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August 23, 2007

The Honorable Coleen M. Dale
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, Missouri 65101

Re: Complaint of Charter Fiberlink-Missouri, LLC Seeking Expedited Resolution and Enforcement of Interconnection Agreement Terms Between Charter Fiberlink-Missouri, LLC and CenturyTel of Missouri, LLC

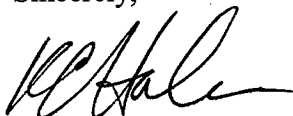
Dear Judge Dale:

Attached for electronic filing in the above-referenced matter please find the Complaint and Motion for Expedited Treatment by Charter Fiberlink-Missouri, LLC, seeking expedited resolution and enforcement of the interconnection agreement terms between Charter Fiberlink-Missouri, LLC and CenturyTel of Missouri, LLC ("CenturyTel").

As noted in the attached certificate of service, a copy of this filing has been sent to CenturyTel corporate representatives, and Mr. Larry Dority, counsel for CenturyTel in prior proceedings before this Commission.

Please docket these pleadings at your earliest convenience. Thank you.

Sincerely,



K.C. Halm

Enclosures

cc: Counsel of Record

**BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION**

Complaint of

Charter Fiberlink-Missouri, LLC Seeking
Expedited Resolution and Enforcement of
Interconnection Agreement Terms Between
Charter Fiberlink-Missouri, LLC and CenturyTel
of Missouri, LLC

Case No. _____

**COMPLAINT
AND REQUEST FOR EXPEDITED TREATMENT**

Pursuant to Missouri Code of State Regulations, 4 C.S.R. 240-2.070, and 47 U.S.C. § 252, Charter Fiberlink-Missouri, LLC (“Charter”) hereby files this complaint against CenturyTel of Missouri, LLC (“CenturyTel”) to enforce the terms of the current interconnection agreement (“Agreement”) between CenturyTel and Charter.

Charter seeks an expedited ruling and order from the Missouri Public Service Commission (“PSC” or “Commission”) that requires CenturyTel to continue processing requests from Charter to ensure that telephone subscribers in Missouri can continue to “port” (or transfer) their telephone numbers from CenturyTel’s network to Charter’s network. Charter also seeks a determination by this Commission that CenturyTel has improperly billed Charter for porting telephone numbers from CenturyTel’s network to Charter’s network, and for other various charges for which CenturyTel is not entitled to payment.

In conjunction with this request, Charter is filing a motion for expedited treatment

which requests that the Commission address the first count of this complaint on an expedited basis (no later than August 28, 2007), and enjoin CenturyTel from unilaterally declaring Charter in default of the Agreement and discontinuing requests from Charter to port additional telephone numbers.

I. PARTIES

1. Petitioner, Charter Fiberlink-Missouri, LLC, is a certificated local exchange carrier ("LEC") in Missouri, operating under a certificate issued by the Commission in docket number TA-2001-346. Charter is headquartered at 12405 Powerscourt Drive, St. Louis, Missouri, 63131. Charter's telephone number is 314-965-0555; and fax number is 314-965-6640.

2. Respondent, CenturyTel of Missouri, LLC ("CenturyTel"), is an incumbent LEC operating in certain parts of the state. CenturyTel acquired its operations in Missouri via an acquisition of certain Verizon (formerly GTE Midwest) properties. CenturyTel is headquartered at 100 CenturyTel Drive, Monroe, Louisiana, 71203.

3. Charter and CenturyTel are parties to an effective interconnection agreement that is on file with this Commission, a copy of which is attached as Exhibit 1. Because CenturyTel acquired the system and operations of Verizon, it assumed the terms of the effective interconnection agreement between Charter and Verizon. However, the interconnection agreement was not modified to reflect CenturyTel's acquisition, so the agreement continues to identify the parties thereto as Charter Fiberlink and Verizon. Accordingly, for purposes of this complaint, all references to the parties current Agreement will identify CenturyTel as the incumbent LEC which is party to the agreement.

II. COMMISSION JURISDICTION

4. The Commission has jurisdiction over this formal complaint pursuant to 4 C.S.R. 240-2.070(3), to adjudicate the dispute between the parties; and, the Commission also has the authority under 47 U.S.C. § 252, and *Southwestern Bell Tel. Co. v. Connect Commun. Corp.*, 225 F.3d 942, 947 (8th Cir. 2000), and such other provisions of federal and state law as may be applicable, to interpret and enforce the terms of the parties' Agreement.

