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2 PUBLIC SERVICE COMMISSION
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4
5 TRANSCRIPT OF PROCEEDINGS
6 Oral Argument
7 April 9, 2008
8 Jefferson City, Missouri
9 Volume 2
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11 CenturyTel of Missouri, LLC,)
12)
13 Complainant,)
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15) Case No.
16) IC-2008-0068, et al.
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18 Socket Telecom, LLC,)
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20 Respondents.)
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BY:
MINDY VISLAY, CCR
MIDWEST LITIGATION SERVICES

1 A P P E A R A N C E S

2

3 LARRY W. DORITY, Attorney at Law
4 Fischer & DORITY, P.C.
5 101 Madison, Suite 400
6 Jefferson City, MO 65101
7 (573) 636-6758

8 FOR: CenturyTel of Missouri, LLC,
9 Spectra Communications Group, LLC,
10 d/b/a CenturyTel

11

12 GAVIN E. HILL, Attorney at Law
13 Kirkpatrick & Lockhart Preston Gates
14 Ellis, L.L.P.
15 1717 Main Street, Suite 2800
16 Dallas, TX 75201
17 (214) 939-5992

18 FOR: CenturyTel of Missouri, LLC, and
19 Spectra Communications Group,
20 LLC, d/b/a CenturyTel

21

22 CARL J. LUMLEY, Attorney at Law
23 Curtis, Heinz, Garrett &, P.C.
24 130 South Bemiston, Suite 200
25 Clayton, MO 63105
26 (314) 725-8788

27

28 FOR: Socket Telecom, LLC.

29

30 WILLIAM K. HAAS, Deputy General Counsel
31 P.O. Box 360
32 200 Madison Street
33 Jefferson City, MO 65102
34 (573) 751-3234

35

36 FOR: Staff of the Missouri Public
37 Service Commission.

38

39

1 P R O C E E D I N G S .

2 JUDGE VOSS: Good afternoon. We are here
3 for the oral arguments on the parties' cross-motion
4 for summary determination in Commission's consolidated
5 Case Nos. IC-2008-0068 and IC-2008-0127 in the matter
6 of the complaint of CenturyTel of Missouri, L.L.C.,
7 versus Socket Telecom, L.L.C., and Spectra
8 Communications Group, L.L.C., d/b/a CenturyTel, versus
9 Socket Telecom, L.L.C.

10 My name is Cheryl Voss, I'm the Regulatory Law
11 Judge assigned to the consolidated case, and I'll be
12 presiding over the arguments today.

13 We're going to begin with entries of appearance
14 beginning with CenturyTel.

15 MR. DORITY: Thank you, Judge Voss.
16 Appearing on behalf of the Complainants, CenturyTel of
17 Missouri, L.L.C., and Spectra Communications Group,
18 L.L.C., doing business as CenturyTel, Larry W. Dority
19 with the firm Fischer & Dority, P.C., our address is
20 101 Madison, Suite 400, Jefferson City, Missouri
21 65101.

22 Also appearing today on behalf of Complainants is
23 Mr. Gavin Hill with the law firm of Kirkpatrick &
24 Lockhart Preston Gates Ellis, L.L.P. His address is
25 1717 Main Street, Suite 2800, Dallas, Texas 75201.

1 And Mr. Hill has been granted leave to appear
2 pursuant to your order dated November 14th, Your
3 Honor.

4 JUDGE VOSS: Thank you.
5 Socket?

6 MR. LUMLEY: Good afternoon everyone. Carl
7 Lumley with the Curtis Heinz law firm appearing on
8 behalf of Socket Telecom, 130 South Bemiston, Suite
9 200, Clayton, Missouri 63105.

10 JUDGE VOSS: Thank you.
11 Commission staff?

12 MR. HAAS: Good afternoon. William K. Haas
13 appearing on behalf of the staff of the Commission.
14 My address is Post Office Box 360, Jefferson City,
15 Missouri.

16 JUDGE VOSS: And let the record reflect
17 that Public Counsel requested to be recused from this
18 proceeding -- they have not taken a formal position in
19 this case -- and that request has been granted.

20 Are there any other issues that we should address
21 before we commence with oral arguments? Hearing none.

22 It's my understanding that CenturyTel is going to
23 go first, so please proceed.

24 MR. HILL: Your Honor, may we distribute
25 the courtesy copies of Article V?

1 JUDGE VOSS: Yes. I have a copy.

2 MR. HILL: Good afternoon, Your Honor,
3 Commissioners.

4 MR. DORITY: Is the microphone on?

5 JUDGE VOSS: I believe so. That one is
6 always live.

7 MR. HILL: CenturyTel's motion for summary
8 determination asks the Commission to do a very simple
9 thing; to interpret the unambiguous terms of the
10 parties' Interconnection Agreement.

