider of basic local telecommunications service." (Staff Recommendation, p. 6) If this approach is permitted, CenturyTel is concerned that Time Warner may not be required to meet the statutory obligations of certificated basic local exchange providers, including a "requirement that all providers must offer basic local telecommunications services as a separate and distinct service" under Section 392.455(4), and "the minimum service standards, including quality of service and billing standards, as the commission requires of the incumbent local exchange

² Qwest, AT&T dive into residential phone via Internet. Jefferson City Post Tribune. December 11, 2003.

telecommunications company with which the applicant seeks to compete" under Section 392450(2)(2). This may result in an "unequal playing field" since CenturyTel will be required to provide separate and distinct basic local telecommunications services and meet the Commission's quality of service standards, while Time Warner will be able to provide a bundled telecommunications service with its cable television services and not meet the minimum standards established the Commission for basic local exchange service providers. The granting of merely a "local exchange" certificate that does not include the provision "basic local exchange service" appears to be unprecedented and may exceed the statutory authority of the Commission.

WHEREFORE, CenturyTel respectfully files its Response to the Staff Memorandum.

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 12th day of December, 2003, to:

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