

**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 between Southwestern Bell Telephone,)
SBC Missouri, LP, and Xspedius Management Co.)
of Kansas City, LLC and Xspedius Management Co.)
Switched Services, LLC.)

Case No. _____

APPLICATION FOR ADOPTION OF INTERCONNECTION AGREEMENT

Come now CenturyTel Solutions, LLC, and CenturyTel Fiber Company II, LLC, d/b/a LightCore, a CenturyTel company (collectively, the “Applicants” or “the CenturyTel Applicants”), by their undersigned attorneys, and apply pursuant to 4 CSR 240-3.513(4)(B), for a Commission order allowing their adoption of an interconnection agreement between Southwestern Bell Telephone, L.P., dba SBC Missouri, and Xspedius Management Co. of Kansas City, LLC and Xspedius Management Co. Switched Services, LLC, (collectively “Xspedius”), approved by the Commission by order effective August 16, 2005, in Case No. TK-2006-0043. In support of this Application, the CenturyTel Applicants state as follows:

1. Both CenturyTel Solutions, LLC, and CenturyTel Fiber Company II, LLC d/b/a LightCore, a CenturyTel company, are limited liability companies duly organized and existing under and by virtue of the laws of the State of Louisiana. CenturyTel Fiber Company II, LLC’s headquarters and principal place of business are located at 14567 N. Outer Forty Road, Suite 500, Chesterfield, MO 63017, and its telephone number is (314) 253-6600. CenturyTel Solutions, LLC’s headquarters and principal place of business are located at 100 CenturyTel Drive, Monroe, Louisiana 71203, and its telephone number is (318) 388-9416. Copies of CenturyTel Solutions’ Certificate of Formation, Certificate to transact business within the State

of Missouri as a foreign business entity, and Certificate of Good Standing, were previously filed with the Commission with CenturyTel Solutions' application for certification in Case No. LA-2004-0105 (granted by order effective January 17, 2004), which the Applicants adopt by reference pursuant to 4 CSR 240.2-060(G). Copies of CenturyTel Fiber Company II's Certificate of Formation, Certificate to transact business within the State of Missouri as a foreign business entity, and Certificate of Good Standing, were previously filed with the Commission with CenturyTel Fiber Company II, LLC's application for certification in Case No. XA-2003-0416 (granted by order effective May 26, 2003), which the Applicants adopt by reference pursuant to 4 CSR 240.2-060(G). Furthermore, by order effective November 13, 2003 in Case No. LN-2004-0189, the Commission approved the fictitious name of "LightCore, a CenturyTel company," and recognized the name change of "CenturyTel Fiber Company II, LLC" to "CenturyTel Fiber Company II, LLC d/b/a LightCore, a CenturyTel company." The Applicants also adopt by reference the registration of the fictitious name of "LightCore, a CenturyTel company," filed in Case No. LN-2004-0189, pursuant to 4 CSR 240.2-060(G).

2. The Applicants are both direct, wholly-owned subsidiaries of CenturyTel, Inc., a corporation formed under the laws of the State of Louisiana and headquartered at the same Monroe, Louisiana address as CenturyTel Solutions. CenturyTel, Inc. (NYSE: CTL), together with its subsidiaries, operates as an integrated communications company in the United States. It provides local exchange telephone, long distance, Internet access, and dial-up and digital subscriber line Internet services, as well as special access and private line, fiber transport, competitive local exchange and security monitoring, and other related services. As of December 31, 2004, CenturyTel operated approximately 2.3 million telephone access lines in rural areas and small to midsize cities.

3. Century Solutions was certificated by the Commission to provide intrastate

telecommunications service by Order dated January 7, 2004, in Case No. LA-2004-0105. CenturyTel Fiber Company II, LLC, was certificated by the Commission to provide intrastate telecommunications services by Order dated May 16, 2003.

