

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 14th day  
of February, 2008.

In the Matter of CenturyTel of Missouri, LLC's	)	
Request for Competitive Classification Pursuant	)	<b><u>Case No. IO-2008-0243</u></b>
to Section 392.245.5, RSMo.	)	Tariff No. YI-2008-0442

**ORDER GRANTING COMPETITIVE CLASSIFICATION  
AND APPROVING TARIFF SHEETS**

Issue Date: February 14, 2008

Effective Date: February 24, 2008

**Syllabus:** In this Order, the Missouri Public Service Commission grants CenturyTel of Missouri, LLC's request, pursuant to Section 392.245.5, RSMo Cum. Supp. 2007, for competitive classification of the residential services, other than exchange access service, in its Branson, Exeter, and Rockaway Beach exchanges and the business services, other than exchange access service in its Dardenne, Hallsville, Warrenton, Winfield, and Wright City exchanges. In addition, the Commission approves the tariff sheets filed to implement the competitive classifications.

**Procedural History**

On January 25, 2008, CenturyTel of Missouri, LLC filed its verified Application for Competitive Classification pursuant to Section 392.245.5, RSMo Cum. Supp. 2007. In its application, CenturyTel requested that the Commission classify the residential services it offers in its Branson, Exeter, Rockaway Beach, and Wright City exchanges, other than exchange access services, as competitive. CenturyTel also requested that the Commis-

sion classify the business services CenturyTel offers in its Cabool, Dardenne, Hallsville, Warrenton, Winfield, and Wright City exchanges, other than exchange access services, as competitive.

Concurrent with the filing of its application, CenturyTel filed proposed tariff sheets which reflected the requested competitive classifications and had an effective date of February 24, 2008. Although CenturyTel stated in its application that no price changes were being made in its tariffs,<sup>1</sup> those tariffs contained price decreases for all the subject exchanges except Rockaway Beach. The Rockaway Beach exchange contained a price increase.<sup>2</sup>

On January 31, 2008, the Commission entered its Order Directing Notice, Establishing Procedural Schedule, and Reserving Hearing Date, in which the Commission provided notice of CenturyTel's application to all certificated competitive local exchange carriers and incumbent local exchange carriers in Missouri, as well as to the General Assembly and the news media, that any party wishing to intervene in the proceeding must file an application no later than February 8, 2008. This order also established a full procedural schedule and reserved a date for an evidentiary hearing on CenturyTel's application. There were no requests for intervention.

On February 8, 2008, CenturyTel amended its application by withdrawing its request for competitive classification of the residential services in the Wright City exchange and the business services in its Cabool exchange. On the same day, Public Counsel filed a pleading asking the Commission to require strict compliance with the statutory require-

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<sup>1</sup> Application, para. 7.

<sup>2</sup> Staff Recommendation, Appendix A, p. 4.

ments relating to the remainder of CenturyTel's application. Public Counsel's pleading further indicated that although Public Counsel would not stipulate that those exchanges exhibit sufficient competition to justify competitive classification, it was *not* requesting an evidentiary hearing and had no objection to the Commission deciding the case on the basis of the existing record before it.

Also on February 8, 2008, the Staff of the Missouri Public Service Commission filed a verified pleading recommending that the Commission approve CenturyTel's amended application with regard to the requests for competitive classification. Staff also recommended that the Commission "order CenturyTel to file amended tariff sheets removing all rate increases and removing competitive classification for residential services in the Wright City exchange and for business services in the Cabool exchange."<sup>3</sup>

On February 13, 2008, CenturyTel filed substitute sheets to remove the rate changes and the exchanges that were withdrawn from its request for competitive classification. Staff filed a Supplemental Recommendation on February 14, 2008, recommending approval of the tariff sheets as substituted.

### **Overview**

CenturyTel is an incumbent local exchange carrier (ILEC) that is subject to price cap regulation under Section 392.245. Under price cap regulation, maximum allowable rates are established and other restrictions are placed on the ability of the regulated company to raise its rates. The statute that created price cap regulation includes provisions that allow a price cap regulated company to escape regulation when competition develops in the exchanges served by that company. If a carrier obtains competitive status

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<sup>3</sup> Staff Recommendation, p. 2.

in an exchange it will gain greater pricing flexibility and will be able to raise, or lower, the applicable tariffed rate for its services, except exchange access service, by giving ten days notice to the Commission and affected customers. An ILEC with competitive status in an exchange will have essentially the same pricing flexibility in that exchange as a CLEC.