III. NATURE OF COMPLAINT

5. This complaint is an action to enforce the terms of the Agreement between the parties regarding CenturyTel duties to provide number portability without charge to Charter; to adjudicate the billing dispute that has arisen between the parties; and, to prohibit and enjoin CenturyTel from asserting that Charter is in default of the parties' Agreement and acting unilaterally to discontinue service order requests from Charter.

IV. FACTS

A. THE PARTIES' AGREEMENT

6. Charter operates as a competitive LEC in Missouri, including in portions of the state where CenturyTel operates as the incumbent LEC. CenturyTel is an incumbent LEC by virtue of its acquisition of certain Verizon (formerly GTE Midwest) operations in a number of rate centers, including Dardenne, St. Peters, O'Fallon, Wentzville, Bourbon and Cuba.

7. Before CenturyTel acquired the Verizon properties Charter had entered into an interconnection agreement (the "Agreement" as defined above) with Verizon in

August of 2001. The Agreement was filed with, and approved by, the Commission. Upon CenturyTel's acquisition of the Verizon properties, on or about, September 1, 2002, Verizon assigned and transferred the Agreement to CenturyTel.

8. Thus, Charter and CenturyTel have been operating under the terms of the Agreement since 2002. The initial term of the Agreement ended in late 2002, but the contract continues in effect under the terms of an evergreen clause.

B. THE PARTIES' BILLING DISPUTE

9. Immediately after CenturyTel assumed operation and control of the systems from Verizon, on or about September of 2002, the billing problems between CenturyTel and Charter began. Generally speaking, CenturyTel assessed upon Charter a variety of different charges that were either not authorized under the agreement; for which CenturyTel was not entitled to payment; or, which were specifically prohibited under federal law.

10. More specifically, CenturyTel has improperly billed Charter for hundreds of thousands of dollars over the course of the last five years. The improper and unauthorized charges generally fall into one of four categories, as follows:

- a. The first, and by far the largest, category of charges are those assessed on Charter every time that CenturyTel ports a telephone number to Charter's network.
- b. The second category of charges involve so-called customer records searches that are necessary to ensure subscribers are properly listed in telephone directories.

- c. The third category of charges are monthly recurring charges associated with certain unique directory listings, for example requests by subscribers for non-publish or non-list status in CenturyTel directories.
- d. The fourth category of charges cover a variety of miscellaneous billing charges which do not fall within any of the three other categories, but which clearly constitute billing error by CenturyTel.

11. The total amount of charges that CenturyTel has billed, and which Charter has disputed, in all four of these categories, is approximately two hundred and forty-five thousand dollars (\$245,000).

12. Of that amount, approximately two hundred thousand dollars (\$200,000), are for CenturyTel charges for its actions associated with CenturyTel's provision of local number portability to telephone subscribers in Missouri. Number portability is, of course, the act of "porting" (or transferring) a subscriber telephone number when that subscriber discontinues service from one carrier and initiates service with another carrier. Although number porting does not occur for every subscriber that changes service providers, most subscribers that switch providers also wish to port their numbers.

13. Therefore, when a telephone subscriber seeks to change service providers, both providers must act in concert to ensure that the number is ported according to the customer's wishes. When that happens between the parties in this dispute, Charter must inform CenturyTel of the subscriber's request to port the number, and CenturyTel must confirm receipt of the Charter request and then actually port the number.

14. Every time that such a request is made by Charter on behalf of a subscriber in Missouri, CenturyTel attempts to shift its costs associated with porting the

number by assessing a service order charge upon Charter. Specifically, when Charter submits a local service request ("LSR") form notifying CenturyTel that a subscriber seeks to port a number, CenturyTel assesses a \$19.78 charge on Charter. CenturyTel does so even though this charge is not authorized by the parties' Agreement, and is specifically prohibited under federal law.

15. CenturyTel began billing Charter for these charges on, or about, June of 2003. At that time, CenturyTel began billing Charter for every occasion that Charter submitted a LSR form to CenturyTel requesting that a subscriber's telephone number be ported to Charter's network.

16. Upon receipt of the bills containing these charges Charter reviewed the terms of its Agreement with CenturyTel and determined that there was no contractual basis for the charges. Further, upon reviewing applicable federal law, Charter also determined that the charges were prohibited under federal law.

17. Because the charges were impermissible under the parties' Agreement, and/or prohibited by federal law, Charter determined that it was not liable for the charges and that CenturyTel was not entitled to payment for such charges. Accordingly, and consistent with the Agreement's bill dispute provisions, Charter formally disputed the number porting charges, and the other categories of charges identified in paragraph 10, above.

