

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Arbitration Hearing

August 19, 2008
Jefferson City, Missouri
Volume 1

In the Matter of The)
Petition of Charter)
Fiberlink-Missouri, LLC,)
For Arbitration of An)
Interconnection Agreement)Case No. TO-2009-0037
Between CenturyTel of)
Missouri, LLC, and Charter)
Fiberlink-Missouri, LLC)

RONALD D. PRIDGIN, Presiding,
SENIOR REGULATORY LAW JUDGE.

REPORTED BY:
Pamela Fick, RMR, RPR, MO CCR #447
Midwest Litigation Services

1 APPEARANCES:

2 LARRY W. DORITY, Attorney at Law
3 FISCHER & DORITY
4 101 Madison, Suite 400
5 Jefferson City, MO 65101
6 (573)636-6758
7 ldority@sprintmail.com

8 PAUL M. SCHUDEL, Attorney at Law (Via Telephone)
9 JAMES A. OVERCASH, Attorney at Law (Via Telephone)
10 WOODS & AITKEN, LLP
11 301 South 13th Street
12 Suite 500
13 Lincoln, Nebraska 68508

14 THOMAS J. MOORMAN, Attorney at Law (Via Telephone)
15 2154 Wisconsin Avenue, N.W.
16 Suite 200
17 Washington, D.C. 20007

18 FOR: CenturyTel of Missouri, LLP.

19 MARK W. COMLEY, Attorney at Law
20 Newman, Comley & Ruth
21 601 Monroe, Suite 301
22 P.O. Box 537
23 Jefferson City, MO 65102
24 (573)634-2266
25 compleym@ncrpc.com

K.C. HALM, Attorney at Law (Via Telephone)
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006-3402
(202) 973-4200

CLIFFORD K. WILLIAMS, Attorney at Law (Via Telephone)
Charter Fiberlink Missouri, LLC
12405 Powers Court Drive
St. Louis, Missouri 63131

FOR: Charter Fiberlink - Missouri,
LLC.

1 P R O C E E D I N G S

2 JUDGE PRIDGIN: All right. Good
3 morning. We are on the record.

4 This is the initial arbitration meeting
5 in Case Number TO-2009-0037, Petition of Charter
6 Fiberlink-Missouri, LLC, for arbitration of
7 interconnection rates, terms, conditions and related
8 arrangements with CenturyTel of Missouri, LLC,
9 pursuant to 47 U.S.C., section 252 (B).

10 I am Ron Pridgin. I am a regulatory law
11 judge with the Commission, and I have been appointed
12 arbitrator. I also have with me an arbitration
13 advisory staff, and if I could get them to introduce
14 themselves, please.

15 MS. DIETRICH: Natelle Dietrich.

16 MR. VAN ESCHEN: John Van Eschen.

17 MR. COUCH: Myron Couch.

18 JUDGE PRIDGIN: And thank you very much.
19 And I would like to get oral entries of appearance
20 from counsel, beginning with Charter Fiberlink-
21 Missouri, LLC.

22 MR. COMLEY: Thank you, Judge. Let the
23 record reflect the entry of appearance of Mark W.
24 Comley, Newman, Comley & Ruth, PC, 601 Monroe Street,
25 Suite 301, Jefferson City, Missouri 65101, on behalf

1 of Charter Fiberlink of Missouri, LLC.

2 And also let me introduce to you those
3 who are on the phone today, Mr. K.C. Halm of Davis,
4 Wright, Tremaine, LLP, 1919 Pennsylvania Avenue N.W.,
5 Suite 200, Washington, D.C., 20006, and also Clifford
6 K. Williams of Charter Fiberlink Missouri LLC,
7 12405 Powers Court Drive, St. Louis, Missouri 63131,
8 all of us on behalf of Charter Fiberlink of Missouri.

9 JUDGE PRIDGIN: Mr. Comley, thank you.
10 Mr. Halm, Mr. Williams, welcome.

11 Any counsel entering appearance on
12 behalf of CenturyTel of Missouri, LLC, please?

13 MR. DORITY: Thank you, Judge.
14 Appearing on behalf of CenturyTel Missouri, LLC,
15 Larry W. Dority, Fischer & Dority, PC, 101 Madison,
16 Suite 400, Jefferson City, Missouri 65101.