11 When the Commission reviews those terms,
12 specifically the intercarrier compensation divisions
13 which are found in Article V, the Commission will find
14 that the agreement is precisely what this Commission
15 ordered it to be back in the arbitration two years
16 ago.

17 It is an agreement that requires the parties,
18 CenturyTel and Socket, to exchange Local Traffic.
19 That Local Traffic under this agreement includes local
20 internet traffic, or ISP Traffic as it's called under
21 the agreement.

22 The Commission will also find that the agreement
23 does not require either party to pay for the exchange
24 of that traffic. Indeed, the agreement is silent on
25 any provision applying compensation to the exchange of

1 Local Traffic including internet traffic.

2 While Socket thinks it is entitled to receive
3 reciprocal compensation under the terms of the
4 Interconnection Agreement, or under the Telecom Act,
5 Socket did not receive that ruling from this
6 Commission in arbitration.

7 Indeed, the Interconnection Agreement, which is in
8 conformity with the arbitration award, is silent on
9 the application of any compensation arrangement as it
10 applies through the Local Traffic.

11 If Socket thinks that the law requires the
12 Interconnection Agreement to include an express
13 reciprocal compensation provision, then its quarrel is
14 not with CenturyTel its quarrel is with this
15 Commission's ruling, and its remedy is an appeal under
16 Section 252(e)(6) of the Telecom Act.

17 Now, to place this dispute in context, the
18 agreements at issue here became effective in October
19 of 2006. Two months after they became effective
20 Socket began billing CenturyTel for reciprocal
21 compensation, allegedly for the termination of Local
22 Traffic under the agreement.

23 CenturyTel brought this action to ask the
24 Commission to interpret the agreement and to declare
25 that there is no obligation for a party to pay

1 reciprocal compensation under the agreement.

2 Socket principally relies on two arguments. It
3 has repeatedly claimed that the agreement expressly
4 requires the payment of reciprocal compensation. And
5 in making that argument it principally relies on two
6 key provisions, one is 9.7 and the other is 9.7.2.

7 And I passed out courtesy copies should you wish
8 to look at it. And with Your Honor's permission I'd
9 like to use the Elmo to display that.

10 JUDGE VOSS: Yes, go ahead.

11 MR. HILL: Unfortunately there's no
12 microphone so I'll speak loudly.

13 JUDGE VOSS: You can move that microphone
14 over there. I'm not sure how long that cord is that's
15 attached to it.

16 MR. HILL: Section 9.7 of Article V
17 essentially defines what constitutes -- or the
18 mechanics of -- transport. Whereas 9.7.2 defines what
19 constitutes termination of traffic. Both of these --
20 and I've highlighted the word "includes" to show that
21 both of these provisions are essentially definitional,
22 they are descriptive of a particular type, or the
23 components of a reciprocal compensation regime.

24 What these provisions do not do is they do not
25 specifically apply this compensation regime to the

1 exchange of any particular traffic. There is no
2 language in here that says that the parties shall
3 compensate each other or shall pay each other for the
4 transport and termination of Local Traffic.

5 By way of example, there are other provisions in
6 the intercarrier compensation section. Specifically
7 down here at Section 9.4.2 there is a bill-and-keep
8 provision which is essentially a definition of
9 bill-and-keep. It says what happens when the parties
10 invoke a bill-and-keep arrangement and the fact that
11 the parties will not pay each other.

12 But standing alone, this bill-and-keep provision
13 and its definition does not apply the compensation
14 regime described in it to any particular type of
15 traffic. Rather, you have to look up Section 9.2.3
16 that specifically speaks to VNXX Traffic and which
17 expressly states that the exchange of that traffic
18 shall be at bill-and-keep.

19 Now, what you will note as you review Article V is
20 that there is no corresponding provision in those
21 intercarrier compensation provisions that actually
22 applies the definitional recip/comp terms, 9.7 and
23 9.7.2, that Socket relies upon to the exchange of
24 Local Traffic.

25 In fact, you will find that there is no provision

1 in Article V that applies reciprocal compensation, or
2 any compensation regime, to Local Traffic. It's
3 simply left silent as directed by the Commission's
4 final Commission decision in the underlying
5 arbitration.

6 Socket has raised another argument. Essentially
7 that argument says that unless there's an express
8 bill-and-keep provision for Local Traffic in the
9 agreement that the Commission should read the
10 statutory reciprocal compensation obligation from the
11 Act into it.

