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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

CHARTER FIBERLINK-MISSOURI,)
LLC)
Complainant,)
vs.) Case No. TC-2004-0046
CENTURYTEL OF MISSOURI, LLC)
Respondent.)

PRE-CONFERENCE HEARING
TRANSCRIPT OF PROCEEDINGS

Wednesday, July 30, 2003
1:30 p.m.

DALE ROBERTS, Presiding,
Chief Regulatory Law Judge

REPORTED BY: Monnie S. VanZant, CCR, CSR, RPR
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23 Reporter's Certificate and Costs {PG#}

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1 TRANSCRIPT OF PROCEEDINGS

2 JUDGE ROBERTS: Good afternoon.

3 Ladies and gentlemen, my name is Dale Roberts.
4 I'm the judge to whom this case is assigned. We
5 are here for the complaint case of Charter,
6 Fiberlink-Missouri, LLC, versus CenturyTel of
7 Missouri, LLC, which is case number
8 TC-2004-0046. And to start off, I'd like to
9 take entries appearance starting with the
10 complainant, please.

11 MR. ZOBIRTS: Karl Zobrist,
12 Blackwell Sanders Peper Martin for the
13 Complainant. And appearing with me momentarily,
14 Judge Roberts, will be Ms. Carrie Cox, who is
15 just using the restroom at the moment. She's
16 entered her appearance at pleadings for Charter
17 Fiberlink. She's in-house counsel.

18 JUDGE ROBERTS: In-house counsel.
19 Carrie, C-a-r --

20 MR. ZOBIRIST: -- r-r-i-e.

21 JUDGE ROBERTS: Cox, C-o-x?

22 MR. ZOBIRIST: Uh-huh.

23 JUDGE ROBERTS: Okay.

24 MR. DORITY: Thank you, Judge.

25 Appearing behalf of the respondent CenturyTel of

1 Missouri, LLC, Larry Dority, and James Fischer,
2 Fischer & Dority, PC. Our address is 101
3 Madison Street, Suite 400, Jefferson City
4 Missouri, 65101.

5 MR. POSTON: Mark Poston appearing
6 for the staff of the Missouri Public Service
7 Commission, P.O. Box 360, Jefferson City,
8 Missouri, 65102.

9 MR. DANDINO: Michael Dandino,
10 Office of the Public Counsel, Post Office Box
11 7800, Jefferson City, Missouri, 65102,
12 representing the Office of Public Counsel and
13 the public.

14 JUDGE ROBERTS: Thank you. I had
15 read everything in the file, except, I must
16 admit, I hadn't noticed the response of
17 complainant and the request for early
18 pre-hearing conference. I think we met in my
19 office. We, being the complainant and the
20 respondent, dropped by and asked for a few
21 moments to talk about setting this case for
22 prehearing conference. And it looks like your
23 response, which I've just read, basically says
24 what you said in the office that day. And I
25 apologize to staff and Office of the Public

1 Counsel for not being able to loop you all in
2 quickly enough. The attorneys -- the primary
3 parties, as I refer to them, in the complaint
4 showed up and just wanted to talk about setting
5 this prehearing conference. So we did that.

6 Procedurally, I -- everything that is
7 required to have been filed has been filed up to
8 this point. The respondent's answer -- and I
9 apologize. You know, I met with the two
10 attorneys in my officed and then dashed out an
11 order. And I should never dash out an order.
12 The ordered section was correct and accurate.
13 It didn't necessarily jive with what the
14 introductory text said. But the order -- and
15 thank you, Mr. Dority, for calling that to my
16 attention. But the ordered section was correct
17 in that we're having the prehearing conference
18 today. The answer is due on August 6th?

19 MR. DORITY: 6th.

20 JUDGE ROBERTS: Okay. So but for
21 the answer, everything else has been filed and
22 we're kind of up to date. One of the problems
23 -- and excuse me. One of the reasons I had
24 issued an order asking complainant to file
25 something more specific is that as you probably

1 know and especially you, Mr. Zobrist, I don't
2 think -- unless the respondent just comes in and
3 -- and files an answer in which they admit
4 everything, I don't think the Commission can
5 necessarily issue an order find them in
6 violation of the contract or finding them
7 lacking in some way without having some evidence
8 on the record. So if we're going -- if we're
9 going to have to resolve this in the time frame
10 you've set out, then we have to have a very
11 expedited hearing. And I know that may not be
12 necessary and maybe I should have asked you how
13 things were going before I got into this. But
14 I'll finish.

