

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

FullTel, Inc.)
)
 Complainant,)
)
 v.)
)
 CenturyTel of Missouri, LLC,)
)
 Respondent.)

Case No. TC-2006-0068

BRIEF OF CENTURYTEL OF MISSOURI, LLC

November 4, 2005

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CenturyTel of Missouri, LLC (“CenturyTel” or “Respondent”), pursuant to the schedule established in the Commission’s Order Changing Procedural Schedule as further revised by agreement among the parties, respectfully submits its Brief in the above-captioned matter.

INTRODUCTION

In this matter Complainant FullTel, Inc. (“FullTel”) asserts that certain traffic should be exchanged between itself and CenturyTel pursuant to terms of a local interconnection agreement recognized by the Commission in Case No. TK-2005-0079. In that case, the Commission 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 (referred to herein as the “Interconnection Agreement”).

As discussed herein, the traffic in question is not subject to the Interconnection Agreement both as a matter of general law, and based upon the provisions of the Interconnection Agreement itself. FullTel further asserts that the Commission should order CenturyTel to transport and deliver all such traffic to FullTel at a single point in the Branson exchange. There is no basis for such an order as the traffic in question is not subject to the Interconnection Agreement, and in any event the Interconnection Agreement could not be interpreted to generate such an unjust and unreasonable result.

I. Description of the Traffic at Issue.

The traffic that FullTel wishes to exchange with CenturyTel involves calls from CenturyTel end user customers to an Internet Service Provider (“ISP”) that is a customer of FullTel.¹ FullTel’s ISP customer is located in Oklahoma City or is otherwise outside of the local calling area of the CenturyTel customer placing the call.² Such a call (for example from a CenturyTel customer in Ava, Mo. to a FullTel ISP customer in Oklahoma City) is clearly not a local call as the calling and called party are not located in the same local calling area as defined by this Commission. Never-the-less, FullTel attempts to create the illusion that the call is somehow local by engaging in “Virtual NXX” slight of hand. This involves FullTel giving its ISP customer in Oklahoma City an Ava telephone number, even though that customer is not located in the Ava calling area and will receive its service from FullTel in Oklahoma City rather than in Ava, Mo.³

¹ Joint Stipulation of Fact at Paragraph 10.

² This fact is noted in the Susan Smith letter of June 2, 3005 which is referenced in and attached to the Joint Stipulation of Fact. The Roger Baresol letter of June 7, 2005 (also attached to the Stipulation of Fact) purports to be FullTel’s response to Susan Smith’s letter of June 2, 2005. The Baresel letter does not challenge the statement that the FullTel customer is located in Oklahoma City.

³ This is a very questionable practice given that the Central Office (“CO”) Code Assignment Guidelines issued by the North American Numbering Plan Administrator assume “from a wireline perspective that that

FullTel will then claim that calls from CenturyTel customers in Ava to its customer in Oklahoma City are somehow local and therefore are not subject to access charges that would otherwise apply to non-local calls that use CenturyTel's network.

The illusion that FullTel attempts to create with the assignment of local telephone numbers in no way changes the fact that calls from Ava to Oklahoma City, for example, are not local calls but rather constitute interexchange traffic (i.e. traffic between exchanges rather than within an exchange).

II. The Traffic at Issue is not Subject to the Interconnection Agreement as a Matter of Law.

The Interconnection Agreement is a creature of Sections 251 and 252 of the 1996 Federal Telecommunications Act ("the Act") (47 U.S.C. §§ 251 and 252). Section 251/252 interconnection agreements were designed to accommodate the provision of "local" competition. They were not intended to provide a vehicle to allow carriers to force an exchange of non-local traffic in a manner that would evade access charges.

CenturyTel's duty to interconnect and exchange traffic pursuant to a Section 251 interconnection agreement is set forth in Section 251 (c)(2)(A) and is limited to interconnection for the "transmission and routing of telephone exchange service and exchange access."

SECTION 251 INTERCONNECTION

...

(c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS – In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

CO codes/blocks allocated to wireline service providers are to be utilized to provide service to a customer's premises physically located in the same rate center that the CO codes/blocks are assigned."

...

(2) INTERCONNECTION – The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network –

...

(A) for the transmission and routing of telephone exchange service and exchange access.

