

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

Petition of FullTel, Inc. for Approval of an)	
Interconnection Agreement Pursuant to)	Case No. TK-2005-0079
Section 252 of the Communications Act)	
of 1934, as Amended)	

**JOINT REPLY TO THE
STAFF RESPONSE TO APPLICATION FOR REHEARING
AND THE
RESPONSE OF FULLTEL TO CENTURYTEL'S APPLICATION FOR
REHEARING AND REQUEST FOR CLARIFICATION OF ORDER**

COME NOW CenturyTel of Missouri, LLC ("CenturyTel") and Spectra Communications Group, LLC d/b/a CenturyTel ("Spectra"), pursuant to Commission Rule 4 CSR 240-2.080(15), and for their Joint Reply to (1) the Staff Response to Application for Rehearing ("Staff Response") and (2) the Response of FullTel to CenturyTel's Application for Rehearing and Request for Clarification of Order ("FullTel Response"), respectfully state as follows:

1. On December 30, 2004, the Commission, on a 3-2 vote, issued its Order Recognizing Adoption of Interconnection Agreement ("Order"), wherein FullTel, Inc.'s "Petition of FullTel, Inc. for Confirmation of Interconnection Agreement Adoption" was granted in part and denied in part.¹

2. CenturyTel and Spectra timely filed their Application for Rehearing of the Commission's Order on December 30, 2004 and, on that same date, the Commission

¹ "That FullTel, Inc.'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, is hereby recognized as to CenturyTel of Missouri, LLC, but not Spectra Communications Group, LLC d/b/a CenturyTel, pursuant to Section 252(i) of the Telecommunications Act of 1996." Ordered Paragraph 2 of the Order, page 8.

issued its Order Directing Filing, directing FullTel and Staff to respond to the Application for Rehearing no later than January 11, 2005.

3. Consistent with its Staff Memorandum filed in this matter on November 5, 2004, wherein the Staff “recommends that the Commission reject the confirmation of interconnection agreement adoption,” the Staff Response supports the granting of a rehearing – “Staff requests the Commission to grant rehearing for the purpose of conducting a hearing.”² While the Commission’s Order “finds that CenturyTel is Verizon Midwest’s successor-in-interest,” the Staff reminds the Commission that Case No. TM-2002-232, *In the Matter of the Joint Application of GTE Midwest Incorporated, d/b/a Verizon Midwest, and CenturyTel of Missouri, LLC*, 11 Mo. P.S.C. 3d 288, involved an asset purchase agreement, wherein the Commission authorized GTE Midwest to sell all of its telecommunications facilities, assets and equipment located in its then remaining 96 exchanges to CenturyTel of Missouri, LLC. The Staff cites Missouri case law that addresses the question of an asset-purchasing corporation’s liability, and notes that it is a question of fact whether an exception to the general rule of nonliability applies to CenturyTel of Missouri’s purchase of Verizon Midwest’s assets.

The reasonableness of a Commission order depends on whether it is supported by competent and substantial evidence upon the whole record; whether it was arbitrary, capricious or unreasonable; or whether the Commission abused its discretion. *State of Missouri ex rel. Associated Natural Gas Company v. Public Service Commission*, 37 S.W. 3d 287, 292 (Mo. App. W.D. 2000).

The record as it now stands does not support a finding that CenturyTel of Missouri is a successor to Midwest Verizon. The record as it now stands supports a finding that CenturyTel of Missouri is not a successor to Midwest Verizon. (Emphasis added).³

² Staff Response, page 4.

³ *Id.*, Paragraphs 9 and 10, pages 2-3.

4. CenturyTel and Spectra concur in Staff's conclusion that the record as it now stands supports a finding that CenturyTel is not Verizon Midwest's successor-in-interest and, accordingly, CenturyTel does not take on Verizon Midwest's liability on the Brooks Fiber agreement.

5. CenturyTel and Spectra respectfully submit that FullTel's Response, while long on conclusory rhetoric, provides no substantive support for the majority's unlawful and unreasonable Order. However, there are three specific areas contained in FullTel's Response that CenturyTel and Spectra must address: (a) the request to "clarify the scope of the Commission's Order to also include Spectra as a party to the newly-formed interconnection agreement;" (b) the purported "June 2004 date of adoption," whereby FullTel seeks to unilaterally circumvent the effect of the FCC's Interim Order and resulting freeze; and (c) the reference to Spectra Communications Group, LLC d/b/a CenturyTel's previous allegations concerning the Missouri statutory definition for "Incumbent Local Exchange Telecommunications Company" in the context of its petition regarding price cap regulation under Section 392.245, RSMo 2000.

