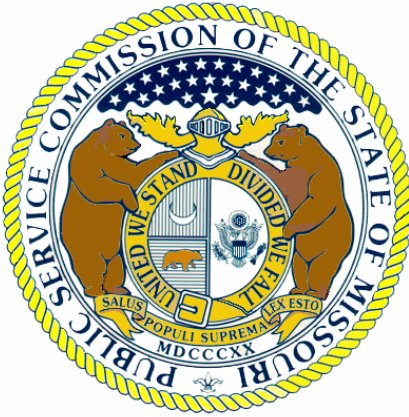


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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

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) **Case No. LC-2008-0049**
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REPORT AND ORDER

Issue Date: October 21, 2008

Effective Date: October 31, 2008

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OF THE STATE OF MISSOURI

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Seeking Expedited Resolution and Enforcement of
Interconnection Agreement Terms Between Charter
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Case No. LC-2008-0049

APPEARANCES

Mark. W. Comley, Newman, Comley & Ruth, 601 Monroe Street, Suite 301, P.O. Box 537, Jefferson City, Missouri 65102. Attorney for Charter Fiberlink-Missouri, LLC.

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Larry W. Dority, Fischer & Dority, PC, 101 Madison, Suite 400, Jefferson City, Missouri 65101. Attorney for CenturyTel of Missouri, LLC.

Tyler Peters, Payne & Jones, Chartered, 11000 King, Overland Park, Kansas 66210. Attorney for CenturyTel of Missouri, LLC.

Marc Poston, Senior Public Counsel, Office of the Public Counsel, 200 Madison Street, Post Office Box 2230, Jefferson City, Missouri 65102. Attorney for the Office of the Public Counsel and the public.

Blane Baker, Assistant General Counsel, Missouri Public Service Commission, 200 Madison Street, Post Office Box 360, Jefferson City, Missouri 65102. Attorney for the Staff of the Missouri Public Service Commission.

JUDGE: **Kennard L. Jones**

REPORT AND ORDER

Background

In 2001 GTE Midwest Incorporated, d/b/a Verizon Midwest and Charter Fiberlink – Missouri, LLC entered into an Interconnection Agreement. In 2002 CenturyTel of Missouri, LLC acquired Verizon's assets including the agreement, unchanged, as entered into between Verizon and Charter.

As required by federal law¹, the Agreement contains provisions to facilitate number portability.² Number portability is the term used to describe a telephone customer's ability to keep the same telephone number when changing telephone companies.³ Under the Agreement, each time a customer wishes to maintain a telephone number when switching companies, the parties are required to work together to port the customer's telephone number(s).⁴ CenturyTel maintains that this is a "service" for which it can bill Charter. Charter disputes the charges and, like the Staff of the Commission, argues that under the Agreement neither party is allowed to charge for porting telephone numbers. As a result of Charter not paying the charges associated with porting telephone numbers to it from CenturyTel, CenturyTel threatened to stop processing orders to port. Charter then filed this complaint, asking the Commission for relief largely relevant to number porting.

CenturyTel initially argued that Charter's complaint should be dismissed because Charter did not comply with the dispute resolution provision in the Agreement. Because

¹ 47 U.S.C. §251 (b)(2).

² Exhibit 1, p. 78, section 15.

³ Schremp Direct, p. 3, lines 13-16.

⁴ Exhibit 1, p. 78 section 15.2.1.

CenturyTel recognizes, however, that this matter needs to be resolved, it no longer asserts Charter's noncompliance.⁵

Relief requested

In its complaint, Charter asks the Commission to issue an order:

- 1) directing CenturyTel to continue processing service order requests from Charter;
- 2) stating that charges associated with the porting of telephone numbers are not authorized by the parties' Agreement;
- 3) stating that charges associated with number portability are not authorized by federal law;
- 4) requiring CenturyTel to refund \$68,867.61 paid by Charter for porting requests; and
- 5) stating that CenturyTel is not entitled to payment, and that Charter is not liable for, other charges including customer records searches, unique directory listings and other miscellaneous charges.