The Commission must classify the ILEC's services as competitive in any exchange in which at least two other non-affiliated carriers are providing basic local telecommunications services within that exchange.<sup>4</sup> The statute provides that one commercial mobile radio service provider can be counted as an entity providing basic local telecommunications services.<sup>5</sup> The other entity that can be counted as providing basic local telecommunications services is one that provides "local voice service in whole or in part over telecommunications facilities or other facilities in which it or one of its affiliates have an ownership interest."<sup>6</sup> Therefore, an exchange would be competitive in which two or more facilities-based wireline carriers are providing services to customers, or in which one facilities-based wireline carrier and one wireless carrier are providing services to customers.

CenturyTel's amended application indicates that it faces competition from at least one wireless carrier and one facilities-based wireline carrier for each exchange and type of service requested.

### **Findings of Fact**

The Commission, having reviewed CenturyTel's pending tariff, the verified application and supporting documentation, and Staff's verified recommendation,

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<sup>4</sup> Section 392.245.5(6), RSMo Cum. Supp. 2007.

<sup>5</sup> Section 392.245.5(1), RSMo Cum. Supp. 2007.

<sup>6</sup> Section 392.245.5(2), RSMo Cum. Supp. 2007.

memorandum and supporting documentation, which are admitted into evidence, makes the following findings of fact.

CenturyTel is a "local exchange telecommunications company" and a "public utility," and is authorized to provide "telecommunications service" within the state of Missouri as each of those phrases is defined in Section 386.020, RSMo 2000.<sup>7</sup> CenturyTel is a large ILEC subject to price cap regulation.<sup>8</sup>

In its amended application, CenturyTel requested that the Commission classify as competitive its residential services, other than exchange access service, in the Branson, Exeter, and Rockaway Beach exchanges. CenturyTel also requested that its business services, other than exchange access service, be classified as competitive in its Dardenne, Hallsville, Warrenton, Winfield, and Wright City exchanges. In support of this request, CenturyTel filed its verified application listing the facilities-based and wireless carriers competing in each exchange. CenturyTel specifically stated:

CenturyTel has numerous non-affiliated wireless providers operating in its exchanges providing local service. Exhibits B through J identify wireless carriers, including (a) AT&T Wireless, (f/k/a Cingular), (b) Verizon, (c) T-Mobile, (d) Alltel, (e) US Cellular, and (f) Sprint/Nextel providing local service in the [relevant] . . . CenturyTel exchanges.

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Specific to this application, MCC Telephony of Missouri, Inc. is providing residential phone service, using facilities it owns in part or whole, in the CenturyTel exchange of Exeter. Cebridge Communications, LLC d/b/a Suddenlink Communications<sup>9</sup> is providing residential service, using facilities it owns in part or whole, in the CenturyTel exchanges of: (a) Branson and (b) Rockaway Beach. Charter Fiberlink-Missouri, LLC is providing business phone service, using

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<sup>7</sup> CenturyTel of Missouri, LLC's Application for Competitive Classification, para. 1.

<sup>8</sup> *Id.*

<sup>9</sup> Footnote omitted.

facilities it owns in part or whole, in the CenturyTel exchange of Dardenne. Socket Telecom, LLC is providing business phone service, using facilities it owns in part or whole in the CenturyTel exchanges of: (a) Cabool, (b) Dardenne, (c) Hallsville, (d) Warrenton, (e) Winfield, and (f) Wright City; and is providing residential phone service, using facilities it owns in part or whole in the CenturyTel exchange of Wright City.

Staff also provided its verified recommendation, supporting memorandum, supplemental recommendation, and affidavits in which it discussed its own investigation into the companies providing wireless and wireline service to the exchanges. According to Staff's recommendation, there is at least one facilities-based wireline carrier and at least one wireless carrier serving each exchange at issue. In addition, those providers are not affiliated with CenturyTel and provide basic local phone service to at least two customers of the appropriate classification within those exchanges. Further, Staff states that the competing carriers have residential and/or business customers with numbers which are considered to be "local" numbers in those exchanges.<sup>10</sup>

Staff states that it has no objection to and recommends (1) competitive classification for CenturyTel's residential services, other than exchange access service, in the Branson, Exeter, and Rockaway Beach exchanges, and (2) competitive classification for CenturyTel's business services, other than exchange access service, in the Dardenne, Hallsville, Warrenton, Winfield and Wright City exchanges.

In its review of CenturyTel's tariff sheets, Staff determined that even though the Company stated in its application that prices were not changing, the prices on the proposed tariff sheets had decreased in every exchange with the exception of Rockaway Beach, which increased. Accordingly, Staff originally recommended that the Commission direct

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<sup>10</sup> Staff Recommendation, page 6, and Appendix A.