6. Although FullTel's purported adoption of the Brooks Fiber Agreement specifically was not recognized as to Spectra (*supra*, Footnote 1, page 1), in its Response FullTel nevertheless "requests that the Commission clarify the scope of its Order to also include Spectra as a party to the newly-formed interconnection agreement."⁴ FullTel appears to base its request for "clarification" on the fact that, subsequent to the date of the Commission's Order, it provided a purported notice of adoption to Spectra. (January 10, 2004 correspondence attached as Exhibit 2 to FullTel's Response). Announcing that it

⁴ FullTel Response, page 1.

has “now cleared the sole remaining hurdle,”⁵ FullTel appears to suggest that by addressing one fatal flaw specifically identified in the Commission’s Order, there could be no other bases to deny this unlawful request. While the Commission appropriately determined that since FullTel “did not notify Spectra of its wish to adopt the Brooks Fiber agreement, FullTel is not a ‘requesting telecommunications carrier’ in relation to Spectra,”⁶ there are many other reasons why the Brooks Fiber agreement is not legally applicable to Spectra. Not the least of which is the fact that at the time of Spectra’s acquisition of portions of Verizon’s Missouri properties in 2000 (in accordance with the terms and obligations resulting from the Joint Recommendation and Report and Order entered in Missouri Public Service Commission Case No. TM-2000-182), there was no Brooks Fiber Agreement. See also, Report and Order, Case No. CO-2005-0066, *In the Matter of the Confirmation of Adoption of an Interconnection Agreement with CenturyTel of Missouri, LLC d/b/a CenturyTel and Spectra Communications Group, LLC d/b/a CenturyTel by Socket Telecom, LLC*, December 24, 2004. Therefore, even if Spectra was considered to be Verizon Midwest’s successor-in-interest (which it was not) it could not be deemed to have assumed the Verizon/Brooks Fiber agreement, as that agreement did not exist at the time Spectra purchased the Verizon Midwest assets. How can Spectra be deemed to have assumed a Verizon agreement that Verizon did not execute until after Verizon and Spectra had completed their transaction and gone their separate ways? Spectra has specifically denied FullTel’s January 10, 2005 purported adoption, as set forth in correspondence dated January 20, 2005 (attached hereto as Exhibit 1). Granting FullTel’s “clarification” would be a wholesale departure from the Commission’s Order

⁵ *Id.*, page 7.

⁶ Order, page 4.

and clear Commission precedent, and is unlawful, unreasonable and unsupported by competent and substantial evidence on the whole record.

7. FullTel appears to suggest that since it unilaterally sent a notification to CenturyTel of Missouri dated June 18, 2004, “that date precedes the date of the FCC’s Interim Order (September 13, 2004) by several months” and, therefore, the subsequent freeze would not apply to FullTel.⁷ As the Staff, CenturyTel and Spectra previously advocated in their pleadings herein, the FCC’s interim rules would, indeed, prevent FullTel from unilaterally adopting the Brooks Fiber Agreement. FullTel could not unilaterally adopt the agreement by simply sending correspondence to a carrier on June 18, 2004. The Commission has consistently taken the position that approval of interconnection agreement adoptions is necessary under 252(e). For example, in its Order Denying Motion to Reject and Approving Interconnection Agreement issued in In the Matter of the Adoption of the GTE/Communications Cable-Laying Co dba Dial US Interconnection Agreement by Teleport Communications Group, Case No. TO-99-94 (Nov. 25, 1998), the Commission rejected GTE’s argument that an agreement adopted pursuant to rights granted in Section 252(i) did not have to be submitted for approval under Section 252(e). The Commission stated: “Nothing in 252(i) would override Section 252(e)(1) of the Act, which requires that interconnection agreements be submitted for approval to the state commission. . . .” Indeed, in the Commission’s Proposed Rule 4 CSR 240-3.513 (Filing and Submission Requirements for Telecommunications Company Applications for Approval of Interconnection Agreements, Amendments to Interconnection Agreements, and for Notices of Adoptions of Interconnection Agreements or Statements of Generally Available Terms), Case No.

⁷ FullTel Response, Footnote 19.

TX-2003-0565, Missouri Register, January 18, 2005, Section (4)(A) of the proposal provides that, “The adoption shall be deemed approved on the date it is properly submitted as set forth in this rule. No adoption will become effective prior to the date it is properly submitted as set forth in this rule.” Of course, as here, if the purported adoption is objected to by the non-signatory party, the commission will ultimately determine whether to approve or reject the adoption. (Proposed Rule 4 CSR 240-3.513(4)(B)).