Although directed to do so, the parties were unable to agree on and file a list of issues. The Commission will therefore resolve this matter by addressing the specific relief requested by Charter. Each request for relief will serve as an issue. Upon review of the record the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. CenturyTel is a Missouri incumbent local exchange company.⁶
2. Charter is a certificated local exchange carrier operating under a certificate issued by the Missouri Public Service Commission.⁷

⁵ Miller Direct, p. 30, line 19 to p. 31, line 2.

⁶ Miller Direct, p. 2, lines 9-10.

⁷ Commission Case No. TA-2001-346.

3. Charter is a facilities-based competitor with its own network and switching equipment⁸ and does not purchase telecommunications services from CenturyTel.⁹

4. The Interconnection Agreement under which Charter and CenturyTel operate is an agreement negotiated originally between Charter and Verizon,¹⁰ to which CenturyTel is a successor in interest.¹¹

5. Verizon and Charter did not charge one another for porting telephone numbers while operating under the Agreement.¹²

6. Charter does not charge CenturyTel for porting numbers from CenturyTel to Charter.¹³

7. Initially, CenturyTel did not charge Charter to port telephone numbers.¹⁴

8. The Interconnection Agreement between Charter and CenturyTel is defined in the Agreement to include “(a) the principal document; (b) the Tariff of each party applicable to the Services that are offered for sale by it in the principal document (which tariffs are incorporated into and made a part of this Agreement by reference); and (c) an Order by a party that has been accepted by the other party.”¹⁵

9. Section 15 of the Agreement describes the parties’ obligations with regard to porting telephone numbers.¹⁶

⁸ Schremp Rebuttal, p. 10, lines 14-15.

⁹ Schremp Rebuttal, p. 11, lines 9-12.

¹⁰ Schremp Direct, p. 24, lines 17-20 and Tr. 68, line 17 – p. 69, line 2.

¹¹ Schremp Direct, p. 20, lines 26-28.

¹² *Id.*

¹³ Schremp Direct, p. 7, lines 10-13.

¹⁴ Tr. 73, lines 10-11.

¹⁵ Exhibit 1, General Terms and Conditions, Section 1.1 of the Interconnection Agreement.

¹⁶ Tr. 72, line 23 – p. 73, line 3.

10. CenturyTel did not begin to charge Charter for porting telephone numbers until 9 months after it succeeded Verizon under the Interconnection Agreement.¹⁷

11. CenturyTel began charging Charter for porting requests in 2003 when a CenturyTel employee, unfamiliar with interconnection,¹⁸ saw the word “port” in the Pricing Attachment to the Agreement and began assessing a charge of \$19.78 per number ported.¹⁹

12. The “porting” charge upon which the CenturyTel employee relied refers to an unbundled network element for basic exchange.²⁰

13. The Pricing Attachment, which is a part of the Interconnection Agreement, does not contain a charge for porting requests.

14. CenturyTel was aware, in 2004, that the charge of \$19.78 was not supported by the Agreement.²¹

15. After assessing the charge of \$19.78 per number ported for three and a half years, CenturyTel, relying on its tariff, began charging Charter \$23.44 or \$23.48, depending on whether the exchange is competitive or non-competitive.²²

16. Under CenturyTel’s General and Local Exchange Tariff (“CenturyTel’s Tariff”), service charges apply when the following activities are performed:

- a. Service Connection — New installations or subsequent addition of telephone service and/or semi-public telephone equipment. A move of an existing service to a different premise.

¹⁷ Tr. 73, lines 12-14

¹⁸ Tr. 73, lines 15-17 and Tr. 164, lines 10-15.

¹⁹ *Id.*

²⁰ Interconnection Agreement, Pricing Attachment, page 136.

²¹ Tr. 164, line 16 – p. 165, line 11.

²² Tr. 73, lines 18-22 and Voight Rebuttal, p. 6, lines 1-4.

