

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

Eminent Network Technologies, Inc.)	
d/b/a Interlinc.net,)	
)	
Complainant,)	
)	
v.)	
)	Case No. IC-2007-0092
CenturyTel of Missouri, LLC)	
and)	
Spectra Communications Group, LLC)	
d/b/a CenturyTel,)	
)	
Respondents)	

**RESPONSE OF COMPLAINANT TO JOINT MOTION TO DISMISS,
ANSWER AND AFFIRMATIVE DEFENSES, AND
ANSWER TO COUNTERCLAIM**

Complainant, Eminent Network Technologies, Inc. d/b/a Interlinc.net ("Eminent" or "Complainant"), filed its *Complaint* in this matter on August 29, 2006. On September 28, 2006, Respondents, CenturyTel of Missouri, LLC ("CenturyTel") and Spectra Communications Group, LLC, d/b/a CenturyTel ("Spectra") (collectively "Respondents" or "CenturyTel") filed their *Joint Motion to Dismiss, Answer, Affirmative Defenses and Counterclaim*. Complainant hereby responds to CenturyTel's pleading of September 28. For reasons explained more fully below, and in the *Complaint* filed in this matter on August 29, 2006, Respondents' Motion to Dismiss should be denied and this matter set for early prehearing conference. Complainant is also willing to participate in a mediation process with Respondents, as stated in the *Complaint* in this case.

As explained in more detail below, in Complainant's *Answer to Counterclaim*, Eminent has been erroneously billed by Respondents on a number of occasions, and in a number of accounts, since the resolution of Case No. TC-2005-0356 in 2005. At least one of the accounts in question has been

under discussion for months, if not years. Certain accounts enumerated in Respondents' pleading of September 28 include charges imposed upon Complainant for numerous circuits which Complainant cancelled, or at least sought to cancel, in April 2006. CenturyTel did not cancel the circuits and continued to bill Eminent for them. It is possible that there was a good faith misunderstanding concerning the cancellation order. However, the Commission's records will demonstrate that Respondents are the subjects of numerous consumer complaints over billing and service issues. This issue should be sorted out in this case, not brushed under the rug.

Respondents also complain that Eminent did not always complain about billing disputes and irregularities to the "right person" within the CenturyTel bureaucracy. In fact, Complainant has registered a number of complaints about erroneous billing to CenturyTel personnel since the settlement was reached in Case No. TC-2005-0356. Complainant has continued, since filing the instant complaint, to seek resolution of one of the disputed accounts through telephone and email communications with CenturyTel personnel, and believes that CenturyTel will ultimately agree with Complainant's position (which could reduce the outstanding bills in dispute in this case by tens of thousand of dollars). Complainant has been awaiting a response from CenturyTel to those communications for more than a month.

Respondents allege that the Missouri Public Service Commission has no jurisdiction over two of the four accounts in dispute, because they "represent interstate access services" provided by CenturyTel, which Respondents allege is only FCC-jurisdictional. These two accounts primarily involve DSL service, and Complainant reserves the right to argue the point of PSC jurisdiction over DSL. However, even if Respondents were correct in their position on jurisdiction, to the best of Complainant's knowledge, information and belief, CenturyTel does not

have the ability to disconnect Complainant's DSL service without also disconnecting other services over which CenturyTel does not deny Missouri PSC jurisdiction. Thus, for immediate purposes, Respondent's Motion to Dismiss is irrelevant. It must also be noted that, while Respondents argue lack of PSC jurisdiction in their Motion to Dismiss, their counterclaim asks the PSC to assert jurisdiction.

Complainant Eminent agrees with the formal motion of Respondents, pursuant to 4 CSR 240-2.090(4), to schedule an early prehearing conference in this matter. (*Joint Motion*, page 14, "Other Relief Requested," Item 1.) Complainant Eminent further joins with Respondents in welcoming "the involvement and scrutiny of the Commission's Staff" in investigating and mediating the matters at issue herein. (*Joint Motion*, page 15, "Other Relief Requested," Item 3.) In addition, Complainant Eminent reiterates, as it stated in its Complaint in this case, that it is willing to participate in a mediation process with the goal of resolving its billing and service disputes with Respondents.