The term “telephone exchange service” is defined in the Act as being “service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area ...” (47 U.S.C. 53 (47)). The traffic at issue here is not telephone exchange service as it consists of calls that do not originate and terminate within the same exchange or exchange area. Nor is FullTel seeking to connect with CenturyTel for the purpose of providing “exchange access,” which is defined in the Act as being “the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.” (47 U.S.C. 63 (16)).

Accordingly, Section 251 interconnection agreements are intended to provide for interconnection to CenturyTel’s network for the purpose of exchanging local traffic, or in the vernacular of the Act, telephone exchange service. Access to CenturyTel’s network for the provision of non-local interexchange services continues to be governed by interstate and intrastate access charge tariffs. The traffic at issue is interexchange in nature and consequently CenturyTel has offered FullTel access to CenturyTel’s network to exchange such traffic pursuant to the terms of CenturyTel’s access tariffs.⁴

The FCC was wary of the temptation to abuse the Section 251 interconnection agreement process in an attempt to evade access charges. Therefore, the FCC adopted a

⁴ See letter of June 23, 2005 from Calvin Simshaw of CenturyTel to FullTel, referenced in, and included as an exhibit to the Joint Stipulation of Fact.

rule (47 C.F.R. 51.305(b)) as a safeguard. The rule puts carriers on notice that they will not be allowed to utilize an incumbent LEC's network to originate or terminate interexchange traffic under the guise a Section 251 interconnection agreement:

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))

In this proceeding FullTel seeks to avail itself of a Section 251 local interconnection agreement for the specific purpose of provisioning interexchange traffic. This is precisely what 47 C.F.R. 51.305(b) states that FullTel is not entitled to do. The traffic at issue is not subject to the Interconnection Agreement pursuant to the prohibition in 47 C.F.R. 51.305(b) and because such traffic does not constitute telephone exchange service under 47 U.S.C. 251 (c)(2)(A).

III. The Traffic at Issue is Outside the Scope of the Interconnection Agreement by Virtue of the Agreement Itself.

There is no language in the Interconnection Agreement that brings the traffic at issue within its scope. In fact, there is language in the adoption letter that excludes such traffic.

A. The Terms of the Adoption Letter Exclude the Traffic at Issue from the Scope of the Interconnection Agreement.

The Interconnection Agreement consists of FullTel's adoption of the Substitute Interconnection Agreement submitted by Brooks Fiber and Verizon Midwest in Missouri Public Service Commission Case No. CK-2002-1146. Consequently an integrated part of the Interconnection Agreement is the adoption letter executed by Brooks Fiber (see

FullTel's submission of September 7, 2005 in Case No. TK-2005-0079 and Exhibit 1 to the Joint Stipulation of Fact). The adoption letter provided that the agreement would only cover services within Verizon's service territory:

Brooks represents and warrants that it is a certified provider of local telecommunications service in the state of Missouri, and that its adoption of the Verizon California Terms will only cover services in the service territory of Verizon in the state of Missouri. (emphasis added) (Interconnection Agreement, Exhibit 1 to the Joint Stipulation of Fact, at seriatim page 3).

These same terms necessarily apply to FullTel's adoption of that agreement. Therefore the Interconnection Agreement only covers services in the service territory of CenturyTel in Missouri (CenturyTel being placed in the shoes of Verizon).

The traffic at issue is not covered by the Interconnection Agreement because that traffic is not associated with any customers that FullTel serves within CenturyTel's service territory. The traffic at issue arises from FullTel's service provided to customers located outside of CenturyTel's service territory. Therefore, by virtue of the limitation imposed in the adoption letter, and contrary to FullTel's assertions, the traffic at issue is not covered by the Interconnection Agreement.

Nor does the traffic at issue fall within the scope of the Interconnection Agreement as that scope is described further in the body of the Interconnection Agreement.

B. The Traffic at Issue is Neither Telephone Exchange Service or Exchange Access.

FullTel in its Complaint (at paragraph 11) relies upon a provision at page 54 (seriatim page 69) of the Interconnection Agreement for its assertion that the traffic at

issue somehow falls within the scope of the Interconnection Agreement. The language cited by FullTel provides:

Each Party (“Providing Party”) shall provide to the other Party, in accordance with this Agreement and Applicable Law, interconnection with the Providing Party’s network for the transmission and routing of Telephone Exchange Service and Exchange Access.