- b. Inside Moves – Transfer of telephone service and/or semi-public equipment from one location to another location within the same building or that portion of the same building occupied by the same customer, where there is no interruption of the service other than is incidental to the work involved.
- c. Changes – Substitution of semi-public telephone equipment, or rearrangement of such equipment and/or wiring which does not involve changes in location of the equipment or wiring. Also includes directory listing changes and other modifications or rearrangements that do not involve equipment or wiring.
- d. Restoral Charge - Applicable for work associated with reconnecting service which has been temporarily disconnected for nonpayment.²³

17. Porting requests do not fit under any of the activities set out under the definitions of Service Charges.

18. CenturyTel's Tariff contains no provision for porting.

19. CenturyTel's Tariff applies to end-user customers, and does not apply to facilities-based competitors, such as Charter.

20. Under the Agreement, a Local Service Request (LSR) is defined as “an industry form, which contains data elements and usage rules, used by the Parties to establish, add, change or disconnect resold Telecommunications Services and Network Elements.”²⁴

21. A porting request is not a request to “add, change or disconnect resold Telecommunications Services [or] Network Elements.”

22. Charter and CenturyTel do not use LSRs for porting requests to add, change or disconnect resold Telecommunications Services or Network Elements.

²³ CenturyTel of Missouri, LLC's tariff, PSC Mo. No. 1, Original Sheet 1.

²⁴ Exhibit 1, Interconnection Agreement, Glossary Definitions, 2.54, at page 37.

23. The charge for a “Non-engineered Initial Service Order – Changeover” is \$21.62.²⁵

24. A Non-engineered Initial Service Order is a resold service.²⁶

25. The Interconnection Agreement does not provide for charges for porting numbers.²⁷

26. On June 16, 2004, Charter paid under protest, \$68,867.61 to CenturyTel for CenturyTel’s role in porting customer telephone numbers from CenturyTel to Charter.²⁸

27. Charter disputed paid charges and prospective charges for number porting as early as June of 2003.²⁹

28. In addition to giving specific notice to CenturyTel that it disputed paying charges for number porting, Charter also prospectively disputed the class of charges.³⁰

29. With regard to disputed amounts, the Interconnection Agreement provides the following:

If any portion of an amount billed by a Party under the Agreement is subject to a good faith dispute between the Parties, the billed Party shall give notice to the billing Party of the amounts it disputes and include in such notice the specific details and reasons for disputing each item. A Party may also dispute prospectively with a single notice a class of charges that it disputes. Notice of a dispute may be given by a Party at any time, either before or after an amount is paid, and a Party’s payment of an amount shall not constitute a waiver of such Party’s right to subsequently dispute its obligation to pay such amount or to seek a refund of any amount paid. The billed Party shall pay by

²⁵ CenturyTel post hearing brief, p. 21-22; Exhibit 1, Interconnection Agreement, Pricing Attachment, p. 126.

²⁶ Exhibit 1, Interconnection Agreement, Pricing Attachment, p. 126

²⁷ Tr. 72, lines 17-19

²⁸ Schremp Direct, p. 15 lines 12-15 and Miller Direct, p. 31, lines 21-22.

²⁹ Exhibits 15 and 16.

³⁰ Letter dated July 26, 2004, filed as an attachment to Schremp Direct.

the Due Date all undisputed amounts. Billing disputes shall be subject to the terms of Section 14, Dispute Resolution.³¹

30. Charter has complied with the requirements of the Agreement concerning disputed amounts.

31. Section 4, beginning on page 45 of the Agreement, sets out the parties' respective responsibilities with regard to directory listings.³²

32. Charter has the responsibility to provide to CenturyTel on a regularly scheduled basis, all listing information regarding Charter's customers.³³

33. Both Charter and CenturyTel must use commercially reasonable efforts to ensure the accurate publication of Charter customer listings.³⁴

34. At Charter's request, CenturyTel is obligated to provide to Charter, between 30-90 days prior to the close date of the applicable directory, a report of all Charter customers.³⁵

35. Charter has been credited for charges relating to the miscellaneous charges and the monthly recurring charges for unique directory listings.³⁶

36. The Interconnection Agreement provides for a charge of \$4.21 for Customer Records Searches.³⁷

³¹ Exhibit 1, Interconnection Agreement, p. 10, Section 9.3.