15 Luckily, if that's necessary -- and I'm
16 shocked to see this when I printed it out just
17 now -- our hearing schedule for August is really
18 quite open. And if we had to do it, I would say
19 we -- you know, it might be one of those very
20 rare cases where we just take direct testimony
21 from -- you know, live. Or that we get some
22 abbreviated direct testimony prefiled. And I
23 don't think we'd have to go through all the
24 stages of rebuttal and surrebuttal and cross
25 surrebuttal. I think while the facts may not be

1 agreed to, they are probably fairly simple. So
2 that's what the case looks like to me.

3 I'll start with Mr. Zobrist, and you can
4 tell me how long I am. Or how's it's changed.

5 MR. ZOBRIST: I think you're
6 absolutely right, and I think that I would anal
7 -- well, first of all, we have talked, and we're
8 here to -- to do some talking with CenturyTel.
9 So although I can't report any progress or lack
10 of progress, my client is here. I know
11 Mr. Dority's clients are here and that we
12 anticipate having constructive discussions this
13 afternoon. And perhaps depending on upon what
14 happens, we could report back to you either
15 formally or informally, whatever the parties
16 would agree to.

17 I would agree to your observation taht if
18 we don't have an agreement and have to have a
19 hearing it ought to be on an expedited basis.
20 And I would think of it in sort the form of what
21 a court might do in a request for a temporary
22 restraining order. And it would be our proposal
23 that if the director required that it be very
24 direct or perhaps that it simply put in sworn
25 form, the allegations that are in the complaint,

1 perhaps for the few other things, but I would
2 think that the bulk of it is pretty
3 straightforward and could be decided in that
4 kind of a schedule.

5 JUDGE ROBERTS: And as long as --
6 let me stay with you for a moment. If -- you
7 know, if we were to go to a hearing, do you have
8 -- can you tell me how many witnesses you think
9 your client would need to present?

10 MS. COX: Two to three.

11 JUDGE ROBERTS: Okay.

12 MR. ZOBRIST: And, Judge Roberts,
13 this is Carrie Cox who I mentioned on the record
14 just prior to her joining us.

15 JUDGE ROBERTS: Okay. Thank you.
16 Mr. Dority?

17 MR. DORITY: Yes. Thank you, Judge.
18 As you noted, CenturtyTel has not yet had the
19 opportunity to file its response of pleading to
20 the complaint. And that is due one week from
21 today, August 6th. We are here this afternoon,
22 as Mr. Zobrist indicated, to engage in some --
23 what we feel will be some constructive
24 discussions. And, quite frankly, we feel that

1 resolved in an expeditious manner. I'm hopeful
2 that we may not even have to file an answer to
3 this matter next week. But if we do, we're
4 prepared to do so. And we will be filing our
5 affirmative defenses and probably a Motion to
6 Dismiss. And we'll be presenting you some facts
7 that will appear somewhat different than -- than
8 what is contained in the complaint.

9 But having said that, nevertheless, we --
10 we're here. We're appreciative of your setting
11 this early prehearing conference in response to
12 our request. We -- as Mr. Zobrist indicated,
13 our folks are here. We have others joining us
14 on a conference call that's scheduled to begin
15 at 2 p.m. up in the legal conference room. And
16 we feel that if we can get the right folks
17 involved that -- that this matter can be -- can
18 be resolved and it can be resolved in a timely
19 manner that I think will be to the satisfactory
20 of all the parties.

21 JUDGE ROBERTS: Okay. Great. Mr.
22 Poston?

23 MR. POSTON: Staff doesn't have any
24 problem with expediting this case as much as

25 necessary. And we are -- we plan to meet with

9

1 the parties following this prehearing to see
2 what we can do to resolve this.

