BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In re the Matter of a Proposed Rescission and Consolidation of Commission Rules Relating to Telecommunications	**)** **)** **)** **)** **)**	**File No. TX-2015-0097**

CENTURYLINK'S SUPPLEMENTAL COMMENTS

CenturyTel of Missouri, LLC d/b/a CenturyLink, Embarq Missouri Inc., d/b/a CenturyLink, Spectra Communications Group, LLC d/b/a CenturyLink and CenturyTel of Northwest Arkansas, d/b/a Century Link (collectively "CenturyLink"), through undersigned counsel, files this supplemental comment to the Missouri Public Service Commission's ("Commission") proposed rules to rescind and consolidate its rules relating to telecommunications.

I. Introduction

Based on the Commission's discussion at its August 19, 2015 Agenda session, CenturyLink believes the Commission should be given greater detail regarding the issue of "reasonable period of time" for adoption of an expired interconnection agreement ("ICA"), as required by the Federal Communications Commission ("FCC").

Further, CenturyLink still contends the Commission's proposed rule in 4 C.S.R. 240-28.080(2) is clearly inconsistent with the Commission's stated intent of "consolidation", "simplification", and "rescission" due to "state and federal statutory changes affecting the Commission's jurisdiction" and should be addressed, if at all, in a separate proceeding for such purpose and with an accurate finding of necessity for such rule.

II. Comments

4 C.S.R. 240-28.080(2)

CenturyLink believes that the Commission's changes to the timeframe in which a CLEC can adopt an interconnection agreement ("ICA") previously approved by the Commission in this new proposed rule are improper based on federal law. Clearly, the Federal Communications Commission ("FCC"), at 47 C.F.R. § 51.809(c)[1], requires ILECs to allow adoption of an ICA to provide services to third-party CLECs using the same terms agreed to by another CLEC for a "reasonable period of time". Further, the United States Court of Appeals for the Sixth Circuit stated:

> The right to adopt an existing interconnection agreement contains several limitations, one of which is time. Under a regulation promulgated by the Federal Communications Commission (FCC), an entrant seeking to adopt an approved agreement must do so within 'a reasonable period of time after the approved agreement is available for public inspection,' 47 C.F.R. § 51.809(c), which is to say a reasonable time after the state commission has approved the underlying agreement, 47 U.S.C. § 252(e)(1), (h).[2]

Stated differently, after the passage of some "reasonable" amount of time, an ILEC is not required to allow an ICA to be adopted by other LECs. On a national basis, CenturyLink has consistently maintained that the period of time during which it is "reasonable" to require adoption of an ICA continues until there is less than six months left on the Term of the ICA. The Commission's proposed new rule completely removes the element of time as a consideration for adopting an ICA, which is certainly not in keeping with making Missouri rules consistent with the federal framework which explicitly refers to a "reasonable amount of time" for such adoptions.

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[1] 47 C.F.R. § 51.809(c), entitled "Availability of provisions of agreements to other telecommunications carriers under section 252(i) of the Act," states:

> Individual interconnection, service or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for inspection under section 252(f) of the Act. See Attachment 1 for the entire Rule.

[2] *BellSouth Telecomms., Inc. v. Universal Telecom, Inc.*, 454 F.3d 559, 560 (6th Cir. 2006).

The proposed rule includes the following provision that CenturyLink recommends be removed:

> "Approved interconnection agreements whose original term has expired, but which remain in effect pursuant to term renewal or extension provisions, will be subject to adoption for so long as the interconnection agreement remains subject to the renewal or extension provision."

Under this provision of the proposed rule, a CLEC could adopt an ICA at any point regardless of how long the ICA has been expired under its terms, so long as the parties to the ICA continue to operate under the ICA pursuant to its post-expiration terms. Such a rule goes far beyond and is inconsistent with the FCC's requirement of offering the adoption for a "reasonable period of time" since it effectively removes any time limitation whatsoever upon the ability to adopt an ICA which conflicts with the terms of 47 C.F.R. § 51.809(c). In fact, any proposed rule that sets absolutely no time limitation on the adoption of ICAs has the effect of rendering the FCC's rule meaningless.

Further, during the Agenda discussion on August 19th, Staff stated that CenturyLink was incorrect in its position concerning a "reasonable period of time" for adopting an ICA, since it was "technically feasible" for such adoptions to occur even when the ICAs were past their expiration. However, CenturyLink believes Staff's interpretation of the rule is incorrect in that the rule provides that an ILEC has to offer an existing ICA to a requesting CLEC for a "reasonable period of time" unless: (1) an issue exists relating to costs; or (2) "The provision of a particular agreement to the requesting carrier is not technically feasible.". "Reasonable period of time" for adoption and rejection due to lack of technical feasibility are two separate issues. The "reasonable period of time" provision applies to how long an ICA can be adopted rather than the justification of an ILEC to reject while the adoption is within a "reasonable period of time" as Staff claims. The federal rule can be found in Attachment 1 in its entirety.

Staff asserts that the purpose of the proposed rule is to create a process in which the Commission can decide whether an adoption of an expired ICA should occur based on the facts before it. If that is indeed the desired result, a rule stating "Approved interconnection agreements whose original term has expired, but which remain in effect pursuant to term renewal or extension provisions, will be subject to adoption for so long as the interconnection agreement remains subject to the renewal or extension provision" is inappropriate because the rule would eliminate the "reasonable period of time" as a factor in determining whether an ICA is properly available for adoption. The removal of the sentence in dispute would accomplish the intended purpose of bringing disputes to the Commission to determine on a case by case basis without eliminating the "reasonable period of time" criteria which the FCC specifically contemplates.

Finally, CenturyLink recommends that the sentence immediately following the previously quoted language and found in 4 C.S.R. 240-28.080 (2), which was modified during the Commission's discussions at Agenda on August 19th, be deleted. The modified proposed rule may create confusion regarding the status of an ICA during the period of time between the filing of the ICA and the date when an objection is filed by the ILEC. CenturyLink believes the Commission intended to provide an opportunity for the ILEC to object to the CLEC adoption as is currently provided by the current rule, 4 C.S.R. 204-3.513 (4)(B)(4) and 47 C.F.R. §51.809(b) and as provided in 2(D) of the proposed rule. Since the current proposed rule already specifies when the ICA becomes effective, and the last sentence creates an unintended ambiguity which isn't necessary for such ICAs to become effective, CenturyLink recommends deleting the entire last sentence of (2).

For the foregoing reasons, CenturyLink respectfully requests that the Commission delete and amend the language as outlined in these comments and for such further relief as deemed necessary by the Commission.

Respectfully submitted,

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Attachment 1

§ 51.809 Availability of agreements to other telecommunications carriers under section 252(i) of the Act.

(a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (*i.e.*, local, access, or interexchange) as the original party to the agreement.

(b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:

(1) The costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or

(2) The provision of a particular agreement to the requesting carrier is not technically feasible.

(c) Individual agreements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(h) of the Act.