

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO


In the Matter of CenturyTel of Ohio, Inc. to)
Provide a New Prepaid Service Bundle.) Case No. 08-889-TP-UNC

ENTRY ON REHEARING

The Commission finds:

- (1) This case involves an application filed by CenturyTel of Ohio, Inc. (CenturyTel or "the company") on July 17, 2008, through which the company has sought Commission review and approval of a proposed new residential bundled service offering known as Prepaid Local Telephone Service (PLTS). On September 24, 2008, the Commission issued a finding and order (Order) by which it, among other things, granted that application, subject to certain contingencies as spelled out in the Order.
- (2) Section 4903.10, Revised Code, indicates that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by filing an application within 30 days after the entry of the order upon the journal of the Commission. Under Rule 4901-1-35(B), Ohio Administrative Code, (O.A.C.), any party may file a memorandum contra within ten days after the filing of an application for rehearing.
- (3) On October 24, 2008, the office of the Ohio Consumers' Counsel (OCC), as a party to this case whose motion for intervention was granted within the Order, filed an application for rehearing of the Order, along with an accompanying memorandum in support thereof. CenturyTel filed a memorandum contra OCC's rehearing application on November 3, 2008.¹
- (4) In its application for rehearing, OCC contends that the Commission's decision is unreasonable and unlawful based on

¹ An initial version of CenturyTel's memorandum contra was filed in this case on the morning of November 3, 2008. Later on that same day, a second, revised version of it was filed. The Commission accepts the later filing as being timely and it is the one that the Commission will acknowledge and consider, here, in reaching its disposition of this case.

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four allegations of error. Specifically, OCC argues that, within the Order, the Commission erred:

- (a) In approving a service that does not include directory assistance (DA) and operator services (OS). OCC claims that CenturyTel's prepaid customers "would be blocked" from basic service that includes DA and OS and that, consequently, the company "should seek a waiver to provide prepaid service that includes such blocking" (Memorandum in Support of OCC's Rehearing Application at 5, 6).
- (b) In ruling that no waivers of the Commission's minimum telephone service standards (MTSS), as set forth in Chapter 4901:1-15, O.A.C., were necessary to approve CenturyTel' prepaid service. In its memorandum in support of its rehearing application, OCC breaks this argument out into two components. The first, which is a reiteration of both its first allegation of error and of arguments that it already made at an earlier stage in the case, is that the Commission is without authority to approve a basic service that does not include access to DA and OS.

The second component of OCC's argument is that the Commission was wrong in concluding, as it did on page 12 of the Order, that it could authorize the company to provide PLTS "without need of the company either to seek and/or to obtain from the Commission any waivers from our MTSS rules." OCC's support for this position stems from OCC's belief, further elaborated upon in OCC's third allegation of error, that the "statement" that the company sends its customers concerning how to obtain another month of prepaid service is, despite the Commission's holding in the Order to the contrary, "actually a bill and disconnection notice, and should therefore comply with the MTSS." Such MTSS compliance, says OCC, is necessary in order to avoid harming the company's prepaid customers by depriving them of the consumer protections provided for under numerous MTSS provisions identified in OCC's pleading (*Id.* at 6, 9).

- (c) In finding that CenturyTel's statement concerning how to obtain another month of prepaid service is neither a bill nor a disconnection notice. Under such a finding, contends OCC, CenturyTel and other telephone companies could avoid including important consumer safeguards on customer bills and disconnection notices.

OCC says this finding amounts to a change in position from what the Commission decided nine years ago in the *NOW Order*.² Moreover, says OCC, such a change in position is illegal under Ohio case law because, in this case, neither a need for such a change has been demonstrated nor has there been any showing that the previous decision is in error (*Id.* at 8, citing *Cleveland Electric Illuminating Co. v. Public Utilities Commission* (1975), 42 Ohio St. 2d 403, 431).

OCC also contends that it is necessary to understand the statement concerning prepayment service renewal as both a bill and a disconnection statement because the customer will experience a "disconnection" as defined in the MTSS if the customer does not make a payment by the date for renewal identified in the statement (*Id.* at 8). "Disconnection" is defined in the MTSS as "the intentional interruption by the telecommunications provider of incoming or outgoing telecommunications service" (*Id.* citing Rule 4901:1-5-01(N), O.A.C.).

