

Calvin K. Simshaw
Vice President
Associate General Counsel - Regulatory



June 23, 2005

Roger Baresel
Fulltel, Inc.
201 Robert S. Kerr Ave – Suite 210
Oklahoma City, OK 73102-4202

Re: Fulltel Interconnection

Dear Mr. Baresel:

I have been asked to provide a response to your letter of June 7, 2005 given that it presents numerous legal interpretations. I gather from reviewing prior correspondence that Fulltel desires to interconnect with CenturyTel's network for the purpose of exchanging traffic originating from CenturyTel customers located in Ava, Mansfield, Willow Springs and Gainesville, MO on the one hand, and terminating to Fulltel customers located in Oklahoma City.

As noted in Ms. Smith's earlier letter, 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 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))

CenturyTel takes exception to the implication in your letter that the FCC has somehow removed interexchange traffic that terminates to an ISP customer from the access charge regime. The FCC has never ruled that calls to an ISP that is not located in the same local calling area are not interexchange calls or should

not be subject to access charges. The *ISP Remand Order*¹ that you cite in your letter clearly addressed only local calls to ISPs. The D.C. Circuit Court that reviewed and remanded the FCC's *ISP Remand Order* correctly noted that the FCC had addressed only local calls to ISPs. 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.

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

The traffic Fulltel seeks to exchange is interexchange traffic subject to access charges. Therefore, CenturyTel has offered, and continues to offer to interconnect with Fulltel for exchange of this traffic pursuant to appropriate access tariffs. Fulltel need only submit a proper ASR.

CenturyTel also disagrees with Fulltel's assertion that applicable law somehow mandates that CenturyTel carry all traffic to a single point of interconnection ("POI") in the LATA. The subject of appropriate POIs is very much up in the air at this time. In the *Intercarrier Compensation NPRM*, the FCC solicited comment on whether an incumbent LEC should be obligated to bear its own costs of delivering traffic to a single POI when that POI is located outside the calling party's local calling area.² The FCC has not yet answered that question and has asked it again in the more recent *Intercarrier Compensation FNPRM*³

In the FNPRM the FCC stated very legitimate concerns with regard to any attempt to force a single POI outside the calling area:

When traffic is out of balance, the cost of interconnection is borne primarily by the originating carrier, and the terminating carrier may lack the incentive to minimize the transport costs associated with connecting the two networks.⁴ For instance, competitive LECs appear to have targeted customers that primarily or solely receive traffic, such as ISPs, in order to become net recipients of traffic.⁵ NPRM at paragraph 91.

¹ *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 Order on Remand*").

² *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9651, para. 113.

³ *Intercarrier Compensation* CC Docket No. 01-92, Further Notice of Proposed Rulemaking, adopted Feb. 10, 2005.

⁴ See Sprint Comments at 29.

⁵ *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9616, para. 11. In such situations, the originating carrier bears the cost of interconnection to the single POI selected by the competitive LEC in addition to paying reciprocal compensation for the termination of traffic. Because ISP customers rarely, if ever, originate traffic, there is little traffic flow in the opposite direction, and the originating carrier bears the majority of the interconnection costs between the two carriers.

Given that in this instance Fulltel is seeking to terminate one-way traffic to its ISP customer in Oklahoma City, CenturyTel is concerned that Fulltel is attempting to perpetrate the very abuse that the FCC has described.

CenturyTel strongly disagrees with Fulltel's stated interpretation of the interconnection agreement that Fulltel was allowed to adopt (the "Brooks Fiber Agreement"). Given the circumstances leading to application of the Brooks Fiber Agreement, it is not surprising that disagreements would arise. The Brooks Fiber Agreement is actually an adoption of the agreement between ICG Telecom Group and Verizon California for the state of California. Given that neither CenturyTel nor Fulltel participated in the development of that agreement it is difficult to discern what the original intent of the parties may have been with regard to each provision. To further complicate matters the agreement was written before, and did not anticipate the issues arising from the advent of attempts to provision dial-up ISP-bound traffic via a Virtual NXX arrangement.

CenturyTel recently experienced similar disagreements with MCI concerning application (or non-application) of this same Brooks Fiber agreement. Fortunately the parties were able to resolve their differences without resorting to litigation. Rather than litigating an interpretation of the Brooks Fiber agreement, CenturyTel and MCI executed an amendment to the agreement specifying mutually acceptable terms applicable to dial-up ISP-bound traffic provisioned via a Virtual NXX arrangement. The amendment includes resolution of the POI issue.

In hopes that Fulltel would give serious consideration to a similar approach to resolving the differences arising in this matter, I have attached a copy of the CenturyTel/MCI amendment for your review.

I can be reached at (360) 905-5958 or calvin.simshaw@centurytel.com to discuss the amendment or any other aspect of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Calvin K. Simshaw /rp".

Calvin K. Simshaw
Assoc. Gen. Counsel

cc: John Van Eschen, Missouri PSC
Bill Voight, Missouri PSC
Guy Miller
Susan Smith