4. All inquiries, correspondence, communications, pleadings, notices, orders, and decisions relating to the case should be addressed to:

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5. By this Application, the CenturyTel Applicants move pursuant to 4 CSR 240-3.513(4)(B) for adoption of the interconnection agreement between SBC Missouri and Xspedius, which was approved by the Commission by Order dated August 15, 2005, in Case No. TK-2006-0043 (“the Interconnection Agreement”). As demonstrated below, the CenturyTel Applicants have taken all appropriate actions to effect adoption of the Interconnection Agreement, but SBC Missouri has failed to execute the M2A successor interconnection agreement “short form” letter of adoption.

6. By fax delivered to SBC Missouri on August 19, 2005, the date on which the CenturyTel Applicants and other CLEC parties to the M2A interconnection agreement were to elect their successor M2A interconnection agreement by agreement with SBC Missouri, the CenturyTel Applicants both faxed to SBC Missouri their signed election form posted by SBC Missouri on its CLEC Online website.¹ A copy of the CenturyTel Applicants' short form adoption agreements are attached hereto as **Exhibit A**. The short form agreements are clear and unequivocal, and since their terms were prepared and posted by SBC Missouri on its website for use by CLECs adopting Commission-approved M2A successor agreements, and were timely submitted to SBC Missouri, must be understood to be an acceptable form of adoption of an M2A successor agreement.

7. SBC Missouri has not disputed the CenturyTel Applicants' entitlement to adopt the Xspedius arbitrated interconnection agreement with SBC Missouri, nor contested that the CenturyTel Applicants failed to timely execute and submit their short form agreement to SBC Missouri electing an M2A successor interconnection agreement.

8. As of the date of the filing of this Application, SBC Missouri has failed to execute the short form interconnection agreement that each of the CenturyTel Applicants executed and faxed separately to SBC Missouri on August 19, 2005. Under the terms of 4 CSR 240-3.513(4)(B)(2), the CenturyTel Applicants are to explain why they have been unable to obtain SBC Missouri's signature on the short form adoption agreement. The sole reason seems to be

¹ Pursuant to instructions from its Account Manager, since as of August 16, 2005 only a short form was available on the website for Applicant Century Solutions, LLC, but not Applicant Century Fiber Company II, LLC d/b/a LightCore, a CenturyTel Company, LightCore executed the CenturyTel Solutions short form and amended the CenturyTel Solutions name by interlineation and then submitted its election. Later, on or shortly before August 19, 2005, SBC Missouri posted on its SBC CLEC Online website new short form agreements for both CenturyTel Applicants. However, as will be discussed, this revised version of its short form agreement included substantive changes to the terms of the short form, and specifically to the "Clarifications" language of Section 3.1.

that SBC Missouri refuses to sign the CenturyTel Applicants' short form agreement electing the Xpedius agreement, unless and until the CenturyTel Applicants adopt SBC-revised "Clarification" language inserted in its CLEC short form agreements, and posted on its "SBC CLEC Online" website on or about August 18-19, 2005. The SBC-Missouri newly added language reads:

If any action by any federal court of competent jurisdiction in connection with the appeal in Case No. 4:05CV01264-CAS and/or on remand of such case to the Commission ("Government Action"), invalidates, modifies, or stays provisions of the Separate Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by the Separate Agreement specifically including but not limited to those arising with respect to a Government Action, the affected provision(s) in this MFN **shall be immediately invalidated, modified or stayed consistent with such Government Action as to the Separate Agreement.**

See **Exhibit B**, p. 0003 (emphasis added).

9. After the CenturyTel Applicants, as instructed, faxed to SBC Missouri on August 19, 2005 the initial short form agreement language (which did not include the objectionable Sec. 3.1 "Clarification" language quoted above), SBC Missouri added additional clarification language to the short form on August 24, 2005, signed the short form, and initialed and faxed the added language to the CenturyTel Applicants requesting that they initial their approval to SBC-Missouri's addition of the "Clarification" language quoted above.² The CenturyTel Applicants advised SBC Missouri on August 24, 2005 that SBC Missouri's revised clarification language was and is unacceptable and inappropriate, because this new language would vitiate significant intervening law terms of the interconnection agreement that they are adopting. Specifically, the CenturyTel Applicants advised SBC Missouri that any "Change in Law" affecting the parties'