³² Exhibit 1, Interconnection Agreement, p. 45, Section 4.

³³ *Id.*, Section 4.2.

³⁴ *Id.*, p. 46, Section 4.6.

³⁵ *Id.*

³⁶ Hankins Direct, p. 2, lines 9-12.

³⁷ Exhibit 1, the Interconnection Agreement, Pricing Attachment, p. 138.

CONCLUSIONS OF LAW

Commission's Jurisdiction

The Commission has granted certificates of service authority to both Charter and CenturyTel to provide telecommunications service within the State of Missouri. Under Missouri law they are subject to the Commission's jurisdiction.³⁸ Although the Interconnection Agreement under which the parties operate is facilitated by federal law,³⁹ state commissions have jurisdiction to interpret and enforce interconnection agreements.⁴⁰

Issue 1

Whether CenturyTel must continue processing service order requests from Charter?

Charter's first request, that the Commission direct CenturyTel to continue processing service orders during the course of this complaint, was granted by the Commission through an order issued in this case on August 27, 2007.⁴¹

Issue 2

Whether the Interconnection Agreement between Charter and CenturyTel allows the parties to charge one another for porting customer telephone numbers?

It is clear that the framers of the Interconnection Agreement, Verizon and Charter, did not intend that there be a charge for porting telephone numbers because while operating under the agreement the two did not charge one another. Charter still does not charge for porting requests. In light of the fact that CenturyTel did not charge for porting during the first nine months after it and Charter operated under the Agreement, CenturyTel's position on this issue is suspect. The record shows that it was only by chance

³⁸ Section 392.250 (2). RSMo 2000

³⁹ 47 U.S.C. §251

⁴⁰ *Southwestern Bell Tel. Co. v. Connect Commun. Corp.*, 225 F3d 942, 947 (8th Cir. 2000).

⁴¹ Order Directing CenturyTel to Continue to Process Charter Service Order Requests While This Complaint is Pending

that CenturyTel began charging for porting request because an employee with CenturyTel, unfamiliar with interconnection agreements, saw the word “port” in the Pricing Attachment and thought it was a charge for porting requests. In 2003, that employee assessed a charge of \$19.78. The “port” does not concern porting requests but actually refers to the unbundled network element for basic exchange. Although CenturyTel knew that the \$19.78 charge was incorrect, it continued to charge this amount for three years. Then, in 2007, CenturyTel began charging a “Service Ordering Charge” of \$23.48 or \$23.44.

The fee of \$23.48 is listed in the tariff under “Service Order Charge” as an “initial” charge. There is also a Service Order Charge of \$8.44 described as a “subsequent” charge. There is no such thing as an “initial” port request and a “subsequent” port request. Also, notably, there is only a charge of \$23.48 listed in the tariff. There is no listed charge of \$23.44 in the tariff. CenturyTel’s attempt to link a charge to its tariff is through the fact that porting requests are made by using a Local Service Request or LSR.

To elaborate, an LSR is defined as a form used by the parties in relation to resold services and network elements. It is not contested that Charter does not resell CenturyTel’s services. Nor does CenturyTel argue that a porting request constitutes a network element. Therefore, the use of an LSR for porting requests is not consistent with the definition of an LSR. It appears that the LSR is used for porting requests for purposes of convenience rather than as a vehicle through which a charge should be assessed.

CenturyTel for the first time, in its posthearing brief, theorizes that the charge could be \$21.62; a figure set out in the Pricing Attachment as “Non-engineered Initial Service Order – Changeover.” This charge is listed under non-recurring charges for resale services but Charter does not purchase resold services from CenturyTel. Therefore, this charge

could not apply to Charter. The Commission concludes that neither the Agreement, nor the documents to which the Agreement refers, provide for a charge for porting requests.

