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 STAFF RECOMMENDATION AND TO THE REPLY OF CENTURYTEL APPLICANTS TO SBC MISSOURI'S RESPONSE 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 Staff Recommendation and to the Reply of CenturyTel Applicants to SBC Missouri's Response to Application for Adoption of Interconnection Agreement ("CenturyTel Applicants' Reply"), states as follows:

1. On August 30, 2005, the CenturyTel Applicants filed their Application for Adoption of Interconnection Agreement ("Application") in which they sought 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 underlying Xspedius Interconnection Agreement is subject to a pending appeal in Case No. 4:05-cv-01264-CAS in the United States District Court for the Eastern District of Missouri.

2. SBC Missouri was not served with the Application. SBC Missouri learned of the Application through the Order issued by the Commission on September 2, 2005, and subsequently filed its Response on September 12, 2005. In its Response, SBC Missouri explained that it objected to approval of the adoption of the Xspedius agreement. SBC Missouri

explained that the CenturyTel Applicants were seeking to adopt the Xspedius Interconnection Agreement without being subject to the outcome of the appeal of the Order approving the Xspedius Agreement. SBC Missouri noted that approval of the Interconnection Agreement would violate the Preliminary Injunction Order previously entered by the United States District Court on September 1, 2005. SBC Missouri further noted that the CenturyTel Applicants were seeking to adopt the Xspedius Interconnection Agreement without being subject to the ultimate outcome of the appeal on the same basis as Xspedius.

3. The Staff Recommendation suggests that the Commission approve the Adoption of the Interconnection Agreement, but find it subject to the terms of the Preliminary Injunction Order. Staff is, of course, correct in advising the Commission that it must comply with the Preliminary Injunction Order and cannot approve the Adoption of Interconnection Agreement without making that agreement subject to the terms of the Preliminary Injunction Order. But Staff's Recommendation does not appear to go far enough, as it does not make explicit that the CenturyTel Applicants are also subject to the ultimate outcome of the appeal of the Order approving the underlying Xspedius Interconnection Agreement. The Staff Recommendation does not even address SBC Missouri's arguments that the CenturyTel Applicants' agreement must be immediately revised to comply with any decision issued in the appeal of the underlying Xspedius Interconnection Agreement. SBC Missouri pointed out that it would be unlawful for the Commission to require SBC Missouri to "negotiate and arbitrate" with the CenturyTel Applicants the impact of any order on appeal of the underlying Xspedius Interconnection Agreement.

4. The CenturyTel Applicants' response concedes that the Commission lacks the authority to approve adoption of an interconnection agreement that is contrary to the Preliminary

Injunction Order.[1] But, the CenturyTel Applicants Response makes clear they are seeking to avoid the impact of the ultimate decision on appeal by requiring SBC Missouri to arbitrate and negotiate the impact of the Xspedius appeal under the "Change in Law" provisions of the contract.[2] The CenturyTel Applicants are simply incorrect in their assertion that any change in the underlying Xspedius Interconnection Agreement would not also immediately change the SBC Missouri-CenturyTel Applicants Interconnection Agreement. The Commission dealt with a substantially identical issue in Case No. TO-98-200. In that case, MCI sought to adopt an Interconnection Agreement between SBC Missouri and AT&T Communications of the Southwest, Inc. ("AT&T") which was imposed as a result of an arbitration in Case No. TO-98-115. SBC Missouri sought inclusion of language in the adoption agreement to clarify that the impact of an appeal of the order adopting the underlying SBC Missouri-AT&T Interconnection Agreement would immediately impact the MCI Interconnection Agreement. The Commission noted that the adopting company's interconnection agreement would automatically be revised in accordance with any order issued on appeal of the underlying interconnection agreement:

> In the event that the Commission's arbitration order is overturned or remanded, the March 4 agreement approved for SWBT/AT&T will have to be revised accordingly, and the March 4 agreement will cease to be approved. The Agreement will therefore no longer constitute an "approved agreement" that is subject to adoption pursuant to § 252(i), and the terms of the adopted Agreement would no longer apply between SWBT and MCI. MCI should not be permitted to acquire rights greater than AT&T is entitled to by using the adoption process rather than proceeding with arbitration. If the AT&T/SWBT agreement is revised as a result of administrative or judicial review, then it will be because the Commission abused its broad discretion as an arbitrator in some fashion. The Commission could not permit MCI to exercise rights that the Commission granted to AT&T in error, because if MCI were to acquire such rights through an arbitration agreement then MCI's rights would be subject to challenge. The Commission concludes that MCI's adoption Agreement will no longer be in effect to the extent that the underlying agreement between AT&T/SWBT is rendered void or partially void on judicial or administrative

[1] CenturyTel Applicant Response, paras. 3-5.
[2] CenturyTel Applicants Response, para. 7.

> review. Therefore, SWBT's concerns that MCI could acquire greater rights than AT&T by adopting SWBT/AT&T Agreement of March 4 is unfounded.[3]

5. SBC Missouri notes that in Case No. TO-98-200 the Commission did not require the inclusion of a provision making the Adoption Agreement immediately subject to revision in the underlying agreement as a result of the appeal. The Commission reached its conclusion by determining that, as a matter of law, the revision to the underlying interconnection agreement would immediately effect a change in the adopting company's interconnection agreement. SBC Missouri believes it would be a better practice for the Commission to require the Adoption Agreement to reflect that is subject to modification based upon the appeal of the underlying interconnection agreement as this would ensure that all parties are on notice of this impact. This will avoid a party being "surprised" when it learns that its agreement has been modified as a result of the appeal of the underlying agreement, and will encourage prompt negotiation of new terms to the extent the underlying agreement is modified on appeal. SBC Missouri notes that all of the other CLECs which have adopted one of the underlying interconnection agreements have signed Adoption Agreements including language which makes clear that a revision to the underlying interconnection agreement will immediately revise the adopting company's agreement. Requiring inclusion of this language in the Adoption Agreement will avoid future conflicts as well as comply with applicable law.

Accordingly, for all the foregoing reasons, SBC Missouri respectfully requests the Commission to issue an order rejecting the Application of the CenturyTel Applicants for approval of adoption of the Xspedius interconnection agreement.

[3] Case No. TO-98-200, 7 MO. P.S.C. 3d 354, July 22, 1998 (attached as Exhibit A).

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 26, 2005.

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