

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

**Charter Fiberlink-Missouri, LLC Seeking
Expedited Resolution and Enforcement of
Interconnection Agreement Terms Between
Charter Fiberlink-Missouri, LLC and
CenturyTel of Missouri, LLC**

Case No. LC-2008-0049

**CHARTER FIBERLINK-MISSOURI, LLC'S
REPLY TO CENTURYTEL OF MISSOURI, LLC'S
APPLICATION FOR REHEARING AND CLARIFICATION**

COMES NOW Charter Fiberlink-Missouri, LLC ("Charter") by and through its attorneys, pursuant to 4 CSR 240-2.080(15), hereby opposes CenturyTel of Missouri, LLC's ("CenturyTel") Application for Rehearing and Clarification ("Application") of the Report and Order issued in this proceeding on October 21, 2008 by Judge Kennard L. Jones ("*Report and Order*").

INTRODUCTION

Charter filed a complaint seeking a determination by the Commission that CenturyTel had improperly billed Charter for fulfilling number porting requests, and for other various charges for which Charter alleged that CenturyTel was not entitled to payment. On October 21, 2008, the Commission properly agreed with Charter and Commission Staff (who also filed testimony and a brief in support of Charter's position) on the principle issue in dispute. Specifically, that CenturyTel was not entitled to assess number porting charges under the parties' Interconnection Agreement. The Commission also correctly ordered CenturyTel to refund \$68,867.61 in disputed charges to Charter, and determined that Charter had properly disputed the number porting charges (both paid and unpaid) assessed by CenturyTel as unauthorized.

As such, CenturyTel's claim that the *Report and Order* is unlawful, unjust and unreasonable is without merit. In fact, CenturyTel has not raised any grounds that merit rehearing. Because CenturyTel has failed to provide a sufficient basis upon which to justify rehearing of the Commission's decision, the Commission should deny CenturyTel's Application.

STANDARD OF REVIEW

Upon review, the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefore be made to appear." *See Socket Telecom, LLC v. CenturyTel of Missouri, LLC*, 2008 WL 2039030 (Mo. P.S.C. 2008) (citing Section 386.500, RSMo. 2000) (denying CenturyTel's application for rehearing because it failed to establish sufficient reason to grant its application). Further, any such application for rehearing shall set forth "*specifically* the ground or grounds on which the applicant considers said order or decision to be unlawful, unjust or unreasonable." Section 386.500, RSMo. 2000 (emphasis added).

ARGUMENT

I. CENTURYTEL DOES NOT PROVIDE ANY BASIS FOR REHEARING OF THE COMMISSION'S DECISION

In the *Report and Order*, the Commission properly determined that the interconnection agreement between Charter and CenturyTel ("Interconnection Agreement") does not provide for charges for the provision of porting customer telephone numbers.¹ This finding was based on the clear and convincing evidence in the record that: (i) the framers of the Interconnection Agreement did not intend that there be a charge for porting telephone numbers; (ii) Charter did not assess a charge upon CenturyTel for porting requests; (iii) CenturyTel did not assess a charge upon Charter for number porting for the first nine months of operating under the Interconnection Agreement; (iv) CenturyTel, merely by chance, began charging for porting requests when one of

¹ *Report and Order* at 7.

its employees saw the word “port” in the Pricing Attachment and thought, in error, that it was a charge for porting requests; (v) there is no charge for number porting listed in any applicable tariff; and (vi) CenturyTel’s attempt to use a Local Service Request (“LSR”) for porting requests is not consistent with the definition of an LSR.²

Accordingly, and based on these findings, the Commission properly concluded that neither the Interconnection Agreement, nor the documents (including CenturyTel’s tariffs and “Service Guide”) to which the Interconnection Agreement referred to, provide for a charge for porting requests.³ In addition, the Commission properly determined that Charter complied with the dispute resolution process in the Interconnection Agreement, and was therefore entitled to a refund of \$68,867.81 it paid, under protest, to CenturyTel in 2004. Further, because Charter had properly disputed the unpaid number porting charges, the Commission ruled that Charter is not required to pay CenturyTel for such charges.

Finally, although the Commission concluded that FCC regulation, 47 C.F.R. 52.33, neither prohibits nor mandates charges for number porting requests, the Commission’s decision is silent as to the FCC’s finding in its 2002 Cost Recovery Reconsideration Order, at ¶ 62. In that decision, the FCC ruled that “incumbent LECs may not recover any number portability costs through interconnection charges or add-ons to interconnection charges to their carrier “customers,” nor may they recover carrier-specific costs through interconnection charges to other carriers where no number portability functionality is provided.”⁴ It is therefore clear that the FCC’s conclusion in this regard, also supports the Commission’s decision not to endorse CenturyTel’s unwarranted charges.