² See, Exhibit B, CenturyTel Fiber Company II, LLC Short Form (executed by both SBC Missouri and by CenturyTel Fiber Company II, LLC, but with additional Clarification language added by SBC Missouri after submission of the executed short form by CenturyTel Fiber Company II, LLC, and additional language initialed solely by SBC Missouri.).

interconnection agreement would be governed by the Intervening Law provision of the agreement itself, i.e. the Intervening Law terms of the SBC Missouri-Xspedius interconnection agreement.³ The "Change in Law" or "legally binding judicial decision" language of the Xspedius agreement provides in that if any such "Change in Law" event occurs, either party may request renegotiation in good faith and amendment of the agreement.

10. For example, if SBC Missouri were hypothetically to prevail in any of its pending legal challenges in its federal district court appeal of the Xspedius arbitrated interconnection agreement, and amendment or revision of the interconnection agreement was necessary, SBC Missouri would be required to request renegotiation in good faith and amendment of its interconnection agreement with Xspedius to conform to the results of any legally binding judicial decision. Under the terms of the Xspedius agreement, the results of any "legally binding judicial decision" reviewing the interconnection agreement would not "immediately invalidate...modif[y]...or stay..." the affected provisions of the Xspedius agreement, prior to requisite compliance with the intervening law provisions of the parties' agreement. In any event, the CenturyTel Applicants should not be put at a competitive disadvantage to other competitors by SBC-Missouri and be forced to accept alternative intervening law terms which dispense with any required negotiation of conforming amendments as provided by the Xspedius agreement. SBC-Missouri appears to be exercising self-help by unilaterally grafting a substantive amendment upon the intervening law provisions of the Xspedius agreement being adopted via the terms of its short form adoption agreement, apparently in order to circumvent its obligation to negotiate conforming amendments in the event of a "legally binding judicial decision." The CenturyTel Applicants emphasize that they are not seeking any terms other than those of the Xspedius agreement and its Intervening Law provisions. SBC Missouri has not addressed the

³ See, Section 23.1 of the SBC-Missouri - Xspedius interconnection agreement, Case No. TK-2006-0043.

CenturyTel Applicants' specific concerns about SBC Missouri's revised Clarification language and has instead suggested that the CenturyTel Applicants file this Application for approval pursuant to 4 CSR 240-3.513(4)(B) without SBC Missouri's signature to the short form agreement.

11. Consistent with 4 CSR 240-2.060(1)(K), the CenturyTel Applicants do not have any pending action or final unsatisfied judgment or decisions against them from any state or federal agency or court which involves customer service or rates, which action, judgment or decision has occurred within 3 years of the date of application.

12. Consistent with 4 CSR 240-2.060(1)(L), the CenturyTel Applicants do not have any overdue annual reports or assessment fees.

Wherefore, the CenturyTel Applicants requests that the Commission open a case to consider this Application, that it serve notice on SBC Missouri of the filing hereof, and that it take all other action consistent with 4 CSR 240-3.513(4)(B) to bring about the adoption of the SBC Missouri - Xspedius interconnection agreement by the CenturyTel Applicants.

Respectfully submitted,

/s/ Mark P. Johnson

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CENTURYTEL FIBER COMPANY II, LLC
d/b/a LIGHTCORE, A CENTURYTEL
COMPANY

VERIFICATION

STATE OF MISSOURI)
)
COUNTY OF JACKSON) ss.

Comes now Mark P. Johnson, being of lawful age and duly sworn, who swears and affirms as follows:

1. My name is Mark P. Johnson, and I am an attorney for CenturyTel Solutions, LLC and Century Fiber Company II, LLC, d/b/a LightCore, a CenturyTel Company, the Applicants herein. I have been authorized by the Applicants to verify this Application on their behalf.

2. I have read the foregoing Application, and its contents are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.



Mark P. Johnson

Subscribed and sworn to before me this 30th day of August, 2005.



Notary Public

My commission expires:

