

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

**In the Matter of the Petition of Charter Fiberlink-
Missouri, LLC for Arbitration of an Interconnection
Agreement Between CenturyTel of Missouri, LLC
And Charter Fiberlink-Missouri, LLC.**

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Case No. TO-2009-0037

**CENTURYTEL OF MISSOURI, LLC'S MOTION FOR RECONSIDERATION
AND MOTION FOR EXPEDITED TREATMENT**

CenturyTel of Missouri, LLC ("CenturyTel"), by counsel and pursuant to Missouri Public Service Commission ("Commission") Rules 4 CSR 240-2.160(2), 4 CSR 240-2.080(16) and 4 CSR 240-36.040, respectfully requests immediate reconsideration of the "*Order Requiring Expedited Response and Scheduling Initial Arbitration Meeting*" (the "*Order*") issued August 8, 2008 in the above-captioned proceeding. For the reasons stated below, the *Order* unlawfully abridges CenturyTel's rights under 47 U.S.C. § 252(b)(3), and works an undue hardship upon it, thus negating CenturyTel's fundamental due process rights. Accordingly, CenturyTel respectfully moves for expedited treatment of this Motion, and requests that the August 25, 2008 due date for CenturyTel's response be re-established immediately as required by 47 U.S.C. § 252(b)(3). While CenturyTel does not oppose the scheduling of the initial arbitration meeting on August 19, 2008, it further requests that the provisions of the Order reserving September 9-12, 2008 for the evidentiary hearing be vacated, and that setting of any dates for the further development of the record in this proceeding be held in abeyance for discussion at such initial arbitration meeting.

I. Background

1. As noted in the *Order*, on July 31, 2008, Charter Fiberlink-Missouri, LLC filed a petition for arbitration (the "*Petition*") to resolve certain issues that remain in dispute arising

from a request for interconnection made by Charter to CenturyTel pursuant to Section 251 of the 1996 revisions of the Communications Act of 1934, as amended (the "Act"). (*Order*, 1). Charter's Petition was filed pursuant to the Act. (*Id.*; *see also* Petition, 1 (The Petition was filed "[p]ursuant to Section 252(b)(2)" of the Act). As a result of Charter's filing made pursuant to the Act, CenturyTel is afforded twenty-five (25) days within which to respond to the Petition. (*Order*, 1)¹ Indeed, Commission Rule 4 CSR 240-36.040(7) (referenced at page 1 of the *Order*) specifically incorporates this statutory time frame embodied in the Act: "(7) Opportunity to Respond – Pursuant to subsection 252(b)(3) of the Act, any party to a negotiation, which did not file a petition for arbitration ("respondent"), shall file with the commission, within twenty-five (25) days of the date the petition for arbitration is filed with the commission, a response to the petition for arbitration. . . ." Nonetheless, the *Order* recites that "Commission Rule 4 CSR 240-36.040(15) gives the arbitrator some leeway in meeting deadlines imposed by the 4 CSR 240-36" (*Order*, 1), thereby reducing the Section 252(b)(3) filing period by ten (10) days. Thus, the *Order* requires CenturyTel's response to be filed by August 15, 2008, rather than August 25 in light of the September 29, 2008 deadline for the Arbitrator's recommendation in this case which is set forth in the *Order*. (*Id.*, 2)

II. The *Order*'s Time Frame for CenturyTel's Response is Unlawful and Otherwise Imposes Fundamental Unfairness Upon CenturyTel in Violation of Its Due Process Rights

2. As indicated above, Section 252(b)(3) provides CenturyTel 25 days for the filing of its response to Charter's Petition. CenturyTel appreciates the Arbitrator's concern with respect to the time constraints imposed on the issuance of his recommendation in this proceeding. However, these time constraints are not novel. Congress knew the timeframes that

¹ Specifically, the Act states that a "non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State commission receives the petition." (47 U.S.C. § 252(b)(3))

it had established in the Act. Congress determined that the response time was so important to the process that the 25 day response time was specifically included in the Act. Not only *must* the full 25 days be provided to CenturyTel in order to provide it the opportunity for a full response, but the completeness of CenturyTel's response is of paramount importance to the arbitration process.

3. In its initial reply, CenturyTel must reply to the positions taken by Charter in its Petition and the attachments thereto, ensure that such positions and attachments are properly addressed, ensure that the purported issues raised by Charter are properly characterized, and, as is its right, ensure that it raises *all* new issues that Charter has chosen to either avoid raising or to ignore. Thus, the response becomes the first time for CenturyTel to present to the Arbitrator and the Commission a complete understanding of the full scope of the proceeding from CenturyTel's perspective. This becomes all the more important in light of the number of complicated and varied issues that must be resolved in this proceeding. Therefore, the cited time constraints arising in this proceeding cannot be used as a basis to reduce the Act's deadlines, or to abridge CenturyTel's due process rights with respect to its response to the Petition.

4. Moreover, and while the *Order* notes that Commission Rule 4 CSR 240-36.040(15) provides the arbitrator some leeway regarding deadlines contained in 4 CSR 240-36, Commission Rule 4 CSR 240-36.040(15) does not allow the modification of deadlines in the Act such as the 25 days established in Section 252(b)(3).

