

<sup>1</sup> As noted in the letter dated December 20, 2006 from Gay Fred, Consumer Services Manager, Missouri Public Service Commission, attached to the subject Complaint, there is an issue as to

3. Responding to the averments of Paragraph 1, CenturyTel admits that it is a "telecommunications company" and a "public utility" as those terms are defined by Section 386.020, RSMo. 2000 and is, therefore, subject to the jurisdiction and regulation of the Commission as provided by law.

Further answering, for purposes of this proceeding, contact information for CenturyTel should be:

Arthur P. Martinez  
Director Government Relations  
CenturyTel  
220 Madison Street  
Jefferson City, Missouri 65101  
(573) 634-8424  
(573) 636-6826 (fax)  
[arthur.martinez@centurytel.com](mailto:arthur.martinez@centurytel.com)

All communications and pleadings in this case should be directed to:

Larry W. Dority  
Fischer & Dority, P.C.  
101 Madison, Suite 400  
Jefferson City, MO 65101  
(573) 636-6758  
(573) 636-0383 (fax)  
[lwdority@sprintmail.com](mailto:lwdority@sprintmail.com)

4. CenturyTel denies the allegations contained in Paragraph 2 of the Complaint.

Further answering, CenturyTel states that it is CenturyTel's policy to require two forms of identification when establishing service for new customers in conformance with the Company's tariffs.<sup>2</sup> This information serves to help the

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whether the service location in question is the residence of Complainant or an elderly person with whom she is staying.

Company establish credit as well as to protect existing customers and the Company against fraud.<sup>3</sup> As noted, *supra*, further compounding the issue is whether the service location is the residence of Ms. Rossetti or that of an elderly person with whom she is staying. Consistent with the Company's tariff and policy, CenturyTel offered Ms. Rossetti several options including a utility statement, letter of credit from a bank, social security number or driver's license. Ms. Rossetti would only provide a check in the form of a deposit as a means of establishing identification.

5. CenturyTel denies the allegations contained in Paragraph 3 of the Complaint. Further answering, CenturyTel admits that it has been contacted by the Complainant and that it responded as set forth above.

6. CenturyTel denies that Complainant is entitled to the relief requested in the Complaint, and further states that the Commission is without jurisdiction and authority to grant such relief.

### **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,

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<sup>2</sup>Applications for initial or additional services made verbally or in writing become a contract upon the establishment of the service or facility. During the application process, the Company will check commercial credit services in order to establish a credit risk assessment for each customer. PSC MO. NO. 1, Section 2, Original Sheet 10, Sub Section D.1.a.

<sup>3</sup> The Company may refuse to furnish service and may also disconnect existing service for a customer who demonstrates fraudulent means of obtaining, or attempting to obtain, or assisting another to obtain, service by any trick, scheme, false representation, false credit device, or by or through any other fraudulent means or device whatsoever, with intent to avoid the payment, in whole or in part, of the charge for such service. PSC MO. NO. 1, Section 2, Original Sheet 9, Sub Section C.6.b.

CenturyTel respectfully re-states and incorporates by reference its Answer as fully set forth above. As discussed above, CenturyTel's actions in this matter are lawful and consistent with the Company's tariff and policy.

In addition, the Commission "is purely a creature of statute" and its "powers are limited to those conferred by the [Missouri] statutes, either expressly, or by clear implication as necessary to carry out the powers specifically granted." State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission, 585 S.W. 2d 41, 47 (Mo. banc 1979); State ex rel. City of West Plains v. Public Service Commission, 310 S.W. 2d 925, 928 (Mo. banc 1958). While the Commission properly exercises "quasi-judicial powers" that are "incidental and necessary to the proper discharge" of its administrative functions, its adjudicative authority is not plenary. State Tax Commission v. Administrative Hearing Commission, 641 S.W. 2d 69, 75 (Mo. 1982), *quoting* Liechty v. Kansas City Bridge Co., 162 S.W. 2d 275,279 (Mo. 1942). The Commission is without authority to award monetary damages or equitable relief. See, *GS Technology Operating Company, Inc. d/b/a GST Steel Company, Complainant v. Kansas City Power & Light Company, Respondent*, Case No. EC-99-553, July 25, 2000.

### **AFFIRMATIVE DEFENSES**

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

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

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

WHEREFORE, having fully answered, Respondent CenturyTel of Missouri, LLC respectfully requests the Commission to enter an Order dismissing the Complaint, and for such other further and additional relief as may be appropriate.

Respectfully submitted,

/s/ Larry W. Dority

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Attorneys for CenturyTel of Missouri, LLC

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, to the following parties this 23<sup>rd</sup> day of February, 2007:

Christiane Rossetti  
602 Chestnut Street  
Thayer, MO 65791

William K. Haas  
Deputy General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Office of the Public Counsel  
P.O. Box 2230  
Jefferson City, MO 65102

/s/ Larry W. Dority

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Larry W. Dority