

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

Application of CenturyTel Solutions, LLC and	)	
CenturyTel Fiber Company II, LLC d/b/a LightCore,	)	
for Adoption of an Approved Interconnection Agreement	)	Case No. LK-2006-0095
between Southwestern Bell Telephone, SBC Missouri, L.P.,	)	
and Xspedius Management Co. of Kansas City, LLC and	)	
Xspedius Management Co. Switched Services, LLC.	)	

**RESPONSE OF SBC MISSOURI TO APPLICATION
FOR ADOPTION OF INTERCONNECTION AGREEMENT**

COMES NOW Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") and for its Response to the Application for Adoption of Interconnection Agreement filed by CenturyTel Solutions, LLC, and CenturyTel Fiber Company II, LLC, d/b/a LightCore ("the CenturyTel Applicants") states as follows:

1. On August 30, 2005, the CenturyTel Applicants filed their Application for Adoption of Interconnection Agreement ("Application") in which they seek to adopt an existing interconnection agreement between SBC Missouri and Xspedius Management Co. of Kansas City, LLC and Xspedius Management Co. Switched Services, LLC, (collectively "Xspedius") which was previously approved by the Commission effective August 16, 2005 in Case No. TK-2006-0043.

The Application does not reflect service on SBC Missouri and no service was in fact made. SBC Missouri has, however, learned of the Application through the Order issued by the Commission on September 2, 2005, which required SBC Missouri to respond to the Application on or before September 22, 2005.

2. In its Application, the CenturyTel Applicants note that SBC Missouri has declined to execute the interconnection agreement adoption form that would permit the CenturyTel Applicants to operate under the Xspedius interconnection agreement previously approved by the Commission. Although the CenturyTel Applicants purport not to understand the reason SBC Missouri has not executed the adoption form, the CenturyTel Applicants are in fact well aware of the reason. On

August 22, 2005, SBC Missouri provided to the CenturyTel Applicants a proposed amendment form which “makes it clear that this MFN is subject to the outcome of the appeal of the underlying arbitrated agreement in the same manner as the parties to that arbitrated agreement.” See, Exhibit A. Subsequent correspondence between the parties made clear that the CenturyTel Applicants objected to SBC Missouri’s position that a change in the underlying Xspedius interconnection agreement as a result of the pending appeal would also affect the CenturyTel Applicants’ interconnection agreement in the same manner and at the same time.

3. As the Commission is aware, various aspects of the Commission’s decision establishing the interconnection agreement between SBC Missouri and Xspedius have been appealed to the United States District Court for the Eastern District of Missouri. That Court has already entered an Order which has affected the underlying SBC Missouri-Xspedius interconnection agreement. In its Preliminary Injunction Order issued on September 1, 2005, the Court enjoined the Commission’s Orders to the extent they would require SBC Missouri to fill new orders for unbundled local switching or the Unbundled Network Elements Platform (“UNE-P”). The Preliminary Injunction Order also enjoins any Orders requiring SBC Missouri to fill new orders for unbundled local switching or UNE-P with respect to “any other telecommunications carrier that adopts one of the interconnection agreements are the subject of this injunction.” Exhibit B, p. 2. Accordingly, it would be unlawful for the Commission to approve an interconnection agreement between SBC Missouri and the CenturyTel Applicants to the extent it would require SBC Missouri to provide unbundled local switching or the UNE-P in contravention of the Preliminary Injunction Order.

4. Even absent the Preliminary Injunction Order, it would be unlawful and inappropriate for the Commission to approve an interconnection agreement that would give greater rights to the CenturyTel Applicants than to the parties to the underlying SBC Missouri-Xspedius

interconnection agreement. The underlying interconnection agreement is, of course, subject to the outcome of the appeal and will be immediately invalidated to the extent of any order issued as a result of that appeal. The CenturyTel Applicants, however, seek to place themselves above the law and avoid any ruling on appeal with which they do not agree. Instead, the CenturyTel Applicants seek to require SBC Missouri to “negotiate and arbitrate” the impact of any order on appeal which affects the Xspedius interconnection agreement. Under the CenturyTel Applicants’ proposal, Xspedius would be immediately subject to the ruling on appeal while the CenturyTel Applicants would continue to gain the benefit of the unlawful provisions until these changes were “negotiated and arbitrated” with the CenturyTel Applicants, a process which the CenturyTel Applicants would seek to drag on for weeks or months. Even if such an approach were lawful, which it clearly is not, there is no rational public policy which would support this outcome. A party opting into an interconnection agreement which is subject to a pending appeal cannot acquire greater rights than the parties to the underlying agreement. Such a result would clearly be arbitrary and capricious.

5. The CenturyTel Applicants also seek rights superior to those of other CLECs which have opted into interconnection agreements that are the subject of the pending appeal. CLECs which have opted into interconnection agreements that are subject to the pending appeals have routinely agreed to the very language to which the CenturyTel Applicants object. The Commission has routinely approved such agreements including: ACN Communications Services, Inc., Case No. VT-2006-0004; AccuTel of Texas, Inc., Case No. VT-2006-0005; American Fiber Systems, Inc., Case No. VT-2006-0006; American Fiber Network, Inc., Case No. VT-2006-0007; Everest Midwest, Case No. VT-2006-0008; Missouri Telecom, Inc., Case No. VT-2006-0009; Trinsic Communications, Inc., Case No. VT-2006-0011; Western Communications, Inc., Case No. VT. 2006-0012; The Pager Company, Case No. VT-2006-0014; Missouri Network Alliance, Case No.