Complainant Eminent opposes Respondents' call for escrow arrangements to be established for disputed amounts. Complainant established a record of fulfilling its payment obligations under the settlement reached in Case No. TC-2005-0356, and has made a payment offer to Respondents in the current dispute, which was rejected by Respondents.

Complainant will not, in any event, "continue to increase its debt to Respondents." (*Joint Motion*, page 15, "Other Relief Requested," Item 2.) Again, Complainant is entirely willing to agree to make payment of all amounts ultimately determined, in this case, to be due and owing to Respondents. In addition, Complainant has significantly reduced its monthly obligations to Respondents going forward, by: (1) eliminating its DSL customers as of October 1, 2006, thereby assuring that no new charges under Accounts 9787VEMIS3 and

9787E611S3 will accrue in the future; and (2) by finally securing the cancellation of numerous circuits which Complainant had been trying to cancel since April in other accounts.

Complainant came, perhaps belatedly, to the realization that it is impossible to compete against Respondents for the provision of DSL service since Respondents offer that service directly to their own customers at a lower monthly rate than they charge to Complainant at “wholesale” to provide DSL service to Complainant’s customers. Having accepted this reality, Complainant no longer offers DSL service.

Respondents themselves have caused enormous expenses to be incurred by Eminent and by its affiliated basic local exchange carrier, CD Telecom, in the last two and a half years, which have put extraordinary pressure on the cash flow of Eminent, CD Telecom and their ownership. Eminent had to undertake a formal complaint against Respondents in 2005 because of billing disputes, in Case No. TC-2005-0356. CD Telecom was forced to secure an injunction against Respondents in Cole County Circuit Court in 2004 to keep Respondents from terminating service in various exchanges, without notice to CD Telecom, and then to undertake an arbitration at the PSC in 2005 in order to arrive at a new Interconnection Agreement (Case No. XO-2005-0277; Case No. TK-2006-0125). CD Telecom’s negotiated Interconnection Agreement with Respondents may now be adopted by other carriers, without any cost to those carriers. However, Complainant and CD Telecom are seriously doubtful that any other CLEC as small as CD Telecom has ever had to undertake an Interconnection Agreement arbitration at the Commission. These unanticipated expenses make it essential that Eminent not be charged for any services it does not actually receive from Respondents, or has sought to cancel, or is misbilled for.

The financial pressure experienced by these sister companies also makes Respondents' proposal that Eminent escrow all amounts claimed by Respondents to be due and owing unrealistic and unfair. Eminent must be assured that the amounts billed by Respondents are accurate, and then be provided with a reasonable period of time to pay those amounts determined to be accurate. This more reasonable approach was successful in the settlement reached with Respondents in Case No. TC-2005-0356.

Complainant Eminent requests that the Commission deny Respondents' Motion to Dismiss the instant complaint. In the alternative, Complainant urges the Commission to hold Respondents' Motion to Dismiss in abeyance until the Parties have additional time to seek amicable resolution of the matters in dispute. As previously stated, Complainant supports the scheduling of an early prehearing conference in this matter, as suggested by Respondents, and stands willing to participate in mediation of the matters at issue.

ANSWER TO COUNTERCLAIM

1. Except as specifically admitted herein or stated in the Complaint in this case, Respondents deny each and every allegation, averment and statement in Respondents' *Joint Motion to Dismiss, Answer, Affirmative Defenses and Counterclaim*.

2. Eminent admits the averments of Paragraphs 1, 2, 3 and 4 of the Counterclaim, except to observe that the Commission's EFIS System shows the Jefferson City address for CenturyTel, not the Wentzville address reflected in Paragraphs 2 and 3 of the Counterclaim.

