

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

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

**CENTURYTEL OF MISSOURI, LLC'S
REQUEST FOR VOLUNTARY MEDIATION,
MOTION TO DISMISS, ANSWER AND AFFIRMATIVE DEFENSES**

COMES NOW CenturyTel of Missouri, LLC ("CenturyTel" or "Respondent"), pursuant to Commission Rule 4 CSR 240-2.070(8), the Commission's Notice of Complaint dated August 9, 2005, and the Commission's Order Denying Motion for Reconsideration and Changing Procedural Dates of August 23, 2005 ("August 23rd Order")¹, and respectfully submits its Request for Voluntary Mediation, Motion to Dismiss, Answer and Affirmative Defenses to the Complaint filed by FullTel, Inc. ("FullTel" or "Complainant").

INTRODUCTION

In its previous pleadings filed in this matter, CenturyTel voiced its strong objections to the Commission's expedited treatment of the substantive factual, policy and legal issues that will need to be addressed should this complaint

¹ The Commission's Order denied CenturyTel's motion to reconsider expediting this matter; however, the Order did allow CenturyTel seven additional days to file its answer, to August 31, 2005. (Ordered Paragraph 2).

ultimately be allowed to proceed.² At this point, however, the Commission has determined that “this case will continue expeditiously.”³

In accordance with the Commission’s Notice of Complaint, CenturyTel hereby requests that this complaint be referred to a neutral third-party mediator for voluntary mediation of the complaint. CenturyTel makes this request in good faith, believing that a neutral third-party mediator could assist the parties in resolving their disputes. However, mindful of Complainant’s baseless allegations regarding CenturyTel’s purported intent to delay, CenturyTel is not taking advantage of any tolling period contemplated by the Commission’s procedures and is, in fact, concurrently filing its responsive pleadings herein.

Should Complainant decline the opportunity to seek mediation, the Commission should proceed to reject and dismiss FullTel’s attempt to utilize an interconnection agreement to bypass lawful interexchange access charges. Such use of “Virtual NXX” – the assignment of numbers from an NPA/NXX associated with one rate center to customers physically located in another rate center – shifts the burden of additional costs on CenturyTel and circumvents the lawful rate and regulatory structure sanctioned by this Commission.

Based on previous correspondence between the parties, it appears that FullTel desires to interconnect with CenturyTel’s network for the purpose of exchanging traffic originating from CenturyTel customers located in Ava,

² Response in Opposition to Motion for Expedited Treatment and Motion for Reconsideration of Order Granting Motion for Expedited Treatment, August 11, 2005; Reply of CenturyTel of Missouri, LLC to FullTel’s Response to Order Directing Filing, August 17, 2005.

³ August 23rd Order, page 4.

Mansfield, Willow Springs and Gainesville, Missouri on the one hand, and terminating to FullTel customer(s) located in Oklahoma City, Oklahoma.

By attempting to provision dial-up ISP-bound traffic to its ISP customer in Oklahoma City via a Virtual NXX arrangement, the Complainant is not providing service to customers within the former Verizon service territory and, accordingly, the local interconnection aspects of its adopted interconnection agreement do not apply⁴. The local interconnection aspects of the subject interconnection agreement do not cover CenturyTel providing facilities to help FullTel to provide services outside of CenturyTel's (the former Verizon) territory. Such traffic is clearly interexchange as it involves calls between customers who are not located in the same calling area. Such interexchange traffic is subject to the existing access charge regime and is not governed by Section 251/252 local interconnection agreements. As the Federal Communications Commission ("FCC") notes in its rules:

A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC's network and not for the purpose of providing to others telephone exchange service, exchange access service, or both, is not entitled to receive interconnection pursuant to Section 251(c)(2) of the Act.

(47 C.F.R. 51.305(b))

Accordingly, since the traffic FullTel seeks to exchange is interexchange traffic subject to access charges, CenturyTel has offered and continues to offer to

⁴ Order Recognizing Adoption of Interconnection Agreement, 3-2 decision of the Commission in Case No. TK-2005-0079, whereby FullTel's adoption of the terms and conditions contained in the interconnection agreement between Brooks Fiber Communications of Missouri, Inc., and GTE Midwest Incorporated, d/b/a Verizon Midwest, Case No. CK-2002-1146, was recognized as to CenturyTel of Missouri, LLC.

interconnect with FullTel for exchange of this traffic pursuant to appropriate access tariffs. FullTel need only submit a proper access service request (“ASR”).

In addition, CenturyTel disagrees with FullTel’s allegations that applicable law somehow mandates that CenturyTel carry all traffic to a single point of interconnection (“POI”) in the LATA, and with FullTel’s stated interpretation of the interconnection agreement that FullTel was allowed to adopt.