3 JUDGE ROBERTS: And before I go to
4 you Mr. Dandino, I'm not sure if this is a
5 question for staff, one which you would have to
6 discuss with Mr. Voight or maybe for all of you,
7 I suppose. It's not at all uncommon in a
8 complaint case when we -- if we get the
9 scenario, you know, he said/she said sort of
10 thing, as the facts in here -- I mean, so far,
11 we have the complaint and the -- the focus of
12 the complaint seems to be that some data or
13 information has not been provided -- a
14 compilation of data has not been provided to
15 Mr. Zobrist's client. It's imaginable that
16 Mr. Dority could say, Well, for lack of a better
17 -- I'm not putting words in Mr. Dority's mouth,
18 but for lack of a better expression, Garbage in,
19 garbage out. Whoever you told us the people are
20 subscribing, those are the ones we fed back to
21 you in the date, what have you. The bottom line
22 is it's often in the case in complaints whether
23 we get -- if they're not resolved after the

24 complainant answer that we issue an order
25 directing the staff to investigate under the

10

1 theory that they don't have a dog in this fight.
2 They are our resident experts. They'll look at
3 it as an unbiased party and kind of tell us
4 what's going on. I don't want to -- if we need
5 that, we need to start it now because of the
6 time crunch.

7 On the other hand, I don't want to send
8 staff off on some -- you know, doing work that
9 may not be at all necessary. So I guess that's
10 -- I don't know. Actually, that's really not a
11 question to you, Mr. Poston. It's probably a
12 question back to the parties. And maybe after
13 today you can give me some better information
14 unless you have any thoughts on that now. I
15 assume it's safe to say that staff has not yet
16 initiated any sort of inquiry?

17 MR. POSTON: Correct.

18 JUDGE ROBERTS: Okay. Hold that
19 thought. Mr. Dandino?

20 MR. DANDINO: Your Honor, usually we
21 don't get involved in -- in disputes, especially
22 between companies. But there is a public
23 interest and a customer problem, a broader issue

24 in this that the customers may be unlisted in
25 the directory. So we are concerned and we

11

1 certainly hope that the parties can resolve this
2 without delay.

3 JUDGE ROBERTS: And that's the crazy
4 thing. I think I have to pay CenturyTel to be
5 unlisted and -- no, I -- just kidding. Your
6 customers -- maybe you're getting something for
7 free, Mr. Zobrist. It's --

8 MR. ZOBRIST: I don't know, Judge.
9 With your reputation, I can understand why you
10 would have to do that. But --

11 JUDGE ROBERTS: Mr. Dority --

12 MR. DORITY: Yes, sir.

13 JUDGE ROBERTS: Had you and -- we'll
14 strike that off the record later. Mr. Dority, I
15 don't know that I asked you, if this case goes
16 to hearing, do you have any idea how many
17 witnesses you would be presenting?

18 MR. DORITY: I would expect two to
19 three would be -- be the number of witness
20 that's we would have, your Honor.

21 MR. POSTON: Staff would like to
22 have at least one witness.

23 JUDGE ROBERTS: And Mr. Dandino,
24 would you anticipate having a witness here?
25 MR. DANDINO: No, your Honor.

12

1 JUDGE ROBERTS: Okay. So it's
2 probable that this could be done in -- maybe not
3 even two days, maybe a day, maybe half a day?

4 MR. DORITY: (Mr. DORITY nods head.)

5 MR. ZOBRIST: (Mr. Zobrist nods
6 head.)

7 JUDGE ROBERTS: And either one of
8 you tell me if this came to -- let me back up.
9 the drop dead date, so to speak, for decision,
10 if one were necessary in your -- in response to
11 the order directing more specific, you know,
12 information -- I think, Mr. Zobrist, you -- you
13 said although we've passed one -- you know, that
14 date, whatever it was in June, there's a really
15 absolute last date. And what is that?

16 MR. ZOBRIST: Well, the first
17 publication data is August 23rd. And we would
18 need to have Charter act by August 15th.

19 JUDGE ROBERTS: Did you say 14th?

20 MR. ZOBRIST: 15th.

21 JUDGE ROBERTS: So in theory, you'd
22 need a decision from the Commission, if one were

23 necessary, I think at least five days before
24 that?

25 MR. DORITY: Your Honor, if I may, I

13

1 think that's going to be the subject of our --
2 some of our discussions this afternoon as to
3 what a -- what time frame may be required. And
4 I think we may be able to provide you with some
5 further information regarding that.

6 JUDGE ROBERTS: Okay. Because I may
7 try to at least go ahead and mark something off
8 the calendar just in case I need time on the
9 calendar.

10 MR. ZOBRIST: And, Judge, my
11 understanding is that the -- there may be some
12 flexibility in that August 23rd date. The
13 August 28th date is not flexible because that's
14 a Southwestern Bell date that was set by another
15 entity. And I don't think either of us has any
16 control of it, either CenturyTel or Charter has
17 any control over that date.