The terms “Telephone Exchange Service” and “Exchange Access” are defined in the Interconnection Agreement as having the same definition as they have in the Act (see Sections 2.102 and 2.39 of the Glossary of the Interconnection Agreement). The Act’s definition of Telephone Exchange Service, as pointed out above, consists of “service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area ...” (47 U.S.C. 53 (47)). As noted above, the traffic at issue in this proceeding is interexchange traffic and therefore does not constitute service within a telephone exchange. The traffic does not fall within the definition of Telephone Exchange Service in the Interconnection Agreement. Neither is the traffic Exchange Access.

Therefore the agreement language cited by FullTel actually shows that the traffic in question is not included in the scope of the Interconnection Agreement. The Interconnection Agreement speaks to interconnection “for the transmission and routing of Telephone Exchange Service and Exchange Access.” The traffic in question is instead interexchange traffic.

CenturyTel does not deny that FullTel and CenturyTel should interconnect to exchange this traffic. However, such interconnection would not be the local interconnection covered by the Interconnection Agreement. Rather such interconnection

would be for the exchange of interexchange traffic, which has long been covered by access tariffs. CenturyTel has appropriately agreed to exchange the traffic on this basis.

Because the traffic at issue is interexchange, and not local in nature, FullTel's recitations concerning collocation are irrelevant. The Joint Stipulation of Fact (at Paragraph 8) describes the situation with regard to the provision of collocation. It reveals that CenturyTel notified FullTel that collocation would not be immediately available due to space limitations. CenturyTel offered FullTel a walk-through in order to confirm the lack of space. After another collocating party later vacated space in CenturyTel's Branson central office, CenturyTel notified FullTel that space had become available. Consequently collocation is available for legitimate purposes under the Interconnection Agreement. That is, collocation is available for the provision of local service within CenturyTel's operating territory. However, there is no indication that FullTel intends to provide local service to customers located within CenturyTel's service area. Therefore collocation is not an issue. In any event, the provision of collocation is irrelevant to exchange of the traffic at issue in this proceeding because such traffic is interexchange traffic and is therefore controlled by CenturyTel's access charge tariffs and not by the Interconnection Agreement or its collocation provisions.

C. The Traffic at Issue is not "ISP-bound Traffic" as that Term is Used in the Interconnection Agreement and the FCC's Internet Order.

The other provision of the Interconnection Agreement that FullTel principally relies upon for its assertion that the traffic at issue somehow falls within the scope of the Interconnection Agreement is also found at page 54 (seriatim page 69) of the agreement.

The provision cited by FullTel (Section 2.1.2 of the Interconnection Agreement) provides as follows:

Each Party (“Originating Party”), at its own expense, shall provide for delivery to the relevant IP of the Other Party (“Receiving Party”) Reciprocal Compensation traffic and ISP-bound Traffic that the Originating Party wishes to deliver to the Receiving Party.

Once again the language cited by FullTel fails to bring the traffic at issue within the scope of the Interconnection Agreement.

FullTel asserts that the traffic in question is “ISP-bound Traffic” as that term is used in the Interconnection Agreement. However, “ISP-bound Traffic” is defined in the Interconnection Agreement as being:

The traffic that is subject to the intercarrier compensation plan for ISP-bound traffic established in the FCC Internet Order. (Section 2.54 of the Glossary).

The traffic that the FCC made subject to its intercarrier compensation plan did not include the traffic at issue here. Therefore the traffic at issue here does not fall within the definition of ISP-bound Traffic established and utilized in the Interconnection Agreement.

The definition of ISP-bound Traffic hinges upon the scope of the compensation plan established by the FCC in its Internet Order (also sometimes referred to as the ISP Remand Order). An examination of that order indicates that the FCC was addressing only that traffic bound for the internet where the ISP is located in the same calling area as the calling party. In that order the FCC stated:

As we noted in the *Declaratory Ruling*, an ISP's end-user customers typically access the Internet through an ISP server located in the same local calling area.⁵

In referring back to its earlier determination in the *Local Competition Order* that reciprocal compensation is due only on "local" traffic, the FCC stated the question before it as follows:

As a result of this determination, the question arose whether reciprocal compensation obligations apply to the delivery of calls from one LEC's end-user customer to an ISP in the same local calling area that is served by a competing LEC.⁶ (emphasis added).