MOTION TO DISMISS

Pursuant to Commission Rule 4 CSR 240-2.070(6), CenturyTel hereby moves that the Commission dismiss the above captioned matter for failure to state a claim upon which relief may be granted. In support of its motion, CenturyTel respectfully states as follows:

1. Complainant has framed the instant proceeding as a Complaint for *Enforcement of Interconnection Obligations* (emphasis added); however, the local interconnection provisions of the Interconnection Agreement referenced in the complaint are not applicable to the proposed service arrangements of Complainant. The local interconnection provisions of the interconnection agreement cover the provisioning of services only within CenturyTel’s (the former Verizon) service territory. Since complainant is not providing service to any customers physically located within such territory, the local interconnection provisions of the interconnection agreement simply do not apply. Accordingly, there are no applicable interconnection agreement provisions to “enforce,” and the complaint should be dismissed.

2. Complainant references Missouri Public Service Commission Case No. CK-2002-1146 and the interconnection agreement approved therein as the basis for its requested relief. That case was originally filed in Missouri by Brooks Fiber Communications of Missouri, Inc. as an attempted adoption of the Verizon California/ICG Telecom Group interconnection agreement terms. After GTE Midwest Incorporated d/b/a Verizon Midwest was made a party to the proceeding, Brooks Fiber and Verizon Midwest jointly filed a Substitute Interconnection Agreement in that case, pursuant to Section 252(e) of the Telecommunications Act of 1996 (47 U.S.C. § 252). The “Substitute Agreement” consisted of (a) Verizon’s adoption letter dated July 11, 2002, duly executed by both parties; (b) Comprehensive Agreement Termination letter of Verizon dated July 11, 2002, confirming the sale of Verizon’s remaining local exchanges and access lines in Missouri to CenturyTel of Missouri, LLC⁵; and (c) the ICG Telecom/Verizon California Agreement. The Commission’s “Order Approving Interconnection Agreement” was entered in each case on August 5, 2002, effective August 15, 2002.

3. In Missouri P.S.C. Case No. TM-2002-232, the Commission approved the above-referenced sale of GTE Midwest Incorporated d/b/a Verizon Midwest’s local exchanges and access lines in Missouri to CenturyTel of

⁵ Among the provisions of the letter:

“As a part of the Transaction [sale of Missouri properties], the Agreement between Verizon and [both parties, Intermedia and Brooks Fiber] in the State of Missouri is being terminated in accordance with its terms, effective upon and no later than the closing date of the Transaction, which is estimated to be *August 31, 2002*.

Verizon will continue the performance of its obligations under the Agreement prior to the termination of the Agreement concurrent with the closing of the Transaction. For post-closing activities and services in the State of Missouri, [Intermedia / Brooks Fiber] and any affiliates must enter into a separate agreement with CenturyTel.”
Interconnection Agreement, page 8.

Missouri, LLC. A Nonunanimous Stipulation and Agreement was filed in that proceeding and adopted in the Commission's Report and Order issued on May 21, 2002. One section of the Nonunanimous Stipulation and Agreement addressed Interconnection Agreements and provided, *inter alia*, that "CenturyTel agrees to negotiate in good faith new interconnection agreements with all CLECs who currently have interconnection agreements with Verizon and who desire to have interconnection with CenturyTel." That section further provided, "If any particular interconnection agreement has not been replaced through negotiation or arbitration within one year, that agreement will continue in force on a month-to-month basis until so replaced." (Report and Order, Attachment 1, pages 4-5).

4. Brooks Fiber reviewed and countersigned the provisions of Points A, B and C of Paragraph 1 of the Adoption Letter (pages 2-3 of Interconnection Agreement), which specifically provides that the Agreement applies to the "service territory of Verizon," and that its "adoption of the Verizon California Terms will only cover services in the service territory of Verizon in the state of Missouri." In addition, the Interconnection Agreement provided that, "The determination of whether Telecommunications traffic is Exchange Access or Information Access shall be based upon Verizon's local calling areas as defined in Verizon's effective Customer Tariffs and in applicable Commission and FCC orders. . . . For purposes of this definition, a Verizon local calling area includes a Verizon non-optional Extended Local Calling Scope Arrangement, but does not include a Verizon optional Extended Local Calling Scope Arrangement." (See, Section 2.83, Interconnection Agreement, page 52).

The Parties agree that this definition of Reciprocal Compensation Traffic is adopted by the Parties in conjunction with their adoption of the provisions of this Agreement related to Interconnection Points (including, but not limited to, Section 7.1 of the Interconnection Attachment) and other network interconnection arrangements, and is intended to be integrally associated with and a part of such provisions." Interconnection Agreement, Section 2.83, page 52.

