

**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)	<u>Case No. TO-2009-0037</u>
Agreement Between CenturyTel of Missouri, LLC)		
And Charter Fiberlink-Missouri, LLC.)	

**AFFIDAVIT OF SUSAN SMITH
IN SUPPORT OF CENTURYTEL OF MISSOURI, LLC MOTION TO STRIKE**

STATE OF TEXAS)
) ss.
COUNTY OF BOWIE)

Susan Smith, being first duly sworn on oath, states as follows:

1. I am employed by CenturyTel Service Group, LLC, and my business address is 911 North Bishop Rd., C207, Texarkana, Texas 75501.
2. As an employee of CenturyTel Service Group, LLC, I hold the position of Director of External Affairs. In that capacity, I have represented and continue to represent CenturyTel of Missouri, LLC ("CenturyTel") in its negotiations with Charter Fiberlink-Missouri, LLC ("Charter") (CenturyTel and Charter together referred to herein as the "Parties") regarding the Missouri interconnection agreement that is in dispute in the above-referenced docket, as well as interconnection agreements for Wisconsin and Texas.
3. During the negotiations, Charter never disputed the network interface device ("NID") rates referenced in Article VI, § 3.3 and set forth in Article XI, § II of the Parties' Interconnection Agreement (the "Missouri Agreement"). To the contrary, Charter agreed to such rates. The only rate-related issue in dispute was whether the NID rates would apply in the specific situation described in Charter's proposed Article VI, Section 3.5.1 of the Missouri Agreement.

4. On June 12, 2008 (via email sent at 5:43 pm, a copy of which is attached hereto as Exhibit A),¹ Charter's attorney K.C. Halm inserted a comment into Article VI (UNEs) stating that Charter's acceptance of Article VI, § 12 (the provision that addresses the application of UNE prices generally, including the prices for NIDs) was "conditioned upon CenturyTel's delivery of a proposed final price list."

5. The pricing articles for Texas, Wisconsin and Missouri, all of which were being negotiated in tandem, were sent to Charter by CenturyTel. For example, the pricing article for the Missouri Agreement had been sent to Charter on December 18, 2007 via an email at 8:28 pm (a copy of which is attached hereto as Exhibit B). An updated draft of the same pricing article, containing a \$33.38 non-recurring NID charge and the \$1.91 monthly-recurring "Basic NID" charge, was sent to Charter on July 24, 2008 via an email at 9:39 pm (a copy of which is attached hereto as Exhibit C). Charter did not object to the NID rates thereafter, or at any time during our negotiations.

6. Because Charter's arbitration petition for Wisconsin was required to be filed before its petition in Missouri, the Parties continued negotiating Wisconsin NID-related terms. However, consistent with the Parties' broader agreement when appropriate to negotiate a common set of terms for all three states involved in the negotiation, the Parties agreed that contract language resolved for the Wisconsin agreements would similarly be incorporated into the Missouri Agreement. With respect to the Wisconsin pricing articles, Charter's counsel, K.C. Halm, returned those articles to CenturyTel on July 17, 2008 via email at 6:43 pm (a copy of which is attached hereto as Exhibit D). In his July 17th comments, Mr. Halm proposed certain

¹ The disputed provision referenced in paragraph 4—Article VI, Section 3.5.1—was originally numbered as Section 3.3.1 as reflected in Exhibit A. However, by the time Charter filed its petitions for arbitration in Texas, Wisconsin and Missouri, that provision had been renumbered as Section 3.5.1 in the parties' draft agreements.

revisions to the Wisconsin pricing articles, but he did not propose revisions to or otherwise dispute the non-recurring or monthly-recurring NID rates.² Nor did Charter, at any time, dispute the similar non-recurring or monthly-recurring NID rates in the Missouri pricing articles that were derived from the Wisconsin pricing articles.

7. Similar to the above-described manner in which the pricing articles were negotiated, the Parties also negotiated the substantive NID terms using the Texas agreement as the starting point, and rolling resolved terms into the Wisconsin agreements and the Missouri Agreement. To that end, the Parties continued to negotiate the terms applicable to NIDs in the Texas agreement.

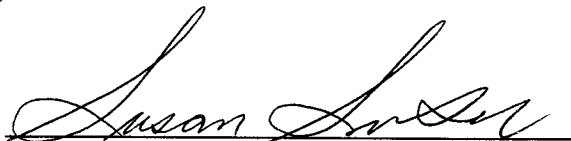
8. On July 11, 2008 via an email at 3:12 pm (a copy of which is attached hereto as Exhibit E), Mr. Halm sent Charter's comments to CenturyTel on the NID terms for Texas. In that email, he specifically stated with respect to the article that contained the NID terms: "The attached version reflects those issues we view as open, and where we are in agreement." The document he sent back with this email showed that Charter unconditionally accepted the language regarding certain NID terms, including Article IX, Sec. 3.3, which states: "Rates and charges applicable to NIDs are set forth in Article XI (Pricing), and such rates and charges shall apply." CenturyTel understood, however, that Charter continued to dispute the applicability of the rates and charges in the specific circumstance addressed in Charter's proposed language for Article IX, § 3.5.1, stating that "when Charter is connecting a Charter provided loop to the inside wiring of a customer's premises through the customer side of the CenturyTel NID, Charter does not need to submit a request to CenturyTel and CenturyTel shall not charge Charter for access to the CenturyTel NID."

² On July 17, 2008, Charter did propose to strike the "Outside Facility Charge" of \$43.69, but that charge is distinct from the initial NID service order charge and monthly-recurring charge for the NID.

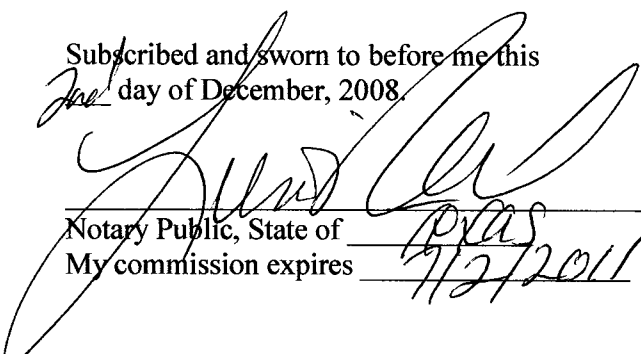
9. These same NID terms—both the disputed and undisputed provisions—were incorporated into the draft Missouri Agreement before Charter filed its petition in Missouri. The NID terms were incorporated into Article VI (UNEs) and into Article XI (Pricing). In other words, in Charter’s Missouri petition and attached Exhibit B (the proposed Missouri Agreement), the specific NID rates, and the language stating that the NID rates in the relevant pricing sections would apply, were incorporated and depicted as undisputed by Charter. The dispute embodied in Section 3.5.1 – whether the particular connection described therein constituted “use of the NID” subject to charges – was the rate-related open issue identified and preserved.

10. That Charter never disputed CenturyTel’s NID rates is further supported by the fact that Charter never asked for cost studies justifying the NID rates in any of the states in which the Parties were negotiating, including Missouri.

Dated this 2nd day of December, 2008.


Susan Smith

Subscribed and sworn to before me this
2nd day of December, 2008.


Notary Public, State of _____
My commission expires 7/2/2011