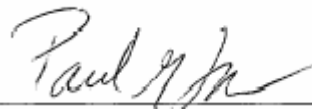
VT-2006-0015; BasicPhone, Inc., Case No. VT-2006-0017; and Quick-Tel Communications, Inc., Case No. VT-2006-0020.

6. As it would be unlawful and contrary to sound public policy, the Commission should reject the CenturyTel Applicants purported adoption of the Xspedius interconnection agreement. If the CenturyTel Applicants wish to have the same terms and conditions as Xspedius and other CLECs which have opted into one of the arbitrated interconnection agreements, they may do so subject to the outcome of the pending appeal.

WHEREFORE, for all the foregoing reasons, SBC Missouri respectfully requests the Commission to reject the Application of the CenturyTel Applicants for approval of adoption of the Xspedius interconnection agreements.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.
D/B/A SBC MISSOURI

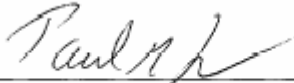
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by electronic mail on September 12, 2005.



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August 22, 2005

Via Fax 314 880-1999

Dan Davis, Vice President
CenturyTel Fiber Company II, LLC
14567 N. Outer Forty Road, Suite 500
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Re: Successor M2A MFN Short Form

We have received your signed MFN Short Form. Unfortunately the form you signed was an outdated form that SBC Missouri replaced on the web site on August 18, 2005. SBC Missouri has signed the form, subject to an additional reservation of rights (ROR) clause (this ROR is the *only* change to the original Short Form) which makes it clear that this MFN is subject to the outcome of the appeal of the underlying arbitrated agreement in the same manner as the parties to that arbitrated agreement.

We have initialed the ROR clause and ask that you do the same. Once the parties have initialed the reservation clause, SBC Missouri will file this with the Commission for approval. Thank you.

Please contact your SBC Account Manager with any questions.

Sincerely,

Notices Manager

CC: Carol Steiner

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Southwestern Bell Telephone, L.P. d/b/a)
SBC Missouri,)

Plaintiff,)

v.)

Case No. 4:05-cv-01264-CAS

The Missouri Public Service Commission,)
et al.,)

Defendants.)
)

PRELIMINARY INJUNCTION ORDER

On August 12, 2005, Plaintiff Southwestern Bell Telephone, L.P. d/b/a SBC Missouri (“SBC Missouri”) filed a Complaint [Doc #1] and Motion for Preliminary Injunction [Doc # 5] against Defendants the Missouri Public Service Commission and its member Commissioners (collectively, the “PSC”), and Defendants Big River Telephone Company, LLC; Birch Telecom of Missouri, Inc.; Ionex Communications, Inc.; NuVox Communications of Missouri, Inc.; Socket Telecom, LLC; XO Communications Services, Inc.; and Xspedius Management Co. Switched Services LLC d/b/a Xspedius Communications, LLC (collectively, the “CLEC Defendants”). On August 31, 2005, the parties jointly filed a Consent Stipulation Regarding SBC Missouri’s Motion for Preliminary Injunction [Doc # 30]. Pursuant to that joint stipulation, the Defendants, without admitting the validity of any aspect of SBC Missouri’s showing, agreed to be bound by the terms of a preliminary injunction to be ordered by this Court, on the terms set

forth below. Accordingly, based upon the consent of the parties, the Plaintiff's Motion for Preliminary Injunction is **GRANTED** on the following terms:

1. The PSC's July 11, 2005 Arbitration Order,¹ as well as related orders approving interconnection agreements between Southwestern Bell Telephone, L.P. and each CLEC Defendant,² are hereby enjoined to the extent they require SBC Missouri to fill new orders for unbundled local switching or UNE-P pursuant to the Federal Telecommunications Act of 1996 with respect to the CLEC Defendants or any other telecommunications carrier that adopts one of the interconnection agreements that are the subject of this injunction.

2. This injunction shall be immediately effective as to orders for unbundled local switching or UNE-P for new customers, and shall be effective on October 7, 2005 as to orders to add lines or move lines for existing customers of each CLEC Defendant.

3. Nothing in this order affects SBC Missouri's obligation to continue to provide service on existing unbundled local switching/UNE-P lines to existing customers at existing locations pursuant to the transition rules set out in the Federal Communications Commission's ("FCC's") *Triennial Review Remand Order*.³

4. In addition, nothing in this order precludes the CLEC Defendants from obtaining additions or deletions of switch features on existing customer lines at existing locations, provided such features have previously been made available, nor shall this order preclude the CLEC

¹ See Arbitration Order, Case No. TO-2005-0336 (Mo. PSC July 11, 2005) (Att. A to SBC Missouri Mem. In Support of Mot. for Prelim. Inj'n).

² See Complaint Exh. B.

³ Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005) ("*Triennial Review Remand Order*"), petitions for review pending, *Covad Communications Co., et al. v. FCC, et al.*, Nos. 05-1095, *et al.* (D.C. Cir.).

Defendants from obtaining line splitting or the termination of line splitting on existing customer lines at existing locations.

5. This injunction shall remain in place until further order of the Court.

SO ORDERED.



THE HONORABLE CHARLES A. SHAW

DATE:

9/1/05