18. Charter disputed these charges, and engaged in formal dispute resolution processes, through a series of communications with CenturyTel representatives beginning in 2003. However, in the spring of 2004 CenturyTel issued the same threat to Charter that precipitated this complaint. Specifically, CenturyTel stated that Charter must pay all

of the pending, disputed charges billed to date (through June, 2004), or CenturyTel would disconnect, or discontinue service to Charter.

19. Forced with this threat of discontinuance, Charter felt as if it had no other option but to accede to CenturyTel's demands. Thus, on June 16, 2004, Charter paid \$68,867.61 to CenturyTel, under duress, simply to ensure that CenturyTel would continue honoring port requests, and other service orders from Charter. In making such payments, Charter did not admit liability for the charges and specifically reserved the right to seek a refund of the payment.

20. Furthermore, following that event, Charter invoked the formal dispute resolution provisions of the Agreement in an effort to resolve the parties' then-developing billing disputes.

21. Specifically, through various correspondence, Charter invoked the dispute resolution provisions, Section 14, of the parties' Agreement, to initiate a dialogue with CenturyTel management concerning the propriety of the charges. During this dispute resolution process the parties exchanged formal and informal correspondence (in the form of letters and electronic mail), and engaged in several telephone conferences and conversations in June, July, August and September of that year.

22. And during this process Charter provided to CenturyTel a detailed explanation of the basis for its dispute of the charges, including an explanation of why it believes that the Agreement does not authorize such charges, why CenturyTel was not entitled to payments, and an analysis of why federal law prohibits certain charges.

23. Despite this intensive discussion and dialogue, and the significant time and energy of both parties, the parties could not resolve their dispute. Accordingly,

Charter never conceded its dispute of these charges to CenturyTel, or the basis for such charges. Instead, the dispute resolution process continued via communications between each parties' billing and carrier relations personnel.

24. Specifically, CenturyTel continued to bill Charter for the number portability charges, the records search and directory charges, and the miscellaneous charges. And Charter, accordingly, continued to dispute each of these different categories of invalid charges. Charter disputed these invalid charges in two separate ways: first, by continuing the process of sending CenturyTel's billing department monthly notices of Charter's dispute of these charges; and second, by providing CenturyTel a single, prospective statement indicating that Charter disputed the entire "class" of charges associated with CenturyTel number porting obligations.

25. For approximately the next three years CenturyTel continued to assess its number portability, records search, directory, and miscellaneous charges on Charter, and Charter continued to dispute each of these different categories of charges pursuant to the bill dispute provisions of the parties' Agreement. In addition, Charter has engaged in repeated communications with CenturyTel representatives throughout this process. Thus, Charter has directly contacted CenturyTel's representatives about the matters in this complaint.

C. CENTURYTEL'S UNILATERAL SELF-HELP ACTIONS

26. However, very recently CenturyTel decided to take unilateral action, outside of the procedures set forth in the Agreement, in an attempt to force Charter to pay these disputed charges under threat of disconnection.

27. CenturyTel's self-help actions came in the form of correspondence and e-mail from CenturyTel employees to Charter employees within the last several weeks. First, CenturyTel sent a letter to Charter on July 11, 2007, demanding payment of certain disputed charges.

28. Following that, and after ensuing discussions between the parties' representatives, on August 14, 2007, CenturyTel Corporate Carrier Relations Manager Pam Hankins stated in an e-mail that it is CenturyTel's position that Charter is "in default" of the parties' Agreement because Charter has not paid certain properly disputed charges to CenturyTel. Further, Ms. Hankins stated that if Charter does not pay all disputed charges within ten business days of her e-mail, **on or before August 28, 2007**, CenturyTel would "stop processing all Charter orders."

29. What this means, in effect, is that unless Charter agrees to pay all of the disputed charges to CenturyTel before the 28th of this month, CenturyTel will no longer respond to number porting requests made by Charter on behalf of telephone subscribers that wish to transfer service to Charter.

30. In addition, CenturyTel's unilateral decision to "stop processing all Charter orders" may also affect Charter's ability to order trunks or interconnection facilities under the Agreement, and it could also impair Charter's ability to provide certain directory listing information to its subscribers.

31. CenturyTel's unilateral actions are outside the scope of permissible procedures under the Agreement, and contrary to the procedures set forth in the Agreement for addressing billing disputes.

32. Section 9 of the parties' Agreement sets forth procedures for disputing charges assessed by the other party. Consistent with that provision Charter has provided notice to CenturyTel, on a timely and consistent basis, that the number porting, records search, directory, and miscellaneous charges were the subject of a good faith dispute. Charter supported that good faith dispute of charges with notice of the specific details and reasons for disputing each different category of charges, as required by that section of the Agreement. Thus, Charter has properly disputed these charges consistent with the processes set forth in the parties' Agreement.

