

**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	)	<b>Case No. LA-2004-0133</b>
and Interexchange Voice Service	)	
in Portions of the State of Missouri	)	
And to Classify said Services and	)	
the Company as Competitive.	)	

**BRIEF IN SUPPORT OF COMMISSION JURISDICTION  
OF  
SPECTRA COMMUNICATIONS GROUP, LLC dba CENTURYTEL  
AND CENTURYTEL OF MISSOURI, LLC**

**COMES NOW** Spectra Communications Group, LLC d/b/a CenturyTel and CenturyTel of Missouri, LLC (collectively referred to herein as “CenturyTel”), and hereby submits its Brief in response to the Commission’s *Order Directing Filing of Briefs* entered in this matter on November 10, 2003.

**SUMMARY**

In its November 10 *Order*, the Commission observes that the applicant in this proceeding, Time Warner, “intends to offer Voice over Internet Protocol, which is a relatively unexplored technology with regulatory uncertainties. Of those uncertainties is whether or not the Commission has jurisdiction over VoIP.” Accordingly, the Commission proceeds to order each party to this matter to file a brief setting forth its position on the following threshold issue: whether the Missouri Public Service Commission has jurisdiction to regulate Voice over Internet Protocol services. CenturyTel respectfully submits that Missouri law, as set forth in Chapter 386 of the

Revised Statutes of Missouri, clearly provides this Commission jurisdiction to regulate VoIP services.

As a preliminary matter, CenturyTel would note that it is already on record in support of this Commission's expeditious examination of the important regulatory and public policy issues associated with the provisioning of VoIP services. 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*, CenturyTel strongly supported the Staff's Motion to Open Case, agreeing that the Commission clearly needs to address the critical issues dealing with this subject matter. Whereas the Commission's Order of November 4 in that proceeding announced the Commission's intention to address such issues in the course of this case, CenturyTel intends to actively participate in the Commission's examination of VoIP services herein. CenturyTel respectfully submits, however, that a brief review of the Missouri statutes regarding the scope of the Commission's authority, clearly reveals that this Commission has jurisdiction over VoIP services. In addition, despite the protestations of those who would suggest that this Commission should ignore these important issues because the Federal Communications Commission ("FCC") has expressed its "intent" to conduct such an examination, neither the FCC nor federal law has preempted this Commission's authority under state law to address the regulatory issues associated with VoIP services.

#### **MISSOURI LAW**

Section 386.250(2) RSMo 2000 provides that the jurisdiction, supervision, powers and duties of the Public Service Commission shall extend "(t)o all telecommunications facilities, telecommunications services and to all telecommunications companies so far as

such telecommunications facilities are operated or utilized by a telecommunications company to offer or provide telecommunications service between one point and another within this state or so far as such telecommunication services are offered or provided by a telecommunications company between one point and another within this state..." The operative terms contained in that express statutory grant of authority are defined in Section 386.020 RSMo, which provides the following:

(51) "Telecommunications company" includes telephone corporations as that term is used in the statutes of this state and every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any facilities used to provide telecommunications service for hire, sale or resale within this state;

(52) "Telecommunications facilities" includes lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used, operated, controlled or owned by any telecommunications company to facilitate the provision of telecommunications service;

(53) "Telecommunications service", the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does not include:

(a) The rent, sale, lease, or exchange for other value received of customer premises equipment except for customer premises equipment owned by a telephone company certificated or otherwise authorized to provide telephone service prior to September 28, 1987, and provided under tariff or in inventory on January 1, 1983, which must be detariffed no later than December 31, 1987, and thereafter the provision of which shall not be a telecommunications service, and except for customer premises equipment owned or provided by a telecommunications company and used for answering 911 or emergency calls;

(b) Answering services and paging services;

(c) The offering of radio communication services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations;

(d) Services provided by a hospital, hotel, motel, or other similar business whose principal service is the provision of temporary lodging through the owning or operating of message switching or billing equipment solely for the purpose of providing at a charge telecommunications services to its temporary patients or guests;

(e) Services provided by a private telecommunications system;

(f) Cable television service;

(g) The installation and maintenance of inside wire within a customer's premises;

(h) Electronic publishing services; or

(i) Services provided pursuant to a broadcast radio or television license issued by the Federal Communications Commission;

Under Missouri law, any telecommunications service, regardless of the technology utilized, is subject to the Commission's jurisdiction unless it falls within the specific statutory exemptions listed above. Indeed, there is no such exemption for VoIP services. In its Application, Time Warner advises the Commission that it "proposes to provide local and interexchange voice service on a facilities and resold basis. . ." (Application, p. 2). In addition, it states that customers will "have access to the public switched telephone network ("PSTN") and thus will be able to call and be called by all other parties connected to the PSTN." (Application, Exhibit B). As a result, these VoIP services are subject to this Commission's regulation and all appropriate compensation requirements for the exchange of such traffic.

### **NO FEDERAL PREEMPTION**

CenturyTel respectfully submits that there is nothing in the federal law, or any FCC action, that preempts this Commission from exercising its authority under Missouri law to regulate VoIP services. As noted in the Commission Staff's Motion filed in Case

No. TO-2004-0172, the FCC is preparing a major examination of the regulation of VoIP services, and at least ten states are at various stages of examining similar issues and/or drafting some sort of VoIP telephony regulations. On November 6, 2003, the FCC issued a Press Release announcing that it would initiate a notice of proposed rulemaking on regulation of voice-over-Internet protocol (VoIP) services, shortly after the FCC hosts a VoIP forum, scheduled for Dec. 1, 2003. Among the issues to be addressed in the NPRM are “regulatory classification” issues. While some parties will argue that the mere initiation of a federal proceeding should cause this Commission to stand idle on the sidelines, no one can predict when the FCC will reach a final resolution or what the actual outcome may be.

## CONCLUSION

CenturyTel respectfully submits that this Commission clearly has jurisdiction over VoIP services under Missouri law, which should be asserted herein. CenturyTel supports the Commission's examination of the regulatory and policy issues associated with these telecommunications services, and commits to assist the Commission in its analysis.

Respectfully submitted,

/s/ Larry W. Dority

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## Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 21<sup>st</sup> day of November, 2003.

/s/ Larry W. Dority

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