18 JUDGE ROBERTS: Okay. And that
19 actually leads me to what may have been my last
20 question on the list. Because the pleadings
21 allude to it, are there -- we've often talked

22 about and probably never attempted any kind of
23 third party interpleader here at the Commission
24 or what -- I'm not sure what we'd call it. But
25 is there any other party to this case that's

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1 necessary or they just sort of incidental?

2 MS. COX: None that I can think of.

3 MR. ZOBRIST: We can't think of
4 anything.

5 JUDGE ROBERTS: I mean, you're
6 trying to get data -- make sure the data is
7 prepared in time for someone else to publish it.

8 MR. ZOBRIST: Correct.

9 JUDGE ROBERTS: And they're not
10 going to stop for us. Did anybody regulate?

11 MR. ZOBRIST: I don't think you --

12 MS. COX: Southwestern Bell Yellow
13 Pages is an affiliate of SBC.

14 MR. ZOBRIST: Yeah. You don't
15 represent the yellow pages. And the CenturyTel
16 arrangements, I understand that they don't do
17 the publishing. They do it with the Berry
18 Company, which is their publisher. So --

19 JUDGE ROBERTS: Okay. Okay. I -- I
20 think those are -- that covers the questions I
21 had. How -- do you have any idea about how soon

22 you may be able to tell me something? Do you
23 think you will have something by the end of the
24 day?

25 MR. ZOBRIST: Judge, can I just ask

15

1 that you let us talk for maybe a couple hours
2 and maybe Mr. Dority and I -- and we'll include
3 public counsel and staff, but we'll let you know
4 how we're doing, if that's all right. What do
5 you think?

6 MR. DORITY: I think that would be
7 fine. I was going to say, Judge, certainly by
8 the end of the week we should be in a position
9 to get back with you with some firm
10 recommendations as to how this should proceed.

11 JUDGE ROBERTS: Okay. I will
12 probably at least sort of pencil in a date on
13 our calendar just so it doesn't get taken in
14 case we need one. But who knows?

15 MR. DORITY: What week were you
16 thinking of, Judge?

17 JUDGE ROBERTS: You know --

18 MR. DORITY: The reason I ask that
19 is I know next week, I think one or two of our
20 folks may be unavailable.

21 JUDGE ROBERTS: Just -- I'm kind of
22 pulling something out of thin air. But I -- I
23 have -- I marked on my calendar the 12th of
24 August. And I don't know if that's -- that may
25 be waiting too late. The other possibility,

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1 according to my -- according to my -- actually,
2 I have open, you know, the 6th of August and the
3 8th of August, although those are coming on
4 awfully quick.

5 MS. COX: Well, certainly from
6 Charter's perspective, the earlier, the better
7 because we're trying to manage data that has
8 time sensitivity, understanding that CenturyTel
9 has already noted they have some gaps in the
10 next week.

11 MR. DORITY: I would think sometime
12 that week of the 12th, Judge, would -- if we
13 have to go to hearing, that would probably be
14 acceptable.

15 JUDGE ROBERTS: Well, that's -- like
16 I said, my -- the first dates that -- that look
17 open to me would be the 12th or the 8th, Friday
18 the 8th, or Tuesday, the 12th. So --

19 MR. DORITY: Again, we're -- I think
20 we have some availability problems on the 8th.

21 So --

22 JUDGE ROBERTS: Okay. Okay.

23 MR. DORITY: Thank you.

24 JUDGE ROBERTS: We'll probably
25 pencil in the 12th. And I guess that's it

17

1 unless -- any requests from the parties?

2 Mr. Zobrist?

3 MR. ZOBRIST: Nothing further, your

4 Honor.

5 JUDGE ROBERTS: Mr. Poston?

6 MR. POSTON: Nothing further, your

7 Honor.

8 JUDGE ROBERTS: Mr. Dandino?

9 MR. DANDINO: Nothing, your Honor.

10 JUDGE ROBERTS: I will be in the
11 building at least until 5:00, and I will be here
12 all day tomorrow. I'll be out of town Friday
13 for a CLE. So today and tomorrow you've got me,
14 and then you're on your own.

15 MR. DORITY: Okay. Thank you,
16 Judge.

17 JUDGE ROBERTS: With that, we'll
18 go off the record. Thank you very much.

19 (The proceedings were concluded at

20 1:45 p.m. on July 30, 2003.)

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