3. Eminent is without sufficient information to admit or deny the averments of Paragraph 5 of the Counterclaim.

4. The averments of Paragraph 6 of the Counterclaim have been addressed above.

5. Responding to the averments of Paragraph 7 of the Counterclaim, Eminent admits that it did receive, during the period covered by the Complaint, services from Respondents that were billed by Respondents under Account 9787E611S3, and that the amount shown as due and owing at the time of the demand letters in question is \$23,594.26. Complainant avers that this account has been disputed by Eminent since the time of the settlement, and that no more than \$2,828.43 was actually due on this account at the time of the demand letter. Eminent has offered to pay the undisputed balance of this account to Respondents, but Eminent's proposal was rejected by Respondents in favor of termination of service.

6. Responding to the averments of Paragraph 8 of the Counterclaim, Eminent admits that it did receive, during the period covered by the Complaint, services from Respondents that were billed by Respondents under Account 9787VEMIS3, and that the amount shown as due and owing at the time of the demand letters in question is \$37,202.29. Complainant avers that this total fails to credit Eminent with amounts actually paid of at least \$9,271.06, and fails to acknowledge approximately \$4,000.00 in dispute on this account. Eminent has offered to pay the undisputed balance of this account to Respondents, but Eminent's proposal was rejected by Respondents in favor of termination of service.

7. Responding to the averments of Paragraph 9 of the Counterclaim, Eminent admits that it did receive, during the period covered by the Complaint, services from Respondents that were billed by Respondents under Account 301650232, and that the amount shown as due and owing at the time of the demand letters in question is \$23,666.85. Complainant avers that this total

includes billings for a number of circuits previously cancelled by Eminent and that no more than \$3,014.63 was actually due on this account at the time of the demand letter. Eminent has offered to pay the undisputed balance of this account to Respondents, but Eminent's proposal was rejected by Respondents in favor of termination of service.

8. Responding to the averments of Paragraph 10 of the Counterclaim, Eminent admits that it did receive, during the period covered by the Complaint, services from Respondents that were billed by Respondents under Account 301796549, and that the amount shown as due and owing at the time of the demand letters in question is \$31,378.24. Complainant avers that this total includes billings for a number of circuits previously cancelled by Eminent, that only one circuit on this account should have been billed after April 2006, and that no more than \$45.52 was actually due on this account at the time of the demand letter. Eminent has offered to pay the undisputed balance of this account to Respondents, but Eminent's proposal was rejected by Respondents in favor of termination of service.

9. Responding Paragraph 11 of the Counterclaim, the averments of Paragraphs 1 through 10 of the Counterclaim have been previously addressed above.

10. Responding to the averments of Paragraphs 12 through 14, Eminent admits that Respondents' applicable tariffs include provisions for the discontinuance of service to customers for nonpayment of undisputed amounts, and that Respondents did send letters dated July 21, 2006 threatening to terminate service to Eminent. However, Eminent denies that Respondents have fully complied with tariff requirements or that Respondents are entitled to discontinue service to Eminent.

WHEREFORE, Complainant, Eminent Network Technologies, Inc. d/b/a Interlinc.net, respectfully requests that the Public Service Commission of Missouri: (1) deny Respondents' Motion to Dismiss the instant Complaint or, in the alternative, defer ruling on said Motion pending further discussions among the Parties; (2) assign appropriate Commission Staff to investigate and mediate the matters at issue herein; (3) issue an Order scheduling an early prehearing conference in this matter; and (4) grant such further and additional relief as is equitable and just.

Respectfully submitted,

/s/ William D. Steinmeier

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Dated: October 6, 2006

Certificate of Service

I hereby certify that the undersigned has caused a complete copy of the attached document to be electronically filed and served on the Commission's Office of General Counsel (at gencounsel@psc.mo.gov), the Office of Public Counsel (at opcservice@ded.mo.gov) and counsel for CenturyTel (at ldority@sprintmail.com), on this 6th day of October 2006.

/s/ William D. Steinmeier

William D. Steinmeier