

**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 )

Case No. LC-2008-0049

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**STAFF'S POST-HEARING BRIEF**

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June 11, 2008

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**COMES NOW** the Staff of the Missouri Public Service Commission (Staff) and, for its Post-Hearing Brief, states to the Missouri Public Service Commission as follows:

**Introduction and Overview**

This case involves the interpretation of an Interconnection Agreement between Charter Fiberlink-Missouri, LLC (Charter) and CenturyTel of Missouri, LLC (CenturyTel). On August 24, 2007, Charter filed a complaint with the Commission against CenturyTel, alleging that CenturyTel was charging Charter for the porting of telephone numbers.

Currently, the parties are operating under an Interconnection Agreement (ICA or Agreement) entered into in 2001 between Charter and Verizon. CenturyTel was assigned the ICA when acquiring Verizon properties in 2002.<sup>1</sup> The agreement has never been changed, altered, or amended since its adoption in 2001.<sup>2</sup> There is no provision in the ICA that provides for number porting charges. Section 15 of the ICA, which describes

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<sup>1</sup> Transcript pg. 68, lines 17-23. (Giamenetti Testimony)

<sup>2</sup> Transcript pg. 72, lines 20-22. (Giamenetti Testimony)

the parties' obligations in regard to number porting, contains no reference to charges for porting numbers.

CenturyTel attempts to justify the porting charges by using its General and Local Exchange Tariff. However, the tariff cited by CenturyTel cannot be applied to number porting charges assessed upon Charter. And Charter does not resell CenturyTel's phone service.<sup>3</sup> CenturyTel's General and Local Exchange Tariff provides only for retail telephone exchange. It does not contain wholesale rates charged to other telephone companies.

Staff's position in this case is that CenturyTel is not authorized to bill Charter for telephone number porting, because such a charge is not contained in the ICA. Moreover, the rates contained within CenturyTel's tariff and Service Guide are not applicable and do not justify the assessment of a number porting charge.

### **Issues**

The parties were not able to agree on a cohesive list of issues for this case. As enumerated in the List of Issues filed for this case, Charter believes the issues are:

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,

Issue 1B: By threatening to unilaterally discontinue number porting unless Charter paid such disputed charges.

CenturyTel believes the following issues better describe the issues at stake in this case, including:

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<sup>3</sup> Transcript pg. 56, lines 10-12.

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?

Issue 2: Is there a contract, 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?

Issue 2A: What effect does the parties' prior 2004 dispute resolution process, and the outcome thereof, have on this issue?

Issue 3: What amount does Charter owe to CenturyTel for the LSR processing charges that CenturyTel has billed to Charter, and that remain unpaid?

### **Analysis**

The Staff, however, believes that the sole issue for determination is whether the ICA authorizes any party to assess charges for the processing of local service requests when the other party requests to port the telephone number of one its customers. Staff asserts that the Interconnection Agreement between Charter and CenturyTel makes no mention of any telephone number porting charge, and the rates as enumerated in CenturyTel's tariff and Service Guide do not apply to this matter, and do not justify applying a charge for telephone number porting.

It is undisputed that Section 15 of the ICA contains no provisions for number porting charges. CenturyTel argues that the ICA contains a provision for the application of its tariff when the ICA is silent upon terms. However, CenturyTel's tariff applies to business customers who order new telephone service from CenturyTel, or who are requesting a change in existing CenturyTel service.<sup>4</sup> These instances are referred to as "Service Ordering Charges."<sup>5</sup> When a customer requests new telephone service, the rate

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<sup>4</sup> Voight Rebuttal, Exh. 10, pg. 6, lines 19-21.

<sup>5</sup> Id., pg. 6, lines 18-19.

is called an “Initial Order Charge,” and when the customer is requesting changes to existing service, it is called a “Subsequent Order Charge.”<sup>6</sup>

CenturyTel is billing Charter based upon the “Initial Order Charge” encompassed within CenturyTel’s tariff. However, Charter is not a customer of CenturyTel, and is not ordering new service. Charter is not reselling CenturyTel’s service either.<sup>7</sup> An initial order charge is only assessed upon a customer when that customer is ordering new service from CenturyTel. Charter is not ordering new service from CenturyTel when requesting that a number be ported, and interestingly enough, service ordering charges do not apply to customers who cancel service with CenturyTel, which is exactly the circumstance when Charter requests a number be ported.<sup>8</sup> For these reasons, the assessment of an initial service order charge upon Charter for porting numbers is inappropriate.