In the Internet Order, clearly the compensation plan that the FCC sought to create was to apply only to traffic where the ISP is located within the same local calling area as the calling party. No party in that proceeding advocated that interexchange traffic (where the ISP is located outside of the local calling area) should be subject to a new compensation plan or anything other than access charges. Nowhere in the 54-page Internet Order did the FCC state that it was applying a new compensation plan to calls where the ISP is located outside of the local calling area.

It is untenable for FullTel to suggest that the compensation plan established by the FCC in the Internet Order somehow applies to any and all calls to an ISP regardless of where they are located. For one thing the FCC never stated that to be the case. For another, there is no question that 1+ and 1-800 calls to ISP's today continue to be subject to access charges and not the interim intercarrier compensation plan established by the FCC in the Internet Order. This is because they are calls where the ISP is not located in the same local calling area.

⁵ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"). at ¶ 10.

⁶ *Id.*, at ¶ 13

The limited scope of the FCC's Internet Order was readily apparent to the reviewing Court. In the D.C. Circuit Court's review and remand of the Internet Order the opinion states:

In the order before us the Federal Communications Commission held that under section 251(g) of the Act it was authorized to 'carve out' from section 251(b)(5) calls made to internet service providers ('ISPs') located within the caller's local calling area.⁷ (emphasis added).

The compensation plan established by the FCC in the Internet Order applied only to traffic where the ISP is located within the caller's local calling area. Therefore by its direct reference to traffic subject to the FCC's Internet Order, the definition of "ISP-bound Traffic" contained in the Interconnection Agreement similarly includes only traffic where the ISP is located within the caller's local calling area. Consequently the traffic at issue in this proceeding is not within the definition of ISP-bound Traffic under the Interconnection Agreement and is not subject to the Interconnection Agreement.

In summary, the traffic at issue in this proceeding is not subject to the Interconnection Agreement because:

- 1) Applying the Interconnection Agreement would violate 47 C.F.R. 51.305(b) which prohibits local interconnection solely for the purpose of originating interexchange traffic on the incumbent LEC's network.
- 2) The traffic does not arise as a result of FullTel providing service within CenturyTel's service territory in the State of Missouri (a requirement under the Adoption Letter).
- 3) The traffic does not involve the transmission and routing of Telephone Exchange Service or Exchange Access. (the conditions contained in the first agreement provision cited by FullTel).
- 4) The traffic does not consist of Reciprocal Compensation Traffic or ISP-bound Traffic as defined in the Interconnection Agreement (the conditions contained in the second provision cited by FullTel).

⁷ *WorldCom v. FCC*, 288 F.3d 429, 430 (D.C. Cir. May 3, 2002).

IV. FullTel's Faulty Interpretation of the Interconnection Agreement Would Lead to an Improper Shifting of Costs on to CenturyTel's Network.

By wrongfully asserting that the traffic in question should be subject to the Interconnection Agreement, FullTel hopes to shift the cost of providing service to its ISP customers onto the CenturyTel network. FullTel seeks to have this Commission mandate that CenturyTel must deliver the traffic in question to FullTel at Branson under the guise of the Interconnection Agreement. FullTel seeks delivery at Branson even though the supposedly local traffic does not originate in the Branson local calling area. FullTel seeks to force CenturyTel to bear the cost of transporting this traffic to Branson even though CenturyTel realizes no benefit or revenues from this traffic. It is FullTel who realizes benefit and revenues from the traffic.

A. Currently ISPs Bear the Cost of Transporting Internet Traffic Outside the Local Calling Area.

Currently when a CenturyTel customer dials up to an Internet Service Provider ("ISP"), CenturyTel delivers that traffic to the ISP's modem bank or server located within the local calling area. The call leaves the Public Switched Telephone Network and CenturyTel's responsibility ends when the call reaches the ISP modem bank or server located in the local calling area. This is the ISP-bound traffic described and addressed by the FCC in its Internet Order. To the extent there is a need to connect the CenturyTel customer to more distant points on the internet once the local connection is made, transport to these more distant points would occur outside the public switched telephone network and would be the responsibility of the ISP.