33. Section 12 of the parties' Agreement sets forth the terms by which one or the other party may be deemed to be in default. That provision makes clear that the failure to make payment of *undisputed* amounts (or those amounts *not* properly disputed under Section 9.3), may constitute a default, or breach, of the terms of the Agreement. But such terms specifically exclude amounts for charges that are properly disputed, like those charges properly disputed by Charter.

34. Indeed, as explained above, Charter has properly disputed each of the four different categories of charges consistent with the requirements of Section 9. Therefore, Charter's non-payment of these properly disputed charges is not a basis for CenturyTel to unilaterally deem Charter in default of the Agreement.

D. CENTURYTEL'S CHARGES ARE NOT AUTHORIZED BY THE AGREEMENT, AND ARE PROHIBITED UNDER FEDERAL LAW

35. Beyond the question of whether Charter has properly disputed these charges, and whether CenturyTel may unilaterally deem Charter in default, is the question of whether CenturyTel's charges are authorized by the Agreement, or permitted under federal law.

36. In point of fact, several of the four different categories of charges are not authorized under the Agreement, and the number porting charges are specifically prohibited by federal law. Accordingly, CenturyTel does not have the right to assert that Charter's non-payment of these invalid, and improper, charges constitutes default of the Agreement, and a basis for CenturyTel's unilateral actions.

37. First, with respect to CenturyTel's number porting charges, the Agreement does not authorize CenturyTel to assess a charge for responding to a number portability service request from Charter. There is *no* provision in the Agreement that authorizes CenturyTel to assess such a charge upon Charter. The Agreement simply does not authorize such charges.

38. Charter understands that CenturyTel has developed various "theories" to get around the fact that the Agreement does not authorize its charges. One such theory, as explained during previous dispute resolution negotiations, is that CenturyTel has identified a rate in the Pricing Appendix of the Agreement as the basis for its alleged right to assess these charges. That rate, \$19.78, is set forth in Section 3 of Appendix A to the Pricing Attachment, which sets forth non-recurring charges for certain "wholesale services" associated with the purchase of unbundled network elements ("UNEs") from CenturyTel.

39. However, this rate represents the charge associated with the purchase of an unbundled switch port, which Charter does not purchase, and which has nothing to do with the provision of local number portability. Thus, the rate in the Agreement which CenturyTel relies upon relates to a service that Charter does not obtain from CenturyTel.

40. In addition, the number porting charges assessed by CenturyTel are specifically prohibited under federal law. Specifically, interconnection charges associated with the provision of number portability are inconsistent with the principles set forth under the Federal Communications Commission's ("FCC") number portability cost recovery rule, 47 C.F.R. § 52.33; and, are specifically prohibited by the FCC's 2002 Number Portability Reconsideration Order.¹

41. Finally, aside from the unlawful number porting charges, CenturyTel is not entitled to payment for those charges falling in to one of the three other categories of charges.

V. CLAIMS TO BE ADJUDICATED BY THE COMMISSION

COUNT 1

CENTURYTEL'S UNILATERAL DECISION TO STOP PROCESSING PORTING ORDERS CONSTITUTES A BREACH OF THE PARTIES' AGREEMENT AND IS CONTRARY TO THE PUBLIC'S INTEREST TO THE CONTINUED AVAILABILITY OF NUMBER PORTING IN MISSOURI

42. Charter incorporates by reference paragraphs 1 through 41 as if fully set forth herein.

43. As explained in the preceding paragraphs, the parties are engaged in a billing dispute concerning certain charges assessed by CenturyTel upon Charter related to CenturyTel's provision of number portability to subscribers in Missouri. In addition, the bill dispute also involves other disputed charges related to certain records search, directory listing functions, and other miscellaneous charges.

44. CenturyTel has billed Charter a service order charge in the amount of \$19.78 in association with every number ported from CenturyTel's network to Charter's

¹ *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 at ¶ 62 (2002).

network. In addition, CenturyTel has billed Charter other rates for the disputed records search, directory, and miscellaneous charges raised in this complaint. Charter has consistently disputed each of the four different categories of charges, and has engaged in good faith efforts to request that CenturyTel stop assessing such charges upon Charter.

45. Nevertheless, within the last several weeks CenturyTel has unilaterally deemed Charter to be “in default” of the Agreement, and has announced its intention to stop processing orders from Charter **on August 28, 2007**, unless Charter pays all such disputed charges.