- (d) By failing to ensure that lifeline-eligible customers will be properly enrolled in CenturyTel's lifeline service instead of the prepaid service. OCC identifies its primary concern, in this regard, is whether personnel who enroll customers in prepaid phone service are "adequately trained and monitored to ensure that lifeline-eligible consumers are not signed up for pre-paid service" (*Id.* at 14).

² In the Matter of the Application of Now Communications, Inc. to Offer Resold Local Exchange and Intrastate Interexchange Services, Case No. 98-1466-TP-ACE, et al, Opinion and Order (November 2, 2000) ("NOW Order").

- (5) In its memorandum contra, CenturyTel contends that each of OCC's four allegations of error are without merit and argues that, consequently, the Commission should deny OCC's rehearing application. Specifically, the company makes the following arguments:
- (a) On rehearing, OCC has done nothing more than to repeat the same arguments that it made earlier, in its initial opposition to CenturyTel's application. The company, in its August 22, 2008, Reply to OCC's Opposition to CenturyTel's Application, responded specifically to each of the four claims that OCC is now merely repeating on rehearing. Moreover, the Commission has already considered, and in the Order properly addressed, each of the arguments that OCC is simply trying to raise for a second time (CenturyTel Memorandum Contra OCC's Rehearing Application at 1, 2).
 - (b) It was not error, says the company, for the Commission to approve a prepaid service that does not include DA and OS for two reasons, both of which have already been incorporated into the Order as a basis for the decision in this case. The first reason is that CenturyTel's PLTS presents consumers a choice between receiving either PLTS or no service at all, rather than a choice between receiving either PLTS or a "better" bundle that has additional elements, such as DA and OS (CenturyTel Memorandum Contra OCC's Rehearing Application at 2). The second reason, acknowledged by the Commission in the Order is that PLTS "is optional ... and will not impact the ability of all customers who are eligible for other services, including both basic local exchange service and lifeline service, to subscribe to those services instead" (*Id.*, at 3, citing the Order at 15). In this regard, the company also points out that, under the language of the Order, PLTS can be offered only under the contingency that the company must also simultaneously continue to make available basic local exchange service that includes DA and OS to all customers who are eligible for and willing to pay for it

(CenturyTel Memorandum Contra OCC's Rehearing Application at 3).

- (c) Responding to OCC's claim, at page six of the memorandum in support of OCC's rehearing application, that "the Commission has not required CenturyTel to inform its prepaid service customers that they may obtain DA and OS through other providers," the company has provided, as an attachment to its memorandum contra OCC's rehearing application, a copy of the "disclosure statement" that the company provides to its PLTS customers - and that such customers must acknowledge through initials and/or a signature prior to receiving the prepaid service - that clearly discloses the availability of both lifeline services and free DA services. The disclosure statement, explains the company, is a document that was revised after the Order was issued, as the result of the company's discussions with the Commission's staff occurring pursuant to the second ordering paragraph of the Order. That ordering paragraph of the Order directed the company to work with the staff to implement the service in a manner consistent with the Order.
- (d) CenturyTel contends that the OCC's second and third allegations of error "blend together and can be addressed simultaneously" (*Id.*). OCC's arguments that it was error for the Commission to find, as it did at page 13 of the Order, that the statement the company sends to a prepaid customer 15 days before the payment must be made if service for the next month is to be renewed "is really neither a bill nor a disconnection notice" are, says the company, without merit. In its memorandum contra OCC's rehearing application, the company reiterates the same position that it argued and that the Commission has already considered and adopted in the Order, namely, that because of the prepaid characteristic of the service, the statement concerning how to renew service through an additional prepayment serves neither the purpose of a bill, nor the purpose of a disconnection notice. The customer of a prepaid service, by definition, says

CenturyTel, pays all charges before service is initiated and there is nothing to bill the customer for. If the customer wishes to continue to receive the service, the customer will prepay again. If the customer does not, the service will end – without disconnection – on the date designated when the customer initiated the service.