12 Now, that is an incorrect argument. It is an
13 errant argument for three reasons. First, the Telecom
14 Act and the regulations that implement it no more
15 mandate reciprocal compensation than they do
16 bill-and-keep. Neither has presumptive application
17 over the other.

18 Second, it violates established -- fundamental and
19 well-established rules of contract instruction and
20 interpretation in Missouri. And in our briefing we
21 cited the case laws that demonstrate that
22 interconnection agreements do not get special
23 treatment, they are construed and interpreted as any
24 other agreement -- as any other contract would be
25 under Missouri law.

1 And finally, the fact that Socket even raises the
2 argument that somehow a reciprocal compensation term
3 ought to be read into the agreement clearly
4 demonstrates, or is essentially an admission or an
5 acknowledgement, that 9.7 and 9.7.2 do not do what
6 Socket says they do. They do not apply reciprocal
7 compensation to Local Traffic.

8 As ordered by the Commission, the agreement is
9 that the parties conform the agreement precisely the
10 way the Commission directed the intercarrier
11 compensation provisions to be conformed. It leaves
12 unaddressed or silent any compensation -- the
13 compensation regime that would apply to Local Traffic.
14 In the absence of a specific provision, neither party
15 is obligated under the agreement to pay for the
16 termination of Local Traffic.

17 May I return?

18 JUDGE VOSS: Sure.

19 MR. HILL: Do you have any questions?

20 JUDGE VOSS: No, I was writing.

21 QUESTIONS BY COMMISSIONER JARRETT:

22 Q. I have a question. On 9.7.2, Mr. Hill, the
23 last sentence says, "Termination rates are set forth
24 in Article VIIA."

25 What does Article VIIA say?

1 A. Article VIIA is simply a schedule of a
2 whole bunch of rates. It includes virtually every
3 rate that could be referenced in an interconnection
4 agreement. There are switching rates, there are all
5 sorts of rates. It's the amalgam of rates that could
6 be used under the agreement.

7 Q. Is there anything in there about charging
8 for local?

9 A. No, it is basically an Excel spreadsheet
10 that lists very specific rates. It doesn't have any
11 substantive provisions, that I'm aware of, that
12 actually apply to anything.

13 Q. It looks like there's a charge for local
14 switching; 0.0033912?

15 A. Yes.

16 Q. Is that what Socket is attempting to charge
17 here?

18 A. That is.

19 Q. And why is that not correct?

20 A. There is a very simple reason for why both
21 those provisions we talked about, 9.7 and 9.7.2, the
22 rates that you are referencing, Commissioner Jarrett,
23 as well as other reciprocal compensation-related type
24 provisions, are in the agreement.

25 In the underlying arbitration both parties present

1 their proffer of a bill-and-keep provision.
2 CenturyTel's provision had an out-of-balance provision
3 which said that in the event that traffic became
4 significantly out of balance the parties could invoke
5 a trigger that would revert to reciprocal
6 compensation.

7 Those rates, and other like provisions, remained
8 in the agreement because they were incident to the
9 bill-and-keep provision CenturyTel had proffered.
10 However, at the arbitration, the Commission rejected
11 both parties' bill-and-keep provisions. And what
12 remained in the agreement were some of the provisions
13 that were related to that out-of-balance trigger, but
14 the specific provision that applied and said how they
15 would be triggered was actually taken out of the
16 agreement. They simply remained in there as inert
17 provisions.

18 Q. So, is your argument that this local
19 switching rate is an inert --

20 A. Yes.

21 Q. Thank you.

22 JUDGE VOSS: I understand staff will be
23 going second?

24 MR. HAAS: Yes, Your Honor.

25 Good afternoon. CenturyTel and Socket are asking

1 the Commission to construe their Interconnection
2 Agreement, which the Commission approved and
3 arbitrated in Case No. TO-2006-0299.

4 Specifically, the parties are asking the
5 Commission to determine whether the agreement provides
6 for bill-and-keep or for reciprocal compensation to
7 apply to the exchange of Local Traffic.

8 As I will explain, the records support
9 CenturyTel's position that the agreement applies
10 bill-and-keep to Local Traffic. There are several
11 rules of contract construction to guide the parties
12 and the Commission in construing the agreement.

13 "A precept of contract construction is that, if
14 possible, a court will give effect to all parts of an
15 instrument, and a construction that gives a reasonable
16 meaning to all its provisions will be preferred to one
17 that leaves portions of the writing useless or
18 inexplicable."

19 "No word or clause should be rejected as mere
20 surplusage if the court can discover any reasonable
21 purpose therefore."