Issue 3

Whether federal law prohibits charges for porting telephone numbers?

Federal law creates a duty that local exchange carriers provide, to the extent technically feasible, number portability in accordance with requirement prescribed by the Federal Communications Commission (FCC).⁴² With regard to carriers recovering their costs related directly to long-term number portability, the FCC neither requires nor prohibits a charge for porting requests.⁴³ This FCC rule specifically refers to an incumbent local exchange carrier's ability to charge end-users for costs associated with providing long-term number portability. The Commission has found that Charter is not an end-user. The rule is silent on whether CenturyTel may charge Charter for long-term number portability costs.

Therefore, the Commission concludes that federal law neither prohibits nor mandates that there be a charge for porting requests.

Issue 4

Whether the Commission should order CenturyTel to refund the \$68,867.61 paid by Charter for porting requests?

The Interconnection Agreement provides that notice of disputed amounts may be given before or after the amount in dispute is paid. As the Commission has found, Charter has disputed the \$68,867.61 it paid to CenturyTel for porting requests both before and after payment. The Agreement also provides that payment of an amount in dispute does not constitute a waiver or the right to seek a refund. Thus, CenturyTel's argument that Charter

⁴² 47 U.S.C. §251(b)(2) and (e)(2).

⁴³ See 47 C.F.R. 52.33.

has waived any refund because Charter has paid the disputed amount is contrary to the language in the Agreement.

The Commission has found that Charter has complied with the dispute resolution process in the Agreement. The Commission has also concluded that the Agreement does not provide for a charge for porting requests. Therefore, the Commission concludes that CenturyTel shall refund to Charter \$68,867.61.

Issue 5

Whether Charter has been improperly billed for customer records searches, monthly recurring charges and other miscellaneous billing charges that do not fall into the former two categories?

Customer Records Searches

Charter opines that the purpose of a customer records search is to ensure that Charter's subscriber information is accurately listed in the public directories.⁴⁴ Charter disputes any charges for customer records searches because CenturyTel did not fulfill its obligations under the Agreement to properly list Charter's subscribers in the CenturyTel directory.⁴⁵ CenturyTel, on the other hand, points out that customer record searches have nothing to do with ensuring that Charter's subscriber information is properly listed in CenturyTel's directories.⁴⁶ CenturyTel also points out that carriers request customer records information just prior to a sending a port request. At the time this occurs, the customer is CenturyTel's customer. CenturyTel then argues that information could not be used for the purpose as described by Charter.⁴⁷

⁴⁴ Schremp Direct, p 10, lines 11-13.

⁴⁵ *Id.*, lines 20-22.

⁴⁶ Miller Rebuttal, p. 14, lines 10-11.

⁴⁷ Hankins Rebuttal, p. 4, line 16 to p. 5, line 3.

Under the Agreement there is a charge of \$4.21 for customer records searches. Charter's reason for contesting these charges is that CenturyTel did not properly list Charter's subscriber directory information correctly. Regardless of Charter's reason for requesting customer record searches, the Agreement contains provisions for assuring accuracy of Charter's subscriber information. Customer record searches are not relevant to this provision. Charter's reason for not paying this charge, that CenturyTel has not performed the work, therefore fails. Charter has the burden of proving issues under this complaint.⁴⁸ The Commission concludes that Charter has not shown that CenturyTel is at fault for improper charges for customer record searches.

Monthly Recurring Charges

Charter also asserts that CenturyTel has assessed monthly recurring charges associated with certain directory listings such as non-publish or non-list status in CenturyTel directories but has not performed the work. This issue is directly related to the discussion above in that it concerns directory listings.⁴⁹

Charter makes a general statement regarding CenturyTel's failure in this regard but does not show how CenturyTel failed to perform work. Charter has the burden of proving issues under this complaint.⁵⁰ The Commission concludes that Charter has not met its burden in this regard.