8. Finally, CenturyTel and Spectra must object to FullTel’s disingenuous suggestion that since Spectra Communications Group, LLC d/b/a CenturyTel previously alleged that it met the Missouri statutory definition for “Incumbent Local Exchange Telecommunications Company” in the context of its petition regarding price cap regulation, it has somehow admitted that it is a “successor-in-interest” to Verizon for purposes of this §252(i) adoption proceeding. Section 386.020(22) defines “incumbent local exchange telecommunications company” as a “local exchange telecommunications company authorized to provide basic local telecommunications service in a specific geographic area as of December 31, 1995, or a successor in interest to such a company.” Accordingly, Spectra appropriately alleged that it met this definition in its petition regarding price cap regulation, Case No. IO-2003-0132. The statutory definition of an incumbent local exchange telecommunications company has no bearing or impact whatsoever on the question of an asset-purchasing company’s contractual liability. Indeed, as the Staff Response points out, the fact that CenturyTel did not assume Verizon’s price cap status is further indication that neither CenturyTel nor Spectra can be considered successors to Verizon for these purposes.

Also, in Case No. TM-2002-232, the Commission granted CenturyTel price cap status pursuant to Section 392.245.2 RSMo. The fact that CenturyTel did not assume Midwest Verizon's existing price cap status is further indication that CenturyTel of Missouri is not a successor to Verizon Midwest.⁸

WHEREFORE, CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel respectfully file their Joint Reply, and again move that the Commission grant their Application for Rehearing previously filed herein.

Respectfully submitted,

/s/ Larry W. Dority

James M. Fischer Mo. Bar 27543

Email: jfischerpc@aol.com

Larry W. Dority Mo. Bar 25617

Email: lwdority@sprintmail.com

FISCHER & DORITY, P.C.

101 Madison, Suite 400

Jefferson City, MO 65101

Tel: (573) 636-6758

Fax: (573) 636-0383

Attorneys for CenturyTel of Missouri, LLC and Spectra
Communications Group, LLC d/b/a CenturyTel

⁸ Staff Response, page 4.

FISCHER DORITY
PROFESSIONAL CORPORATION

James M. Fischer
Larry W. DORITY

Attorneys at Law
Regulatory & Governmental Consultants

101 Madison, Suite 400
Jefferson City, MO 65101
Telephone: (573) 636-6758
Fax: (573) 636-0383

January 20, 2005

VIA FACSIMILE
(573) 636-3306

Mark W. Comley, Esq.
Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, Missouri 65102-0537

Re: FullTel, Inc.

Dear Mark:

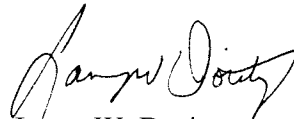
This letter is in response to your correspondence on behalf of FullTel, Inc. dated January 10, 2004, to Spectra Communications Group, LLC d/b/a CenturyTel ("Spectra") concerning FullTel's attempt to adopt the interconnection agreement between GTE Midwest Incorporated, d/b/a Verizon Midwest ("Verizon Midwest") and Brooks Fiber Communications of Missouri, Inc. (the "Brooks Fiber Agreement"), approved by the Missouri Public Service Commission on August 5, 2002 in Case No. CK-2002-1146. Spectra Communications Group, LLC d/b/a CenturyTel was not a party to the Brooks Fiber Agreement and, accordingly, the Brooks Fiber Agreement is not available for adoption pursuant to Section 252(i) of the Act. As you are aware, at the time of Spectra's acquisition of portions of Verizon's Missouri properties in 2000 (in accordance with the terms and obligations resulting from the Joint Recommendation and Report and Order entered in Missouri Public Service Commission Case No. TM-2000-182), there was no Brooks Fiber Agreement. See also, Report and Order, Case No. CO-2005-0066, *In the Matter of the Confirmation of Adoption of an Interconnection Agreement with CenturyTel of Missouri, LLC d/b/a CenturyTel and Spectra Communications Group, LLC d/b/a CenturyTel by Socket Telecom, LLC*, December 24, 2004.

If you or representatives of FullTel, Inc. wish to discuss the adoption of a current Spectra Communications Group, LLC d/b/a CenturyTel interconnection agreement in Missouri, please contact Susan Smith, Director-External Affairs, CenturyTel, 911 North Bishop, Suite C-207, Texarkana, TX 75501, (903) 792-3499.

Mark W. Comley
January 20, 2005
Page Two

Please feel free to contact me should you have any questions or wish to discuss this matter further. Thank you.

Sincerely,



Larry W. Dority

cc: William Voight, Missouri Public Service Commission (via facsimile)
Andrew M. Klein, Esq. (via facsimile)
Arthur Martinez, CenturyTel (via facsimile)
Susan Smith, CenturyTel (via facsimile)

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 21st day of January, 2005, to:

Mark W. Comley
Newman, Comley & Ruth, P.C.
601 Monroe Street
P.O. Box 537
Jefferson City, MO 65102

Dana K. Joyce, General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Andrew M. Klein
Piper Rudnick, LLP
1200 19th Street N.W.
Washington, D.C., 20036

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

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

/s/ Larry W. Dority _____
Larry W. Dority