To the extent this traffic uses CenturyTel's network this traffic is truly a local call and CenturyTel recovers its costs from the local rate charged to the customer making the call. As it is not required to transport the call outside of the local calling area, CenturyTel incurs no cost beyond those incurred on any other truly local call. All of this would change if FullTel is allowed to wrongfully apply the Interconnection Agreement to its non-local VNXX traffic.

B. FullTel Seeks to Impose on CenturyTel the Costs of Transporting the Calls to Branson.

As described earlier, with its VNXX calling scheme, FullTel seeks to have CenturyTel customers call FullTel's ISP customer that is located well outside of the local calling area on a "local" basis. Unlike the true ISP-bound traffic just described in the previous section of this brief, this traffic would involve the cost of transporting traffic outside the local calling area. By wrongly asserting that such traffic would be subject to the Interconnection Agreement and further asserting that CenturyTel must deliver all such traffic to FullTel at a single point in Branson, FullTel seeks to impose these transport costs on CenturyTel.

In the example cited earlier, a CenturyTel customer in Ava, Missouri, would place a call to FullTel's ISP customer in Oklahoma City. Under FullTel's argument, CenturyTel would be required to transport that call from Ava to Branson for delivery to FullTel. However, Ava and Branson are not located in the same local calling area. It is FullTel's position that CenturyTel should bear the costs of this interexchange non-local transport as if Ava and Branson were in the same local calling area.

C. It is FullTel and not CenturyTel that would Receive Benefit and Revenue from the Call.

Under FullTel's interpretations, CenturyTel would receive no benefit or revenue from the traffic in question. Normally when CenturyTel's interexchange facilities are utilized, CenturyTel receives revenue in the form of access charges imposed upon the carrier deriving revenue from the call. In the case at hand, FullTel would be deriving revenue from use of CenturyTel's interexchange facilities in that it would be providing an inward toll-free interexchange calling service to its ISP customer. However, FullTel never-the-less asserts that it should not be subject to access charges for use of CenturyTel's interexchange facilities. Therefore, although CenturyTel would be expected to provide FullTel the use of its interexchange facilities, it would receive no revenue in the form of access charges or otherwise.

FullTel is under the mistaken impression that CenturyTel would bill its own customers for this use of CenturyTel's interexchange facilities. At page 7 of the Complaint, FullTel states that: "CenturyTel must interconnect with FullTel and bring traffic originating from CenturyTel customers –the service for which CenturyTel bills its customers –to the POI." (emphasis added). FullTel is dead wrong in stating that CenturyTel bills its customers for this traffic. CenturyTel, in imposing its monthly local rate on customers, does not anticipate use of interexchange facilities that leave the local calling area in the provision of local service. The local monthly rate covers local calls that do not leave the local calling area, using local facilities that do not leave the local calling area. Therefore CenturyTel does not include the cost of interexchange facilities in establishing its rates for local service. The cost of interexchange facilities is instead included in the setting of rates for interexchange service, in other words access charges.

Without access charges, CenturyTel has no revenue source to recover the costs of the use of its interexchange facilities that leave the local calling area, for example, the facilities from Ava to Branson.

It is FullTel and its ISP customer -- not CenturyTel -- that would derive benefit and revenue from this traffic. As the Colorado Public Utilities Commission observed “When connecting to an ISP served by a CLEC, the ILEC end-user acts primarily as the customer of the ISP, not as the customer of the ILEC.”⁸

For the reasons discussed earlier, the traffic in question is not subject to the Interconnection Agreement. It would be particularly inappropriate to rule otherwise when invalid application of the Interconnection Agreement in the manner desired by FullTel would have such unjust consequences. The party benefiting and receiving revenue from the use of interexchange facilities should bear the costs of such use. The costs should not be shifted to the party who receives no benefit or revenues.