17 Also participating by phone this morning
18 are Paul M. Schudel and Thomas J. Moorman with the
19 firm of Woods & Aitken, LLP. Their address, your
20 Honor, is for Mr. -- for Mr. Schudel is 301 South
21 13th Street, Suite 500, Lincoln, Nebraska 68508, and
22 for Mr. Moorman, his office address is 2154 Wisconsin
23 Avenue, N.W., Suite 200, Washington, D.C. 20007.

24 And I would note, Judge, that we had
25 filed a petition for leave to enter appearance and be

1 admitted pro hoc vice on behalf of Mr. Schudel, James
2 Overcash and Mr. Moorman, and we would ask leave for
3 them to appear and participate this morning.

4 JUDGE PRIDGIN: All right, Mr. Dorothy,
5 thank you. Mr. Comley or Mr. Halm, Mr. Williams, any
6 objection to Mr. Dority's request?

7 MR. COMLEY: None.

8 JUDGE PRIDGIN: All right. Hearing
9 none, Mr. Dority, thank you. Mr. Schudel,
10 Mr. Moorman, thank you and welcome. And Mr. Comley
11 or Mr. Halm, Mr. Williams, you don't have to answer
12 now if you're not ready, but do you have any
13 objection to the petition for leave to enter
14 appearance Mr. Schudel, Mr. Overcast or Mr. Moorman?

15 MR. COMLEY: I don't think we have any
16 objections, Judge. K.C., Mr. Halm, Mr. Williams, do
17 you have any objection to their appearance?

18 MR. HALM: No.

19 MR. OVERCASH: No, your Honor.

20 MR. WILLIAMS: No.

21 JUDGE PRIDGIN: All right. Very good.
22 I will confirm it in writing, but I will grant that
23 petition for leave to enter appearance on behalf of
24 Mr. Schudel, Mr. Overcash and Mr. Moorman.

25 MR. DORITY: Thank you, Judge.

1 JUDGE PRIDGIN: Thank you, Mr. Dority.

2 Is there anything that counsel needs to bring to my
3 attention before I kind of give you my viewpoint on a
4 procedural schedule?

5 MR. DORITY: Judge, if I may?

6 JUDGE PRIDGIN: Certainly.

7 MR. DORITY: We've had some brief
8 discussions just this morning, Mr. Comley and I,
9 regarding a proposed schedule. As your Honor is well
10 aware, the Commission's Chapter 36 rules provides a
11 very compressed time frame for processing these
12 arbitrations, and I think a review of the
13 Commission's records would certainly indicate that
14 extension of the time frames is probably certainly
15 the norm as opposed to the exception in looking at
16 some recent arbitration cases before this body.

17 We have circulated to Charter through
18 their counsel a proposal that would actually extend
19 the current time frame for 90 days, which, again, I
20 would respectfully submit has become sort of the norm
21 here.

22 There is some recent cases that would
23 adopt such a proposal. I have those available and I
24 would be happy to provide them to you if you'd like.
25 But the Commission is certainly on record in support

1 of extending a schedule and has cited FCC precedent
2 for that.

3 It would be my thought, your Honor, that
4 if the parties could have some time this morning to
5 review the proposal and try to have a meeting of the
6 minds as to a joint proposal that we might be able to
7 offer, that that would be a good use of our time.

8 And to the extent that we need some
9 direction or counsel from you or your advisory staff
10 in that regard, perhaps we could ask to reassemble
11 and do that. But my thought would be perhaps if we
12 could go off the record and have an opportunity to
13 visit about the proposal that we circulated.

14 JUDGE PRIDGIN: Okay. Mr. Comley, any
15 comments?

16 MR. COMLEY: Oh, I agree with
17 Mr. Dority, and I think that it would serve the
18 parties well if we did have the occasion this morning
19 to look into the proposal that CenturyTel has
20 supplied to us.

21 Again, we had a few moments to look at
22 it. We're going to probably need some time to look
23 at it a little bit more before we engage in any
24 lengthy discussions with CenturyTel, but I think
25 Mr. Dority has outlined a very good proposal for this

1 morning.

2 JUDGE PRIDGIN: Thank you, counsel. And
3 I don't mean to exclude other counsel. Any comments
4 from any other counsel?

5 MR. OVERCASH: No comments, your Honor.

6 JUDGE PRIDGIN: All right. All right.
7 Thank you. So as I understand it, the parties would
8 wish to go off the record in just a moment to discuss
9 a possible procedural schedule that you might be able
10 to agree on?