22 "If a contract is clear and nonambiguous its
23 construction is limited to the four corners, and
24 parole evidence as to its meaning can not be
25 utilized."

1 "Parole evidence is evidence relating to a
2 contract but not appearing on the face of the
3 contract."

4 "A contract is not ambiguous merely because the
5 parties disagree as to its construction. It is
6 ambiguous only if its meaning in subject to fair,
7 honest and reasonable differences."

8 Therefore, the first question for the Commission
9 to decide is whether the agreement is ambiguous.

10 Yes, the Interconnection Agreement is ambiguous as
11 to the compensation arrangement for the exchange of
12 Local Traffic. The Interconnection Agreement does not
13 contain a definitive declaration that bill-and-keep
14 applies to Local Traffic nor does it contain a
15 definitive declaration that reciprocal compensation
16 applies to Local Traffic. Instead, the
17 Interconnection Agreement has conflicting inferences.

18 Mr. Hill has previously distributed copies of the
19 relevant pages for the Interconnection Agreement.
20 Section 9.7.2 reads: Termination includes the tandem
21 switching of Local Traffic at the terminating
22 carrier's end-office switch. Termination rates are
23 set forth in Article VIIA.

24 Termination rates are appropriate for reciprocal
25 compensation arrangements; thus, Section 9.7.2

1 suggests that the agreement applies to reciprocal
2 compensation for Local Traffic.

3 However, Section 9.8 on this same page provides,
4 in Subsection 2: Nothing in this section shall be
5 interpreted to allow either party to aggregate traffic
6 other than Local Traffic for the purpose of
7 compensation under the bill-and-keep arrangement
8 described in this section.

9 This prohibition against aggregating traffic other
10 than Local Traffic for the purpose of bill-and-keep
11 compensation suggests that Local Traffic may be
12 aggregated for the purpose of compensation under
13 bill-and-keep. Thus, Section 9.8 suggests that the
14 agreement applies bill-and-keep to Local Traffic.

15 If the Commission agrees that the agreement is
16 ambiguous then the Commission reaches the second
17 question. Which interpretation is supported by the
18 parole evidence?

19 The parole evidence supports the findings of the
20 agreement that applies bill-and-keep to Local Traffic.
21 As I noted earlier, the Interconnection Agreement does
22 not contain the declaration that either reciprocal
23 compensation or bill-and-keep applies, nor did the
24 arbitration decision contain such a declaration, and
25 there's a reason why.

1 Socket and CenturyTel did not ask the Commission
2 to decide between reciprocal compensation and
3 bill-and-keep. Each party asked the Commission to
4 adopt its version of bill-and-keep. The final
5 Commission decision ordered the parties to file an
6 Interconnection Agreement that is consistent with the
7 findings and conclusions in the decision.

8 Both Socket and CenturyTel stated that the
9 Interconnection Agreement conformed to the
10 Commission's decision; therefore, the Commission
11 should look to its decision to determine if the
12 Interconnection Agreement applies reciprocal
13 compensation or bill-and-keep to Local Traffic.

14 To assist you in following my argument on how the
15 final Commission decision should be interpreted, I
16 have distributed copies of those pages from the
17 decision addressing Issue 10.

18 That issue asks: What language should the
19 Interconnection Agreement include regarding
20 intercarrier compensation for transport and
21 termination of traffic?

22 As discussed on Page 27 at Section 9.2.2,
23 CenturyTel proposed bill-and-keep for Local Traffic
24 but moving to compensation rates set forth in Appendix
25 A if either party is terminating more than 60 percent

1 of its Local Traffic, excluding information access
2 traffic.

3 Concerning this proposal, the decision states that
4 CenturyTel's language addresses bill-and-keep
5 generally, which corresponds more closely with
6 Socket's language at Section 9.4.1 and 9.4.2. The
7 Commission cannot make a ruling on CenturyTel's
8 language since it refers to a compensation arrangement
9 contained in Appendix A which does not appear to be in
10 the record.

11 As discussed on Page 29 at Section 9.4.1, Socket
12 has proposed bill-and-keep for Non-MCA Traffic
13 including Section 251(b)(5) Traffic, ISP Traffic and
14 FX Traffic including VNXX Traffic.

15 Concerning this proposal the decision states:
16 CenturyTel's language in Section 9.2.3 addressing the
17 appropriate application of bill-and-keep is
18 appropriate.

19 In Section 9.2.3 the Commission had decided that
20 VNXX Traffic shall not be deemed Local Traffic but
21 shall be at bill-and-keep.