The absurdity of applying the Interconnection Agreement to this dynamic is evident in the language of the agreement itself. As noted earlier, one of the provisions cited and relied on by FullTel provides as follows:

Each Party (“Originating Party”), at its own expense, shall provide for delivery to the relevant IP of the Other Party (“Receiving Party”) Reciprocal Compensation Traffic and ISP-bound Traffic that the Originating Party *wishes* to deliver to the Receiving Party. (Section 2.1.2 of the Interconnection Agreement, emphasis added)

Even if FullTel could get past the fact that the traffic in question is neither Reciprocal Compensation Traffic nor ISP-bound Traffic as defined in the agreement, this provision is of no help to its cause. Obviously, if the Originating Party derived no additional

⁸ *In the matter of Petition of Level 3 Communications, LLC*, Docket No. 00B-601T, Decision No. C01-312, at II., C, 8 (March 16, 2001).

revenue from delivering the traffic but only incurred additional costs associated with adding interexchange facilities, the Originating Party would not “wish” to deliver the traffic. Clearly the Interconnection Agreement was never intended to be applied in the manner FullTel seeks.

D. The Additional Costs Shifted to and Imposed Upon CenturyTel would be Significant.

The additional costs that would be shifted to and imposed upon CenturyTel can best be illustrated by looking at a specific route. FullTel will give its ISP customer located in Oklahoma City telephone numbers that are rated out of Ava, Mo. FullTel maintains that CenturyTel’s customers in Ava should then be able to call its ISP customer in Oklahoma City on a “local calling” basis. FullTel further maintains that CenturyTel should be required to transport those calls from Ava to Branson to deliver them to FullTel at Branson at no charge to FullTel or its ISP customer.

CenturyTel currently provides interexchange facilities on a route from Ava to Branson. A specific number of switched trunks are currently operated on this route.⁹ All traffic on these trunks “pays its way.” All such traffic is interexchange traffic because it is in every instance traffic that leaves the Ava local calling area. Consequently, all existing traffic is assessed access charges, which are paid to CenturyTel for use of those interexchange facilities. To the extent that, from time to time, growth in interexchange traffic will require CenturyTel to add interexchange facilities on this route, the additional costs of doing so will be offset by additional access charge revenue associated with the additional traffic.

⁹ These trunks also service traffic leaving the Mansfield local calling area as Mansfield is operated as a remote switch off of the Ava host switch.

FullTel is now demanding that CenturyTel place additional new traffic on the Ava to Branson interexchange route. This is because FullTel insists that CenturyTel must deliver calls from CenturyTel's customers in Ava placed to FullTel's ISP customer, to FullTel in Branson. Such a request might be considered reasonable if the traffic was going to "pay its way" like all other traffic riding the Ava to Branson interexchange route. However, FullTel instead insists that such traffic be given a free ride on those facilities. Although it is FullTel and its ISP customer that will derive revenue from this traffic, they are using this proceeding as an attempt to evade paying to have this traffic ride CenturyTel's facility.

FullTel attempts to obscure these financial realities by claiming that the traffic is somehow CenturyTel's traffic because the call originates from a customer to whom CenturyTel provides local service.¹⁰ This notion is easily dispelled by applying a simple test. Which Party would be harmed if the traffic went away? CenturyTel would not be harmed as it would lose no revenues. The amount it collects from its customers does not change based upon whether its customers make these calls or not. It is FullTel that would be harmed. FullTel would lose revenues because the value of the inward toll-free calling service that it provides to its ISP customer would be diminished. It is therefore clearly FullTel's and not CenturyTel's traffic in any meaningful use of the term.

The costs that FullTel's traffic would impose upon CenturyTel's interexchange facilities from Ava to Branson is not insignificant. Accommodating FullTel's VNXX traffic would require a substantial addition to the number of switched trunks on the Ava to Branson route. In fact the trunks serving all of the traffic currently leaving and

¹⁰ FullTel Complaint at Paragraph 15.

entering the Ava local calling area would have to be more than doubled.¹¹ If new trunks were not added, the existing trunks would immediately exhaust and call blockage would occur on all traffic attempting to leave the Ava local calling area.

It has long been a mantra of CLECs that new competitors should not be required to duplicate the incumbent carrier's network. FullTel's position in this proceeding would turn that mantra on its head. FullTel suggests that CenturyTel should have to more than duplicate its existing network by adding trunks just to accommodate FullTel's traffic. In FullTel's view of the world, duplication of the network should be avoided only if FullTel has to pay the cost, but it is perfectly acceptable to force CenturyTel to do so.