11 MR. COMLEY: Yes, your Honor.

12 JUDGE PRIDGIN: All right. That's
13 certainly fine with me. I'm a little -- personally,
14 I'm perfectly fine with what you're suggesting and I
15 have no problem extending the 90 days.

16 I don't know if it's a jurisdictional
17 question, but I think we have quite competent counsel
18 that would not lead me down the path of something
19 that's not legally accurate.

20 And I've read a case or two or glanced
21 at it from the FCC that talks about a 90-day
22 extension, so I'm not unfamiliar with it.

23 MR. DORITY: Judge, if I may?

24 JUDGE PRIDGIN: Certainly.

25 MR. DORITY: I would be happy -- and I

1 have copies here. I think this may be the most
2 recent decision of the Commission that I'll be happy
3 to hand out and provide a copy to counsel and to you,
4 Judge.

5 And what I'm handing out is the order
6 adopting procedural schedule that was issued
7 August 30, 2007, in the MCI, Metro, Verizon, Access
8 and Embarq arbitration.

9 JUDGE PRIDGIN: I actually looked at
10 that this morning.

11 MR. DORITY: Okay. Then over on page
12 2 --

13 JUDGE PRIDGIN: Yes, sir.

14 MR. DORITY: -- is the area that I would
15 direct your attention.

16 JUDGE PRIDGIN: In that FCC order, yes,
17 sir.

18 MR. DORITY: And it does talk in terms
19 of the FCC order and I think it was the AutoTel
20 decision. And again, I would submit that this
21 appears to be sort of the norm now as opposed to the
22 exception.

23 JUDGE PRIDGIN: And that's perfectly
24 fine. Like I said, I just kind of stumbled across
25 this this morning, and I'm certainly willing to

1 consider that and in all likelihood grant that 90
2 days. I think it would serve the parties well and
3 certainly wouldn't hurt me at all either.

4 So let me -- before I -- before we go
5 off the record, I believe, Ms. Dietrich, you handed
6 me a note, and I have a copy of the note and I have
7 two copies of the note, neither of which I can find,
8 but you wanted the parties to submit when they submit
9 their final -- their final offers, is it, that they
10 could do that via Word copy so that we can work from
11 it more easily --

12 MS. DIETRICH: On the matrix.

13 JUDGE PRIDGIN: -- on your matrix?
14 Anyone have any problems with that?

15 MR. DORITY: I don't believe so.

16 JUDGE PRIDGIN: Okay.

17 MR. DORITY: Paul, do you have any issue
18 with that?

19 MR. SCHUDEL: No. In fact, that's
20 anticipated and is a part of our schedule, your
21 Honor. I do have one question whenever it would be
22 appropriate.

23 JUDGE PRIDGIN: Okay. Mr. Comley, is
24 submitting via Word copy going to work for you and
25 your client?

1 MR. COMLEY: Mr. Halm, Mr. Williams,
2 does that sound acceptable?

3 MR. HALM: Yes, that would be fine.

4 JUDGE PRIDGIN: Okay. Thank you. And
5 I'm sorry, someone have a question?

6 MR. SCHUDEL: Yes, your Honor. This is
7 Paul Schudel. Just a quick question to perhaps
8 provide the parties with some guidance as we go off
9 line. Is there any time that you would like to
10 direct us that your Honor and your -- and/or your
11 staff are unavailable for hearing during let's say
12 the months of October and November? I only ask that
13 because obviously the hearing becomes sort of a
14 driver of a lot of the other milestones that we'll be
15 considering.

16 JUDGE PRIDGIN: Yes, sir. And I'll let
17 my staff answer. I had not anticipated this and I
18 was looking at earlier dates. The fun part may be
19 finding a hearing room. I am available and I expect,
20 if nothing else, we could use this smaller hearing
21 room that we're in now. We may be a little
22 compressed, but I expect we could find -- we could
23 find days for the hearing.