CenturyTel to amend its tariff sheets by removing all rate increases and by removing the competitive classification for the exchanges which it has withdrawn from its application.

CenturyTel substituted its tariffs on February 13, 2008. The substitute tariff sheets removed all the rate changes and are designed to only add the competitive classifications requested in the amended application. Staff, in its supplemental recommendation, recommended that the Commission approve the substituted tariff sheets.

The Commission finds that the facts as submitted in the verified application, as amended, verified Staff recommendation and supporting memorandum, supplemental recommendation, and the related attached materials are reliable and support the grant of competitive classification in the requested exchanges.

The Commission finds that in the Exeter exchange, facilities-based local voice service is being provided to at least two residential customers by Mediacom. In addition, the Commission finds that there is at least one non-affiliated wireless services carrier, AT&T Mobility, providing service to residential<sup>11</sup> customers in the Exeter exchange.

In the Rockaway Beach exchange, the Commission finds that facilities-based local voice service is being provided to at least two residential customers by Suddenlink.<sup>12</sup> In addition, the Commission finds that there are at least two non-affiliated wireless services carriers, AT&T Mobility and Sprint PCS/Nextel, providing service to residential<sup>13</sup> customers in the Exeter exchange.

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<sup>11</sup> AT&T Mobility categorized the customers as “non-business.”

<sup>12</sup> Suddenlink is a cable television provider offering local voice service using its own or one of its affiliates’ facilities.

<sup>13</sup> AT&T Mobility categorized the customers as “non-business.”

The Commission finds that in the Branson exchange, facilities-based local voice service is being provided to at least two residential customers by Suddenlink. In addition, the Commission finds that there are at least three non-affiliated wireless services carriers, US Cellular, AT&T Mobility, and Sprint PCS/Nextel, providing service to residential customers in the Branson exchange.

The Commission finds that in the Dardenne exchange, four facilities-based carriers, AT&T Communications of the Southwest, Socket Telecom, Nuvox Communications of Missouri, and Charter Fiberlink, were providing local voice service to at least two business customers. In addition, the Commission finds that there are at least two non-affiliated wireless services carriers, AT&T Mobility and Sprint/Nextel, providing service to business customers in the Dardenne exchange.

The Commission finds that in the Hallsville and Winfield exchanges, facilities-based local voice service is being provided to at least two business customers by Socket Telecom. In addition, the Commission finds that there are at least two non-affiliated wireless services carriers, AT&T Mobility and US Cellular, providing service to business customers in the Hallsville and Winfield exchanges.

The Commission finds that in the Warrenton and Wright City exchanges, facilities-based local voice service is being provided to at least two business customers by Socket Telecom. In addition, the Commission finds that there are at least two non-affiliated wireless services carriers, AT&T Mobility and Sprint/Nextel, providing service to business customers in the Warrenton and Wright City exchanges.

The Commission also finds that each of the competing carriers has local numbers available for use by customers in each of the exchanges at issue.



Finally, the Commission has determined that the tariff sheets as substituted are designed to implement the competitive classification in accordance with this order. Therefore, the Commission shall approve the tariff sheets as submitted.

### **Conclusions of Law**

The Missouri Public Service Commission has reached the following conclusions of law:

The Commission has jurisdiction over this matter pursuant to Section 392.245.5(6), which provides as follows:

Upon request of an incumbent local exchange telecommunications company seeking competitive classification of business service or residential service, or both, the commission shall, within thirty days of the request, determine whether the requisite number of entities are providing basic local telecommunications service to business or residential customers, or both, in an exchange and if so, shall approve tariffs designating all such business or residential services other than exchange access, as competitive within such exchange.

CenturyTel is an incumbent local exchange telecommunications company and has requested competitive classification of its residential services, other than exchange access service, in its Branson, Exeter, and Rockaway Beach exchanges. CenturyTel has requested competitive classification of its business services, other than exchange access service, in its Dardenne, Hallsville, Warrenton, Winfield, and Wright City exchanges.

Section 392.245.5, provides as follows:

Each telecommunications service offered to business customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in any exchange in which at least two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to business customers within the exchange. Each telecommunications service offered to residential customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in any

exchange in which at least two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to residential customers within the exchange.

For the purpose of determining whether competitive status is appropriate in an exchange, one commercial mobile service provider can be considered an entity providing “basic local telecommunications services.”<sup>14</sup> The statute also requires the Commission to consider as a “basic local telecommunications service provider” any entity providing “local voice service in whole or in part over facilities in which it or one of its affiliates has an ownership interest.”<sup>15</sup>

Section 392.245.5(3), defines “local voice service” as meaning “[r]egardless of the technology utilized . . . two-way voice service capable of receiving calls from a provider of basic local telecommunications services as defined by subdivision (4) of section 386.020, RSMo 2000.”