Because of the short time frame mandated by the Act, the arbitrator shall have flexibility to set out procedures that may vary from those set out in this rule; however, the arbitrator's procedures must substantially comply with the procedures listed herein. The arbitrator may vary from the schedule in this rule *as long as the arbitrator complies with the deadlines contained in the Act.* (emphasis added)

Thus, Commission Rule 4 CSR 240-36.040(15) provides no basis to allow the arbitrator to *reduce* CenturyTel's statutory right to the full response period provided under Section 252(b)(3).

5. CenturyTel shares the Arbitrator's concern with respect to the time constraints of this proceeding, and CenturyTel will work diligently during this proceeding. However, the shortening of the time frame for the CenturyTel response is not allowed pursuant to the Act or Commission Rules. To that end, the parties have available to them processes that will afford the Commission, the Arbitrator and the parties the proper amount of time required for the resolution of this proceeding should the existing time frame be insufficient. For example, the parties are free to extend, by mutual agreement, the end date of the nine month time frame associated with the resolution of this proceeding as required by 47 U.S.C. § 252(b)(4)(C), just as they have done with respect to the extension of the time frames for the negotiation process found in 47 U.S.C. 47 U.S.C. § 252(b)(1). Consequently, the concerns of the Arbitrator with respect to compressed time frames can adequately be address by agreement of the parties without raising the due process concerns that arise from the *Order*.

6. Finally, shortening Section 252(b)(3)'s 25 day response period will also create an unreasonable hardship upon CenturyTel. The instant Petition is one of four companion cases before three (3) state commissions. Currently, CenturyTel's responses to Charter in two proceedings in Wisconsin are due this coming Friday, August 15th. Likewise, a prehearing conference in Texas is scheduled for tomorrow, August 12th in the Texas case, and filing of a Joint Disputed Points List is also due on Friday, August 15th. While the issues that are raised in this proceeding are substantially similar to those presented in the other states, each set of issues raises distinct state law impacts that must be identified, evaluated, and then addressed properly within CenturyTel's response. In this regard, CenturyTel notes that undersigned counsel has

previously scheduled business travel out the State for two days this week. Such travel was not a complicating factor until the issuance of the *Order* since that travel would not have interfered with his efforts to assist the finalization of the CenturyTel response in light of the remaining time within the 25 day response period.

7. Accordingly, in light of the significant conflicts that the *Order* creates with respect to the Section 252(b)(3), the fundamental due process issues raised, and the resulting resource burdens and scheduling conflicts that the *Order* creates, CenturyTel respectfully submits that the *Order* should be reconsidered.

III. Motion for Expedited Treatment

8. Pursuant to Commission Rule 4 CSR 240-2.080(16), and for the reasons fully set forth above and incorporated herein by reference, CenturyTel respectfully seeks expedited treatment of its Motion for Reconsideration and requests that the Arbitrator and/or the Commission act immediately (no later than Tuesday, August 12, 2008) in order to alleviate and avoid the above-stated harm and demonstrated concerns. There will be no negative effect on CenturyTel's customers, the general public or Charter if the Commission acts by said date. This pleading was filed as soon as possible, one business day after the issuance of the *Order*. As stated above, absent immediate action re-establishing the August 25, 2008 due date for CenturyTel's response, the unreasonableness of the *Order*'s requirements upon CenturyTel will be exacerbated. CenturyTel also notes that no harm will be experienced by Charter. Charter filed its Petition pursuant to Section 252(b) of the Act and knew full well that CenturyTel was provided a 25 day period to file its response. Thus, there is no need to await any opportunity for a reply from Charter regarding this motion since it is, in effect, an uninterested party because its rights are not affected by the reinstatement of CenturyTel's Section 252(b)(3) filing rights.

9. With respect to the other matters raised in the *Order*, CenturyTel does not oppose the setting of an initial arbitration meeting on August 19, 2008. However, CenturyTel requests that the tentative evidentiary hearing setting for September 9-12, 2008 be vacated and that the setting of dates for the further development of the record in this proceeding await further discussion at the initial arbitration meeting. This request, in turn, will provide the opportunity for the parties and Arbitrator to discuss the actions and steps that are necessary to ensure that record facts and public policy positions are developed in this proceeding, and the applicable law applied to them.

IV. Conclusion

WHEREFORE, CenturyTel respectfully requests that the Arbitrator and/or Commission grant this Motion for Reconsideration and (a) re-establish the time frames for CenturyTel's response using the 25 days required by 47 U.S.C. § 252(b)(3); (b) vacate the tentative setting of September 9-12, 2008 as the evidentiary hearing dates; and (c) grant this Motion for Expedited Treatment immediately to avoid exacerbating the concerns and issues that the *Order* raises.

DATED: August 11, 2008.

Respectfully submitted,

/s/ Larry W. Dority

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was served by facsimile, hand-delivery, or electronic mail, on the 11th day of August, 2008, on the following:

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