46. The parties’ Agreement only allows for default in the event that one party fails to make payments of *undisputed* charges. However, Charter has properly and consistently disputed such charges. Further, the Agreement does not allow one party to unilaterally reject bill disputes, “deem” the other party to be in default, and then threaten to stop processing service orders. Yet that is precisely what CenturyTel is attempting to do here: unilaterally force Charter to pay charges it has properly disputed, under threat of the discontinuance of number portability to telephone subscribers in Missouri.

47. Accordingly, CenturyTel is taking unilateral action in breach of the terms of the parties’ Agreement, and against the best interests of telephone subscribers in Missouri, by threatening to stop processing service orders from Charter on August 28, 2007.

48. The Commission must prevent such a result by finding that CenturyTel is in breach of the Agreement, and improperly using its provision of number portability to telephone subscribers as a lever to force Charter to pay disputed charges.

COUNT 2

CENTURYTEL'S CHARGES ARE NOT AUTHORIZED BY THE PARTIES' AGREEMENT AND ARE PROHIBITED UNDER FEDERAL LAW

49. Charter incorporates by reference paragraphs 1 through 48 as if fully set forth herein.

50. The disputed charges at issue in this complaint have been assessed by CenturyTel without regard to whether there is a contractual basis for these charges, or whether CenturyTel is entitled to payment.

51. Although CenturyTel has identified certain portions of the Agreement's pricing appendix as the basis for the porting charges, the identified rates are associated with the provision of (physical) ports for UNE switching, a service which Charter does not purchase from CenturyTel.

52. In addition, the porting charges assessed by CenturyTel are contrary to principles memorialized in the FCC's number portability cost recovery rule, 47 C.F.R. § 52.33; and, are specifically prohibited by the FCC orders addressing charges associated with the provision of number portability.

53. Further, in addition to the unlawful number porting charges, CenturyTel improperly assessed upon Charter other charges associated with the provision of certain records searches, directory listing functions, and other miscellaneous charges that CenturyTel is not entitled to collect from Charter.

54. Accordingly, because CenturyTel has assessed upon Charter charges that are not authorized by the Agreement, are specifically prohibited by federal law, and for which CenturyTel is not entitled to collect payment of, CenturyTel's actions constitute a breach of the parties' Agreement.

VI. RELIEF REQUESTED

For the reasons set forth in paragraphs 1 through 54 of this complaint, CenturyTel's decision to engage in impermissible self-help to discontinue processing service orders from Charter, and to continue assessing unauthorized and unlawful charges for porting numbers, are in breach of the Agreement. Accordingly, Charter respectfully requests that the Commission adjudicate these claims by enforcing the terms of the Parties' Agreement, and consistent with such adjudication issue the following relief:

First, Charter seeks an expedited order from the Commission, no later than August 28, that CenturyTel may not unilaterally "deem" Charter to be in default of the Agreement; and that CenturyTel must *continue processing* service order requests from Charter for number porting, and other functions, as specified under the terms of the parties' Agreement. The Commission may achieve this result by simply issuing a "standstill" order that would require CenturyTel to continue its obligations under the Agreement during the course of this proceeding.

Second, Charter seeks an order from this Commission that charges assessed by CenturyTel associated with the porting of telephone numbers, from CenturyTel's network to Charter's network, are not authorized by the parties' Agreement, and are not permitted under federal law, and that Charter is therefore not liable for such charges.

Third, Charter seeks an order from this Commission that CenturyTel is not entitled to payment, and that Charter is therefore not liable for the other charges identified in this complaint (specifically, those charges categorized as bill dispute categories 2, 3, and 4 in paragraph 10, *supra*).

Fourth, Charter seeks an order from this Commission requiring CenturyTel to refund the \$68,867.61 paid by Charter, under duress, to CenturyTel on June 16, 2004, for the sole purpose of ensuring that CenturyTel would continue honoring port requests, and other service orders from Charter.

Finally, Charter asks that the Commission issue such other relief the Commission deems appropriate or necessary.

Respectfully submitted,

Charter Fiberlink-Missouri, LLC

By: 

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Its Attorneys

Dated: August 23, 2007

CERTIFICATE OF SERVICE

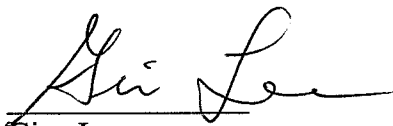
I hereby certify that on the 23rd day of August, 2007, I served the foregoing Complaint of Charter Fiberlink-Missouri, LLC, Motion for Protective Order, and Motion for Expedited Treatment on the following persons via electronic mail and via US Mail. Because this document was filed electronically it is being served both electronically and by hard copy, on the persons listed below, consistent with Commission rules and practice.

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Gina Lee

Dated: August 23rd, 2007