The cost of such a significant addition to the network should be born by the cost causer. In this case it is FullTel who came up with the VNXX numbering scheme that would cause interexchange calls to be treated as local and would require that such traffic be placed on interexchange facilities including those from Ava to Branson. It is FullTel, and not CenturyTel, who would derive revenue from such traffic. Clearly FullTel -- and not CenturyTel -- would be the cost causer.

The Interconnection Agreement does not apply to the traffic in question and certainly would never have been intended to apply in a manner that would result in such a windfall to one party (the cost causer) and injustice to the other party (the non-cost causer).

V. Consistent with Other Agreements Recently Brought to the Commission, the Interconnection Agreement Could be Amended to Cover the Traffic in Question Subject to Reasonable Terms.

¹¹ Calculated based upon the current number of trunks in operation and the additional need for trunks forecasted by FullTel (see Exhibit 2 to the Joint Stipulation of Fact).

FullTel is not the only carrier who has sought to exchange this type of traffic with CenturyTel. Both MCImetro Access Transmission Services, LLC (“MCI”), and CD Telecommunications, LLC (“CD”) sought to provide service to ISPs. Both companies sought to exchange traffic where a customer receiving local service from CenturyTel calls the ISP. Both companies, via the use of VNXX numbering, sought to have such traffic treated as local even where the ISP is not located within the calling party’s local calling area. In other words, the traffic at issue for both companies was the same as the traffic in question in this proceeding. (all such traffic being referred to hereafter as “VNXX traffic.”)

MCI and CenturyTel had in place the very same Brooks Fiber Agreement that FullTel seeks to apply in this case. MCI and CenturyTel agreed to amend the Brooks Fiber Agreement so that it covered VNXX traffic and did so under reasonable terms and conditions.¹² CenturyTel agreed to treat the VNXX traffic as local but only if MCI and not CenturyTel would bear the costs associated with transporting the traffic beyond the local calling area. This was only reasonable given that MCI would be the party deriving revenue from the traffic. The parties agreed to these terms in the amendment.¹³

Given that CenturyTel and FullTel are dealing with the same underlying interconnection agreement, CenturyTel offered to enter the same amendment with FullTel.¹⁴ In this way the Interconnection Agreement could be amended so that it covered VNXX traffic and did so subject to reasonable terms and conditions. Unlike MCI, FullTel has rejected CenturyTel’s offer, choosing instead to take the untenable

¹² The MCI/CenturyTel amendment was submitted to the Commission in Case No. LO-2005-0383 and approved by the Commission by Order issued June 2, 2005.

¹³ Sections 1 and 3 of the First Amendment to Interconnection Agreement.

¹⁴ See Exhibit 6 to the Joint Stipulation of Fact.

position that the existing agreement covers VNXX traffic in hopes that it can get the windfall described above in Section IV.D. of this brief.

More recently, CenturyTel and CD dealt with treatment of VNXX traffic. In negotiating a new interconnection agreement CD and CenturyTel executed an Addendum specifically addressing the treatment of VNXX traffic. A review of the CD/CenturyTel Addendum shows it to have terms very similar to those in the MCI amendment.¹⁵

FullTel's attempt to somehow apply the Interconnection Agreement to the traffic in question is not only not supported by the law or the language of the agreement, it is also completely out of step with the reasonable terms and conditions that other parties have recently agreed to. The Commission should not adopt FullTel's strained interpretation to expand the scope of the Interconnection Agreement to cover VNXX traffic. Rather the Commission should deny the complaint and free the parties to negotiate an amendment or new agreement that would cover VNXX traffic and apply reasonable terms to exchange of such traffic, much like MCI/CenturyTel and CD/CenturyTel have already done.

¹⁵ CTL/CD Agreement and Addendum are on file in Case No. TK-2006-0126.

CONCLUSION

WHEREFORE, based upon CenturyTel of Missouri, LLC's Motion to Dismiss, Answer and Affirmative Defenses, as well as the arguments and legal authority set forth herein, CenturyTel respectfully requests that the Commission dismiss FullTel's complaint or, in the alternative, deny the relief requested therein.

Respectfully submitted this 4th day of November 2005.

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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), William K. Haas, Deputy General Counsel (at william.haas@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 4th day of November 2005.

/s/ Larry W. Dority