- (e) Also without merit, says the company, is OCC's fourth allegation of error, namely that the Commission failed to ensure that lifeline-eligible customers will be properly enrolled in CenturyTel's lifeline service instead of PLTS. CenturyTel supports its position by observing that, at page 6 of the Order, the Commission summarized numerous ways in which customers are "notified, and in many cases, automatically enrolled in CenturyTel's lifeline services" (*Id.* at 4).
 - (f) Finally, the company argues that the Commission thoroughly addressed and clearly articulated in the Order, why its decision in the case at hand is distinguishable from that which was reached in the *NOW Order* (*Id.*).
- (6) Upon review of all relevant pleadings of record, the Commission finds OCC's Rehearing Application should be denied. OCC's first allegation of error is without merit, in that the only new argument or issue it raises that has not already been considered and adequately addressed in the Order is OCC's claim that CenturyTel's prepaid customers are blocked from access to basic service that includes DA and OS. There is no basis in the record for this claim by OCC and it is directly negated both by the fact that PLTS is an optional service and that the Order specifically makes the Commission's approval of PLTS contingent on the requirement that the company must at all times continue to simultaneously offer basic local exchange service that includes DA and OS to all customers who are eligible and willing to pay for it.

OCC's second and third allegations of error are also both without merit in that the Commission has already considered and adequately addressed in the Order, all but one of the arguments raised by OCC with respect to these two allegations of error. The

Order has already adequately and properly distinguished the decision in this case from that in the *NOW Order*.

The only new argument pertaining to OCC's second and third allegations of error, raised by OCC for the first time on rehearing, concerns the question of whether a prepaid customer who decides or otherwise fails to renew the service thereby experiences a "disconnection" -- as that term is defined in the MTSS -- at the time when an established prepaid service account reaches its term of expiration. This new argument is relevant to the question, presented by OCC, of whether the statement that the company sends to a customer concerning how to prepay again in order to renew an existing prepaid service account constitutes a bill and/or a disconnection notice. Upon consideration of all the arguments presented on rehearing, we conclude that our finding within the Order, that such a statement is neither a bill nor a disconnection notice, remains valid and should be upheld on rehearing. (Order at 13.)

Disconnection does not occur because there is a manifest intention, shared between the customer and the service provider alike regarding how and when the prepaid service shall cease to be provided. Rather than any "interruption" of the service, as contemplated in the MTSS definition of the term "disconnection," in a prepaid service setting, there is only a cessation of service that is in all ways controlled by the intentions and actions of the customer manifested both at the time of service initiation and again later by the customer's own response to the company-sent statement explaining how the existing prepaid service account can be renewed.

Finally, we find OCC's fourth allegation of error to be without merit, in that it presents no new argument or issue that has not already been considered by the Commission and adequately addressed in the Order. There is no basis in the record for OCC's claim that personnel who enroll customers in prepaid phone service are not adequately trained and monitored to ensure that lifeline-eligible consumers are made aware of the availability of that service. Our finding, within the Order, concerning the adequacy of the company's policies and procedures relating to providing notice of the availability of its lifeline service to customers who are likely to be eligible to become lifeline customers remains fully justified by the record in this case. All

rehearing arguments not specifically addressed in this entry on rehearing are denied.

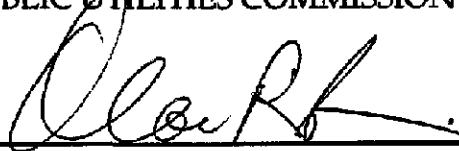
It is, therefore,

ORDERED, That, in accordance with the above findings, OCC's application for rehearing is denied and the Order is, in all respects, affirmed. It is, further,

ORDERED, That all rehearing arguments not specifically addressed in this rehearing entry are denied. It is, further,

ORDERED, That copies of this entry on rehearing be served upon parties of record.

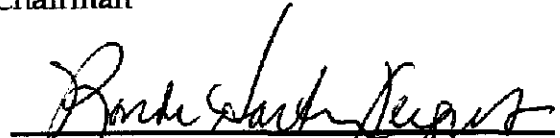
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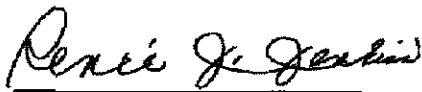


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Secretary