

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

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

**Case No. LC-2008-0049**

**CENTURYTEL OF MISSOURI, LLC'S  
POSITION STATEMENT**

CenturyTel of Missouri, LLC, in accordance with the Commission's *Order Adopting Procedural Schedule* of November 21, 2007, and the List of Issues, List and Order of Witnesses, Opening Statements and Cross Examination filed by the Staff of the Commission on March 21, 2008, respectfully submits the following statements of position in connection with the above-captioned matter.

Issues listed by CenturyTel of Missouri, LLC.

Issue 1:

Are the charges that CenturyTel assesses in connection with the administrative processing of LSRs that Charter submits to CenturyTel when Charter requests to port a customer's phone number permissible under applicable law?

**CenturyTel's position:**

**Yes. Applicable law allows CenturyTel to assess charges for the administrative work that it performs in processing LSRs that relate to Charter's request to port a number. Although the federal cost recovery rule, 47 C.F.R. §52.33, limited carriers' right to recover long-term number portability ("LNP") costs through the five-year end user tariff permitted by the cost recovery rule, none of the charges at issue in this dispute are subject to that rule. Such service order charges are not within the classification of charges that could have been recovered under the end user tariff, and thus were appropriately charged to Charter during and after the expiration of the end user LNP cost recovery tariff permitted under the cost recovery rule. Moreover, applicable law provides that, upon the**

expiration of the five-year cost recovery period, normal cost recovery mechanisms are available to carriers. (Telephone Number Portability, CC Docket 95-116, Memorandum Opinion and Order and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578, effective 7/15/02).

The "legality" of charging for the administrative work that CenturyTel performs in processing LSRs that request the porting telephone number is further demonstrated by the fact that other carriers in the industry charge for similar work; by the fact that Charter has paid similar charges to other carriers; and by the fact that commissions, including this commission, have approved payment for the rendering of such services. For further analysis of this point, CenturyTel refers the Commission to the following testimony and documents previously filed in this case: CenturyTel Motion to Dismiss, Answer and Counterclaim at pgs. 8-12; Guy E. Miller, III Direct Testimony at pgs. 14-21, line 9; Guy E. Miller, III Rebuttal Testimony, pg. 3, lines 12-19; William Voight Rebuttal Testimony at pg. 4, line 20 through pg. 21, line 12.

Issue 2:

Is there a contractual, tariff, or other basis for the charges that CenturyTel assesses in connection with the administrative processing of LSRs that Charter submits to CenturyTel when Charter requests to port a customer's phone number?

CenturyTel's position:

Yes. The parties' Interconnection Agreement ("ICA") contains a provision, the Pricing Attachment (pgs. 121-142), for determining the applicable price for services rendered by the parties. The Pricing Attachment establishes a hierarchy of where the parties are to look to determine applicable pricing, and suggests that, unless otherwise stated, a charge will apply for any service provided. This is, of course, consistent with the practice of having the party who requests service pay for that service.

In this case, the Pricing Attachment instructs the parties to look first to the tariffs to find the appropriate rate, not to any agreement pricing. Because the LSRs that Charter submits to CenturyTel are service orders, the applicable rate for Charter's LSRs is the service ordering charge provided for in CenturyTel's tariff. CenturyTel General and Local Exchange Tariff, PSC Mo. No. 1, Section 5, Sheet 4). That is the rate that CenturyTel seeks to recover in this matter. For further analysis of this point, CenturyTel refers the Commission to the following: CenturyTel Motion to Dismiss at pgs. 13-15; Guy E. Miller, III Direct Testimony, pg. 21, line 17 through pg. 28, line 3; Guy E. Miller, III Rebuttal Testimony at pg. 4, lines 3-20; Guy E. Miller, III Surrebuttal Testimony at pg. 8, line 10 through pg. 15, line 5; and pg. 18, line 7 through pg. 20, line 10.

It has been suggested in prior opposing testimony that the tariff that CenturyTel relies on is inapplicable because it is an "end user" tariff. However, that tariff certainly falls within the agreement's definition (ICA ¶2.85) of tariff, and has thus expressly been incorporated into the parties' ICA. As such, the characterization of the tariff as "end

user" or otherwise is irrelevant. Nevertheless, even if the tariff that CenturyTel relies on is found to be inapplicable, the result is not that Charter gets to entirely avoid the charges that CenturyTel has imposed. Instead, the ICA requires that, if no rate is found in the tariffs, the parties continue to look down the hierarchy of terms of the Pricing Attachment. The Pricing Attachment provides another contractual basis for CenturyTel's charges. To be clear, CenturyTel maintains that the tariff rate is the applicable charge. However, given the strict construction interpretation that has been offered by Staff in this case, the Pricing Attachment does come into play to the extent that the tariff is deemed inapplicable.