² *Report and Order* at 10-11.

³ *Id.* at 11.

⁴ *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578, at ¶ 62 (2002) (“2002 Cost Reconsideration Order”).

In its Application, CenturyTel claims that the Commission’s decision on these issues is “arbitrary, capricious, constitutes an abuse of discretion, is unsupported by the substantial and competent evidence, is against the weight of the evidence considering the whole record, and fails to contain adequate findings of fact and conclusions of law set forth in a sufficient unequivocal affirmative manner ...”⁵ Other than a mere recitation of alleged shortcomings of the Report and Order, however, CenturyTel fails to identify specific facts, or law, which contradict the Commission’s decisions.

CenturyTel’s general assertions are not sufficient to justify rehearing on this matter. First, CenturyTel fails to explain with any level of specificity why the Commission should rehear this matter. Despite the clear statutory requirement that an application for rehearing set forth *specific* grounds to support rehearing,⁶ CenturyTel simply makes the unsubstantiated assertion that the Commission acted unlawfully, unjustly and unreasonably in reaching its decision. In fact, it appears that CenturyTel merely relies upon the rudimentary notion that because the Commission did not rule in its favor, the Commission’s decision must have been reached in error, as CenturyTel fails to proffer any support for its claims. Thus, CenturyTel has not met its burden of proof to justify rehearing.

Second, there was ample support in the record for the Commission to find that the Interconnection Agreement did not provide for a charge for number porting requests.⁷ Indeed, the Commission’s decision set forth a detailed analysis that identified the evidence upon which it

⁵ CenturyTel’s Application for Rehearing, at 2.

⁶ See Section 386.500(2), RSMo 2000.

⁷ In Missouri, judicial review is restricted to whether the Commission’s order was lawful and reasonable. *State ex rel. Conner v. Public Serv. Comm’n*, 703 S.W.2d 577, 579 (Mo.App. 1986). “Questions of ‘lawfulness’ turn on whether the Commission’s order or decisions are statutorily authorized and questions of ‘reasonableness’ turn on whether there is competent and substantial evidence upon the whole record to support them.” *Id.*

relied to render its decision. The Commission's recital and analysis of the facts presented demonstrates that it weighed all of the relevant evidence in reaching its decision.

Finally, CenturyTel has failed to raise a single new legal argument or new fact to justify its request for rehearing. Thus, CenturyTel's attempts to have the Commission hear re-argument of issues that have already been developed, briefed, submitted, and ruled upon by this Commission, should be rejected.

II. CENTURYTEL'S REQUEST FOR CLARIFICATION

In its Application, CenturyTel also asks the Commission to "clarify" that Charter owes CenturyTel unpaid sums related to charges associated with customer records searches. Specifically, CenturyTel asks the Commission to rule that Charter owes a total of \$9,799.35 to CenturyTel for records research charges assessed by CenturyTel.

Although Charter does not dispute the Commission's finding as to its liability for customer records research charges, it does dispute the total amount which CenturyTel alleges to be unpaid. Charter believes that CenturyTel has failed to account for certain payments made by Charter, and that CenturyTel has therefore miscalculated the total amount owed by Charter.

These charges were billed under two separate billing account numbers ("BANs"): 301644892, and 405601334. As for the first BAN, 301664892, totaling \$6,688.16, Charter does not dispute the total unpaid amounts for this account. However, Charter does dispute the amount identified for BAN 405601334, which CenturyTel asserts equals a total of \$3,111.19. This amount does not account for the fact that Charter has already remitted payment of \$2,039.86 to CenturyTel. As the attached affidavit of Charter employee Ms. Julie Lorenz establishes, Charter has remitted payment to CenturyTel of more than \$2,000 via several different payments made to CenturyTel over the course of calendar years 2007 and 2008. Attached as Exhibit A to this

pleading is a spreadsheet identifying the amounts already paid by Charter to CenturyTel. The spreadsheet identifies the amounts paid by Charter to CenturyTel, and also includes the check number, and the check date. (*See* columns 3, 4 and 5 of attached spreadsheet titled MO 405 601 334).

These records reflect the fact that for BAN 405601334 Charter has already paid to CenturyTel a total of \$2,039.86 of the \$3,111.19 CenturyTel alleges to remain as unpaid. Therefore, after accounting for the amounts already paid by Charter, the total amount remaining in dispute for that BAN is only \$1,071.33. Accordingly, the total amount of unpaid records research charges under both BANs is \$7,759.49. The Commission should, therefore, affirm that this amount is owed by Charter to CenturyTel.

Further, in reconciling this amount with the \$68,867.61 owed by CenturyTel to Charter, reflecting the Commission's ruling on Issue 4, at pp. 11-12, the Commission should simply net the amounts owed by Charter to CenturyTel against this amount. Should the Commission accept Charter's accounting of the remaining unpaid records research charges, then the Commission would order CenturyTel to pay Charter a total of \$61,108.12.