Miscellaneous Charges

Charter complains that CenturyTel has billed Charter for items that clearly constitute a billing error. The charges included items such as long distance charges, directory

⁴⁸ *Southwestern Bell Tel. Co. v. Connect Commun. Corp.* 225 F3d 942, 947 (8th Cir. 2000).

⁴⁹ See Schedule 1, attached to Schremp Direct.

⁵⁰ *Southwestern Bell Tel. Co. v. Connect Commun. Corp.* 225 F3d 942, 947 (8th Cir. 2000).

assistance, caller ID and other charges accrued by end-users.⁵¹ CenturyTel explains that during a period of time between when a porting request is made and the port actually occurs, the ported customer accrues charges. Because Charter has ported that number, the charge shows up on Charter's bill.⁵²

Charter admits that some of these charges have been removed from its account, but others have not. Charter goes on to state that it is not possible to calculate precisely whether the account has been properly credited.⁵³ CenturyTel, however, insists that Charter has been properly credited⁵⁴ but goes on to state that it has discovered that there were some charges for which credits have not yet been applied.⁵⁵ CenturyTel also believes that Charter has received credits for payments Charter did not make.⁵⁶ Finally, CenturyTel and Charter both agree that this problem is an ongoing concern.⁵⁷

Ultimately, Charter and CenturyTel are both uncertain of whether improper charges have been properly credited. What both parties agree on is that this is an ongoing concern. The Commission, like the parties, is unable to see a clear, immediate resolution to this issue. Charter has the burden of proving issues under this complaint.⁵⁸ The Commission concludes that Charter has not met its burden in this regard.

⁵¹ Schremp Direct, p. 11, lines 17-24.

⁵² Tr. 286, line 21 – 287, line 17.

⁵³ Schremp Direct, p. 12, lines 10-13.

⁵⁴ Hankins Direct, p. 8, lines 21 – p. 9, line 2 and Hankins Rebuttal, p. 2, lines 9-10.

⁵⁵ Hankins Direct, p. 6, lines 17-21.

⁵⁶ Hankins Direct, p. 8, lines 18-19.

⁵⁷ Tr. p. 289-290 and Tr. p. 313 -314.

⁵⁸ *Southwestern Bell Tel. Co. v. Connect Commun. Corp.* 225 F3d 942, 947 (8th Cir. 2000).

DECISION

Companies may agree to set a charge for porting requests but the parties in this case, have not agreed to do so. The Commission therefore concludes that charges associated with porting telephone numbers are not authorized by the parties' Agreement or those documents to which the Agreement refers.

The Commission concludes that federal law neither mandates nor prohibits a charge for carrier-to-carrier porting requests.

The Commission finds that Charter has complied with the requirements under the Agreement to preserve the right to recover the disputed charges. Having concluded that charges are not allowed under the Agreement between Charter and CenturyTel, the Commission concludes that CenturyTel must refund to Charter \$68,867.61 paid by Charter to CenturyTel for number porting requests.

Finally, the Commission concludes that Charter has not shown that CenturyTel is at fault for any lack of records searches and listings nor that CenturyTel owes credit for monthly recurring charges or miscellaneous charges.

THE COMMISSION ORDERS THAT:

1. Charges associated with the porting of telephone numbers are not authorized under the Interconnection Agreement between Charter Fiberlink-Missouri, LLC and CenturyTel of Missouri, LLC.
2. CenturyTel of Missouri, LLC shall refund \$68,867.61 to Charter Fiberlink, LLC, paid by Charter to CenturyTel for porting requests.
3. Federal law neither precludes nor mandates charges for porting requests.
4. Charter Fiberlink-Missouri, LLC is denied all other relief.

5. This order shall become effective on October 31, 2008.
6. This case may be closed on November 1, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
Jarrett, and Gunn, CC., concur and
certify compliance with the provisions
of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 21st day of October, 2008.