Furthermore, Section 5, Original Sheet 2 of CenturyTel’s tariff states that Initial Order Charges are for “connections of service.”<sup>9</sup> When Charter requests that CenturyTel port a number, that request does not in any way involve the connection of CenturyTel telephone service.<sup>10</sup> Therefore, CenturyTel’s own tariff, which CenturyTel argues applies to number porting, precludes the assessment of Initial Order Charges for number porting, because that tariff defines Initial Order Charges as being for “connections of service.” Clearly, porting a number is not a request for the connection of CenturyTel telephone service, but a request for a cancellation of CenturyTel telephone service. In

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<sup>6</sup> Voight Rebuttal, Exh. 10, pg. 6, lines 21-23.

<sup>7</sup> Transcript pg. 56, lines 10-12 and pg. 246, ln. 20-21 (Miller Testimony); also Voight Rebuttal, pg. 7, lines 14-15.

<sup>8</sup> Voight Rebuttal, Exh. 10, pg. 7, lines 1-3.

<sup>9</sup> Id., pg. 8, lines 1-2.

<sup>10</sup> Id., pg. 8, lines 2-4.

effect, CenturyTel is billing Charter for the installation of service when nothing is being installed.

As for CenturyTel's issue 2A mentioned above, Staff believes that the outcome of the 2004 dispute resolution process has no bearing on the case today. As Mr. Schremp stated in his Direct Testimony, Charter disputed all number porting charges that were assessed by CenturyTel.<sup>11</sup> Mr. Schremp stated that Charter disputed the bill for almost every month between June of 2003 to the present.<sup>12</sup> Moreover, Charter provided notice that it disputed the entire class of charges on July 26, 2004,<sup>13</sup> and submits that the June 16, 2004 payment to CenturyTel for the number porting charges did not admit Charter's liability for the charges in any way.<sup>14</sup> For these reasons, Staff believes that the 2004 dispute resolution process, and subsequent payment by Charter for the number porting charges, has no bearing on the current case and does not preclude Charter from disputing the charges during this proceeding.

CenturyTel and Charter undoubtedly incur administrative costs when porting telephone numbers.<sup>15</sup> But their current ICA provides no provisions for payment of those costs. CenturyTel's attempts to cobble together assorted documents to show otherwise is just creative argument. Verizon, CenturyTel's predecessor, never charged Charter for porting numbers and Verizon operated under the same ICA.<sup>16</sup> Mr. Miller tried to explain away CenturyTel's initial failure to charge for porting by claiming CenturyTel was unfamiliar with interconnection and competition in 2002. Then, in 2003, an

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<sup>11</sup> Schremp Direct, Exh. 2, pg. 10, lines 1-4; and page 13, lines 1-3.

<sup>12</sup> Id., pg. 13, lines 21-23.

<sup>13</sup> Id., pg. 14, lines 8-10.

<sup>14</sup> Id., pg. 15, lines 12-16.

<sup>15</sup> Transcript, pg. 311, lines 16-19 (Voight Testimony).

<sup>16</sup> Transcript, pg. 72, lines 17-19 (Giaminetti Testimony).

inexperienced employee chose \$19 as the charge for porting.<sup>17</sup> Miller claims CenturyTel became more sophisticated in 2004 and Miller advised the company to change the porting fee to \$23 in accordance with his interpretation of the various documents that Miller now asserts show a clear and coherent contract. But CenturyTel did not change the fee from \$19 to \$23 until July, 2007. The three year lapse was due to “human error. Oversight.”<sup>18</sup> CenturyTel’s explanations strain credibility.

**WHEREFORE**, the Staff requests that the Commission rule as follows:

1. The parties’ Interconnection Agreement does not authorize either party to bill the other for number porting, and
2. Issue other findings and orders as are just and reasonable.

Respectfully submitted,

**/s/ Steven C. Reed**

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 11th day of June, 2008.

/s/ Steven C. Reed

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<sup>17</sup> Transcript, pg 164-165 (Miller Testimony).

<sup>18</sup> Id.