24 I don't have the calendar in front of
25 me, but I think we'd be able to accommodate everyone.

1 And I don't know if anybody on my staff has any
2 conflicts, looking at October and November?

3 MS. DIETRICH: NARUC is in November, but
4 I don't know the dates off the top of my head.

5 JUDGE PRIDGIN: Okay. I bet Mr. Dority
6 knows.

7 MR. DORITY: I think I do.

8 JUDGE PRIDGIN: Middle of November,
9 17th, 18th, somewhere in there?

10 MR. DORITY: I have it November 16th
11 through the 19th.

12 JUDGE PRIDGIN: Okay. Well, I was
13 right.

14 MS. DIETRICH: But that would be the
15 Commissioners, so I would be before that, I think.

16 MR. DORITY: So you're probably looking
17 at the 13th, 14th time frame?

18 MS. DIETRICH: Probably 14th, 15th,
19 through the dates you said.

20 MR. DORITY: Okay. Friday the 14th
21 through the 19th might be a problem for Ms. Dietrich
22 so...

23 MR. SCHUDEL: That was November?

24 MR. DORITY: Yes.

25 JUDGE PRIDGIN: So November 14th through

1 the 19th would be a problem. Otherwise, I would be
2 available and we would likely be able to find a
3 hearing room.

4 MR. DORITY: Okay.

5 MR. SCHUDEL: Thank you, Judge. That's
6 helpful.

7 JUDGE PRIDGIN: You're quite welcome.
8 Does counsel need anything else from me before we go
9 off the record?

10 MR. DORITY: Just in terms of reporting
11 back to you, Judge. I realize the court reporter
12 will probably be leaving, and I don't know what
13 you're comfortable with in terms of our getting back
14 with you to let you know where we are.

15 JUDGE PRIDGIN: If -- if the parties --
16 obviously if the parties reach an agreement, I would
17 obviously appreciate a pleading that everybody signs.
18 If you cannot agree, I would also expect pleadings
19 saying we talked, we couldn't agree, we need a --
20 here are our alternative schedules, would you please
21 pick ours?

22 But just something -- because the court
23 reporter won't be here and I don't know how much time
24 you need, so just something so I know. And the
25 sooner, the better.

1 MR. DORITY: Sure.

2 JUDGE PRIDGIN: Would the parties
3 anticipate at least knowing one way or the other
4 sometime today?

5 MR. DORITY: I believe so, Judge.

6 JUDGE PRIDGIN: Okay. All right. And
7 obviously you know where my office is if you just
8 want to say, hey, we have an agreement, or no, we
9 don't, just so I can be on the lookout for whatever
10 pleadings may be coming in.

11 MR. DORITY: That sounds fine.

12 JUDGE PRIDGIN: Okay.

13 MR. DORITY: Paul, did you have any
14 other questions at this point?

15 MR. SCHUDEL: No, I don't, thank you.

16 JUDGE PRIDGIN: Is there anything
17 further from counsel before we go off the record?

18 (NO RESPONSE.)

19 JUDGE PRIDGIN: Okay. Anything from the
20 advisory staff?

21 (NO RESPONSE.)

22 JUDGE PRIDGIN: Okay. And I'm sorry, do
23 you want or need the advisory staff here or would you
24 rather them leave the room? I certainly don't want
25 to -- you're certainly welcome to talk in private.

1 I'm just not sure what you want or need.

2 MR. COMLEY: My thoughts would be if we
3 absolutely would need them, we could call them on the
4 phone.

5 JUDGE PRIDGIN: That's fine, that's
6 certainly fine. I just didn't want to excuse them
7 and then you say wait a minute, we need to -- we want
8 to visit with them. And same with me. I mean, I'm
9 up on the ninth floor. You can find me.

10 MR. COMLEY: I don't think there would
11 be any harm in discharging them.

12 JUDGE PRIDGIN: Very good.

13 MR. DORITY: Judge, one other thing.
14 And I do apologize, but for the record, I did want to
15 introduce Becky Kilpatrick who is manager of
16 Government Relations for CenturyTel who is with me
17 this morning and will be participating in the
18 discussions. I apologize.

19 JUDGE PRIDGIN: That's quite all right.
20 Ms. Kilpatrick, welcome.

21 MS. KILPATRICK: Thank you, Judge.

22 JUDGE PRIDGIN: You're quite welcome.
23 Anything further?

24 (NO RESPONSE.)

25 JUDGE PRIDGIN: All right. If there's

1 nothing further, if you'd please stay on the line,
2 we'll go off the record, and then we'll let you
3 visit.

4 All right. Thanks very much. We're off
5 the record.

6 (WHEREUPON, the recorded portion of the
7 arbitration hearing was concluded.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25