Accordingly, for the foregoing reasons, Charter requests that the Commission act upon CenturyTel's request for clarification by ruling that Charter owes only \$1,071.33 for BAN 405601334; and a total of \$7,759.49 for unpaid records research charges. Further, the Commission should rule that this amount should be netted against the total amount to be refunded to Charter, such that CenturyTel would be ordered to pay \$61,108.12 to Charter following the Commission's final action in this docket.

WHEREFORE, on the basis of the foregoing, Charter prays that CenturyTel's Application for Rehearing and Clarification be denied; or, in the alternative, that the "clarification" relief requested by CenturyTel be granted subject to the amounts already paid by Charter to CenturyTel, as set forth herein.

Respectfully submitted,

By: /s/ K.C. Halm
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Attorneys for
Charter Fiberlink-Missouri, LLC

Dated: November 10, 2008

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of November, 2008, I served the foregoing Charter Fiberlink-Missouri, LLC, Reply to CenturyTel of Missouri, LLC's Application for Rehearing and Clarification on the following persons via electronic mail and via US Mail. Because this document was filed electronically it is being served both electronically and by hard copy, on the persons listed below, consistent with Commission rules and practice.

Mr. Kevin Thompson
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Overland Park, KS 66210

/s/ Gina Lee

Gina Lee

Dated: November 10, 2008

EXHIBIT A

BILL DATE	CUST SERVICE RECORD RESEARCH AMT BILLED	CUST SERVICE RECORD RESEARCH AMT PAID	CHECK NUMBER	CHECK DATE	TOTAL CHECK AMOUNT	NOTES	REMAINING UNPAID
Dec 6, 2007	\$463.10	\$463.10	18033 *	2/22/2008	\$2,087.86		
Nov 6, 2007	\$475.73	\$475.73	18033 *	2/22/2008	\$2,087.86		
Oct 6, 2007	492.57	\$469.53	15306	10/24/2007	\$469.53	Only paid 469.53 of the 492.57 CSRR charge.	\$23.04
Sept 6, 2007	\$265.23	\$265.23	14789*	9/27/2007	\$9,294.55		
August 6, 2007	366.27	366.27	14491	9/5/2007	\$366.27		
July 6, 2007	341.01					Not paid	\$341.01
June 6, 2007	176.82					Not paid	\$176.82
May 6, 2007	\$526.25					Not paid	\$526.25
April 6, 2007	\$4.21					Not paid	\$4.21
TOTAL	\$3,111.19	\$2,039.86					\$1,071.33

* Check # 18033 for \$2087.86 paid the following:	
405 601 334	\$693.71
405 601 334	\$454.68
405 601 334	\$463.10
405 601 334	\$475.73
405 601 334	\$0.64
TOTAL	\$2,087.86
*Check # 14989 for \$9294.55 paid the following:	
405 353 151	\$6,000.00
407 787 922	\$3,029.32
405 601 334	\$265.23
TOTAL	\$9,294.55

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Case No. LC-2008-0049

AFFIDAVIT OF JULIE M. LORENZ

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

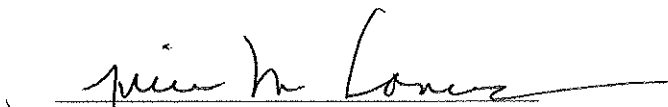
Julie M. Lorenz, being first duly sworn on her oath, states:

1. My name is Julie M. Lorenz. I am presently Director Telco Cost/CABS Assurance for Charter Fiberlink-Missouri, LLC. In that position, I oversee the accounting, and payment, of sums related to charges associated with customer records searches and am familiar with payments that Charter has remitted to CenturyTel for customer record searches.


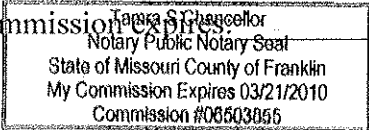
2. I have knowledge of the facts set forth in Charter's Reply to CenturyTel of Missouri, LLC's Application for Rehearing and Clarification ("Charter's Reply"), and attest to their accuracy as stated therein.

3. I also have knowledge of the facts set forth in **Exhibit A** to Charter's Reply, a spreadsheet that identifies the amounts that Charter has paid CenturyTel, the check number associated with that payment, and the check date.

4. I hereby swear and affirm that the foregoing is true and correct to the best of my personal knowledge, information and belief.


Julie M. Lorenz

Subscribed and sworn before me this 11th day of November, 2008.


Notary Public for _____ County, Missouri
My Commission Expires: _____

State of Missouri County of Franklin
My Commission Expires 03/21/2010
Commission #06503865