With regard to the rate contained in the pricing attachment, Section 15.2.1 of the parties' ICA requires Charter to submit an LSR when it requests to port a number. The term "LSR" is defined in §2.54 to the Additional Services Attachment as applicable to resold services and network elements. By requiring porting requests to be submitted through an LSR, and by defining LSR in the manner that it does, in the absence of an applicable tariff, the ICA would require the parties to look to the resale section to the pricing attachment for the appropriate rate. That section of the Pricing Attachment provides that non-engineered service requests for basic services carry a charge of \$21.62. To the extent that the tariff is inapplicable, this is the rate that would apply to Charter's LSR porting orders under Staff's strict construction interpretation. For further analysis of this point, CenturyTel refers the Commission to the following testimony and documents previously filed in this case: Surrebuttel Testimony of Guy E. Miller, III, at pg. 18, line 16 through pg. 23, line 15.

#### Issue 2A:

What effect does the parties' prior 2004 dispute resolution process, and the outcome thereof, have on this issue?

#### CenturyTel's position:

Charter and CenturyTel previously engaged in the formal dispute resolution process required under §14 of the ICA regarding similar LSR charges in 2004. During the course of that process, Charter paid the disputed charges, CenturyTel explained its basis for the charges and, despite having advised CenturyTel of its intention to take prompt action to do so, Charter never did anything to attempt to recover its payment. By choosing not to escalate the dispute, Charter tacitly acknowledged the appropriateness of the charges, and that CenturyTel was entitled to retain the payment that Charter had made. The fact that Charter continued to order services from CenturyTel through the submission of LSRs, knowing that CenturyTel charged a service order charge for providing those services, further evidences Charter's understanding and agreement that it would be assessed charges for CenturyTel's processing of its LSRs.

The question has also been raised as to why CenturyTel did not seek to amend the ICA to provide more specifically for the charges at issue. CenturyTel's position is that it had no reason to do so, as it had retained the payment Charter made, and Charter had failed to escalate the dispute after the completion of the §14 dispute resolution process. In

other words, Charter's payment, and decision not to challenge CenturyTel's retention of that payment following the dispute process, made it clear to CenturyTel that the charges were appropriate under the existing ICA. Accordingly, no amendment to the ICA would be required. For further analysis of this point, CenturyTel refers the Commission to the following testimony and documents previously filed in this case: CenturyTel's Motion to Dismiss at pgs. 6-8; Guy E. Miller, III Direct Testimony at pgs. 31-33; Guy E. Miller, III Surrebuttal Testimony at pgs. 7-8 and pgs. 15-17.

Issue 3:

What amount does Charter owe to CenturyTel for the LSR processing charges that CenturyTel has billed to Charter, and that remain unpaid?

CenturyTel's position:

The amount due to CenturyTel from Charter for LSR processing charges (including LSR orders for porting and CSR orders for customer records), as of December 2007, is \$128,844.45. For further analysis of this point, CenturyTel refers the Commission to the following testimony and documents previously filed in this case: Pam Hankins Direct Testimony at pgs. 3-10; Pam Hankins Rebuttal Testimony, p. 2.

Issues listed by Charter Fiberlink-Missouri, LLC.

Issue 1:

Has CenturyTel breached the Interconnection Agreement between CenturyTel and Charter by:

Issue 1A:

Assessing upon Charter service order charges for number porting, and other charges related to records searches and directory listings, for which it is not entitled to payment; and

CenturyTel's position:

No. For its position with regard to Charter's Issue 1A, CenturyTel refers the Commission to its position on CenturyTel's issues 1, 2 and 2A as set forth above.

Issue 1B:

By threatening to unilaterally discontinue number porting unless Charter paid such disputed charges.

**CenturyTel's position:**

**No. Though CenturyTel never stopped processing Charter's LSRs, it had the right to do so under the agreement. Section 12 of the ICA permits a party to discontinue services when the other party is in default, including a payment default. While the ICA does have an exception for disputed payments, that exception does not apply in this case. In order to meet the exception for disputed payments, the party seeking to do so must properly dispute the charges at issue. This requires that the parties undertake a specific process, which is designed, in part, to prevent a party from simply claiming that it disputes charges, while doing nothing to further that dispute — exactly what Charter has attempted to do in this case. Although the parties eventually followed the dispute resolution process for the 2004 dispute, that matter was concluded, and not escalated. With regard to subsequent charges, Charter has not followed the dispute resolution provisions of the ICA, and the charges at issue in this matter are thus not "disputed." Accordingly, under the terms of the ICA, CenturyTel would have been within its right to discontinue processing Charter's LSRs. For further analysis of this point, CenturyTel refers the Commission to the testimony cited by CenturyTel in support of its position on CenturyTel Issue 2A.**

Respectfully submitted,

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### Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail and U.S. Mail on this 26<sup>th</sup> day of March, 2008, to the following persons:

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