The statute defines “telecommunications facilities” to include, among other items, “lines, conduits, ducts, poles, wires, cables, 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.”<sup>16</sup>

CenturyTel asserts that, other than exchange access services, its residential services in the Branson, Exeter, and Rockaway Beach exchanges, and its business services in the Dardenne, Hallsville, Warrenton, Winfield, and Wright City exchanges

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<sup>14</sup> Section 392.245.5(1), RSMo Cum. Supp. 2007.

<sup>15</sup> Section 392.245.5(2), RSMo Cum. Supp. 2007.

<sup>16</sup> Section 386.020(52), RSMo 2000.

should be classified as competitive. As the party asserting the positive of a proposition, CenturyTel has the burden of proving that proposition.<sup>17</sup>

Because the opportunity for an evidentiary hearing was provided and no proper party requested such a hearing, the Commission may rely on the verified pleadings filed by CenturyTel and Staff in making its decision in this case.<sup>18</sup>

### **Decision**

The undisputed evidence establishes that for residential customers in the Branson, Exeter, Rockaway Beach exchanges there is at least one non-affiliated entity providing local voice service in whole or in part over facilities in which it, or one of its affiliates, has an ownership interest so as to constitute the provision of basic local telecommunications within the meaning of Section 392.245.5(3). Furthermore, the undisputed evidence establishes that there is at least one non-affiliated wireless carrier providing basic local telecommunications service within the meaning of Section 392.245.5(1) to residential customers in the Branson, Exeter, and Rockaway Beach exchanges. Therefore, the Commission concludes that CenturyTel's application for competitive classification of its residential services, other than exchange access services, in the Branson, Exeter, and Rockaway Beach exchanges should be granted.

The undisputed evidence establishes that for business customers in the Dardenne, Hallsville, Warrenton, Winfield, and Wright City exchanges there is at least one non-affiliated entity providing local voice service in whole or in part over facilities in which it, or one of its affiliates, has an ownership interest so as to constitute the provision of basic

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<sup>17</sup> *Dycus v. Cross*, 869 S.W.2d 745, 749 (Mo. banc 1994).

<sup>18</sup> See, e.g., *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. W.D. 1989); n.3 supra.

local telecommunications within the meaning of Section 392.245.5(3). The undisputed evidence also establishes that there is at least one non-affiliated wireless carrier providing basic local telecommunications service within the meaning of Section 392.245.5(1) to business customers in the Dardenne, Hallsville, Warrenton, Winfield, and Wright City exchanges.

CenturyTel submitted tariff changes which will implement the competitive classification designations. Therefore, the Commission shall approve the tariff sheets as substituted.

In addition, the evidence in this matter suggests that although CenturyTel has a facilities-based competitor in the Branson and Rockaway Beach exchanges, that competitor is providing local voice service without a certificate from the Commission. The Commission shall direct its Staff to investigate the provisioning of service by Suddenlink in the Branson and Rockaway Beach exchanges and file a complaint or any other appropriate enforcement action with the Commission.

**IT IS ORDERED THAT:**

1. CenturyTel of Missouri, LLC's residential services, other than exchange access service, are classified as competitive in the Branson, Exeter, and Rockaway Beach exchanges.
2. CenturyTel of Missouri, LLC's business services, other than exchange access service, are classified as competitive in the Dardenne, Hallsville, Warrenton, Winfield, and Wright City exchanges.

3. CenturyTel of Missouri, LLC's proposed tariff revision (Tariff No. YI-2008-0442) is approved, as substituted, to become effective on February 24, 2008.

The tariff sheets approved are:

**PSC MO. NO. 1, Section 4**

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**3rd Revised Sheet 1, Cancels 2nd Revised Sheet 1**  
**2nd Revised Sheet 17.3, Cancels 1st Revised Sheet 17.3**  
**Original Sheet 17.6.1**  
**Original Sheet 17.6.2**  
**Original Sheet 17.7.1**  
**Original Sheet 17.10.1**  
**Original Sheet 17.11.1**  
**Original Sheet 17.11.2**  
**Original Sheet 17.11.3**

4. The Staff of the Missouri Public Service Commission shall investigate the provisioning of service by Cebridge Communications, LLC, d/b/a Suddenlink Communications, in the Branson and Rockaway Beach exchanges and file a complaint or any other appropriate enforcement action with the Commission.

5. This order shall become effective on February 24, 2008.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Clayton,  
Appling, and Jarrett, CC., concur.

Dippell, Deputy Chief Regulatory Law Judge