5. The local calling area as defined in CenturyTel's tariff, coupled with the Complainant's admissions that its customers would not be physically located within CenturyTel's service territory, confirms that the requested trunking facilities would not be used for local interconnection as contemplated by the subject interconnection agreement. Simply put, since FullTel is not providing service to customers within CenturyTel's service territory, the local interconnection aspects of the interconnection agreement do not apply. Thus, the complaint should be dismissed.

ANSWER TO COMPLAINT

For its Answer, CenturyTel states:

1. Except as specifically admitted herein, CenturyTel denies each and every allegation, averment and statement in the Complaint.

2. CenturyTel denies all allegations contained in the narrative introductory paragraphs contained at pages 1 and 2 of the Complaint.

3. CenturyTel is without sufficient information to admit or deny the allegations contained in paragraphs 1 and 2 of the Complaint and therefore denies same.

4. CenturyTel admits the allegations contained in paragraph 3 of the Complaint.

5. CenturyTel admits that, despite the opposition of the Staff of the Missouri Public Service Commission and CenturyTel of Missouri, LLC, a majority of the Commission, on a 3-2 vote, in Case No. TK-2005-0079, recognized FullTel's adoption of the terms and conditions contained in the interconnection agreement between Brooks Fiber Communications of Missouri, Inc., and GTE Midwest Incorporated, d/b/a Verizon Midwest, Case No. CK-2002-1146, as to CenturyTel of Missouri, LLC. CenturyTel states that the Order Recognizing Adoption of Interconnection Agreement and the Order Denying Application for Rehearing issued in Case No. TK-2005-0079 speak for themselves. CenturyTel denies the remaining allegations contained in paragraph 4 of the Complaint.

6. CenturyTel denies the allegations contained in paragraphs 5-7 of the Complaint.

7. CenturyTel admits that it asserts that the traffic to be exchanged between the parties is not local, that the interconnection requested by FullTel is outside the scope of the subject interconnection agreement and that CenturyTel is not required to carry all traffic to a single POI in the LATA. CenturyTel denies the remaining allegations in paragraph 8 of the Complaint.

8. CenturyTel admits that the parties have exchanged correspondence and telephone conversations regarding these matters over the last several months, and that the last correspondence between the parties was the letter dated June 23, 2005 from CenturyTel Vice President and Associate General Counsel-Regulatory Calvin Simshaw to Mr. Roger Baresel of FullTel, Inc. (attached to CenturyTel's Response in Opposition of August 11, 2005 as

Exhibit A, and incorporated herein by reference), wherein CenturyTel offered to discuss a proposed amendment that would address FullTel's concerns or to discuss any other aspect of this matter. CenturyTel denies the remaining allegations contained in paragraph 9 of the Complaint.

9. CenturyTel denies the allegations contained in paragraphs 10-20 of the Complaint. Further answering, CenturyTel restates and incorporates by reference paragraphs 1 through 5 of its Motion to Dismiss, *supra* pp. 4-7.

AFFIRMATIVE DEFENSES

1. Complainant fails to state a claim upon which relief can be granted. CenturyTel incorporates by reference the statements and allegations contained in its Motion to Dismiss, *supra*.

2. Complainant's claims are barred by laches, waiver and estoppel.

3. Complainant's claims are barred by state and federal law.

4. Should the Commission deny Respondent's Motion to Dismiss and proceed to hearings on this matter, Respondent will present its case concerning Complainant's instant attempts to utilize and perpetuate "Virtual NXX." As discussed, *supra*, Virtual NXX is the assignment of numbers from an NPA/NXX associated with one rate center to customers physically located in another rate center, primarily used for arbitrage. Given the Commission's current directive that the Staff investigate this matter and file its report no later than September 13, 2005, Respondent CenturyTel requests that the Staff and the Commission investigate and thoroughly examine the issues arising from the attempts to provision ISP-bound traffic via a Virtual NXX arrangement. The Commission

should confirm that the physical location of the calling and called parties determine the rating and classification of traffic, rather than rate center designation of calling and called parties' numbers, and that number assignment not be used for arbitrage to bypass interexchange access charges.

WHEREFORE, having fully answered, CenturtyTel of Missouri, LLC respectfully requests the Commission to enter an Order dismissing Complainant's Complaint for Enforcement of Interconnection Obligations.

Respectfully submitted,

/s/ Larry W. Dority

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CERTIFICATE OF SERVICE

I hereby certify that the undersigned has caused a complete copy of the attached document to be electronically filed and served on the Commission's Office of General Counsel (at gencounsel@psc.mo.gov), the Office of Public Counsel (at opcservice@ded.mo.gov), and counsel for FullTel, Inc. (at comleym@ncrpc.com & Andrew.Klein@DLAPiper.com), on this 31st day of August 2005.

/s/ Larry W. Dority