22 The decision at Section 9.4.1 continues with the
23 statement: Other traffic included in this section has
24 been deemed non-local through other determinations.

25 This statement is not entirely correct. Section

1 251(b) (5) Traffic had not been deemed non-local
2 elsewhere in the decision. It is the federal statute
3 at 47 USC, Section 251(b) (5), which imposed the duties
4 on each local exchange carrier to establish reciprocal
5 compensation arrangements for the transport and
6 termination of telecommunications.

7 As discussed on Pages 29 and 30 at Section 9.4.2,
8 Socket had proposed to define bill-and-keep to refer
9 to an arrangement in which neither of two
10 interconnecting parties charges the other for
11 terminating FX Traffic that originates on the other
12 party's network.

13 The Commission decided that the language with the
14 removal of the reference to terminating FX Traffic was
15 acceptable and consistent with the federal rule. The
16 Commission's decision should be interpreted as
17 rejecting only those parts of the two bill-and-keep
18 proposals that were in dispute.

19 In other words, the Commission's decision should
20 be read as rejecting Socket's proposal to apply
21 bill-and-keep to all Non-MCA Traffic, and similarly,
22 the Commission's decision should be read as rejecting
23 CenturyTel's proposal for an out-of-bounds provision.

24 The result is an interpretation that bill-and-keep
25 applies to the exchange of Local Traffic.

1 How then are the parties to treat Section 9.7.2,
2 which suggests that reciprocal compensation applies?
3 It is not possible for the agreement to apply both
4 reciprocal compensation and bill-and-keep arrangements
5 to the same traffic; therefore, if the Commission
6 agrees that its decision adopted bill-and-keep for
7 Local Traffic, the Commission should reject the
8 reciprocal compensation contract language as
9 surplusage that was left over from CenturyTel's
10 out-of-balance proposal.

11 In its legal memorandum Socket correctly notes
12 that Section 252(d) (2) (a) instructs State Commissions
13 that the terms and conditions for reciprocal
14 compensation shall not be considered just and
15 reasonable unless such terms and conditions provide
16 for the mutual and reciprocal recovery by each carrier
17 of costs associated with the transport and termination
18 of calls that originate on the other carrier's
19 network.

20 Socket also correctly notes that Section
21 252(d) (2) (b) provides that Section 252(d) (2) (a) shall
22 not be construed to preclude arrangements that waive
23 mutual recovery such as bill-and-keep arrangements.

24 Socket then argues that the statute makes clear
25 that, absent bill-and-keep contractual arrangements,

1 carriers remain entitled to charge one another for the
2 costs associated with transporting and terminating one
3 another's calls.

4 This argument is not persuasive. The statute does
5 not set a default mechanism, and it can just as easily
6 be argued that, absent arrangements for mutual
7 recovery of costs, that carriers are then entitled to
8 bill-and-keep.

9 In summary: One, each party proposed a version of
10 bill-and-keep; two, the Commission did not state it
11 was rejecting the bill-and-keep in its entirety;
12 three, neither party proposed reciprocal compensation
13 as the primary compensation arrangement for Local
14 Traffic; and four, the Commission did not state it was
15 adopting reciprocal compensation.

16 Therefore, the Commission should interpret its
17 decision and, consequently, the Interconnection
18 Agreement, as adopting bill-and-keep for the exchange
19 of Local Traffic. Thank you.

20 JUDGE VOSS: Thank you. Are there any
21 questions?

22 COMMISSIONER MURRAY: Not from me at this
23 time.

24 QUESTIONS BY COMMISSIONER JARRETT:

25 Q. I'm looking at 9.7.2 which says,

1 "Termination includes tandem switching of Local
2 Traffic at the terminating carrier's end-office
3 switch. Termination rates are set forth in Article
4 VIIA."

5 And then in Article VIIA there's a charge for
6 local switching. How is that ambiguous?

7 A. It's ambiguous read in the context of the
8 whole document which is where the other section
9 suggests that bill-and-keep applies to Local Traffic.

10 Q. And does it say anywhere expressly that
11 bill-and-keep applies to Local Traffic? We have to
12 kind of go through 9.8 -- is 9.8 ambiguous?

13 I mean, I think you said that we had to imply that
14 local was bill-and-keep under that?

15 A. Yes, you would have to imply that. But to
16 give some meaning to the reservation there, I think
17 that's the correct reading.

18 "Nothing in this section shall be interpreted to
19 allow either party to aggregate traffic other than
20 Local Traffic for the purpose of compensation under
21 the bill-and-keep arrangement described herein."

22 It says that it's all right for the parties to
23 aggregate Local Traffic for bill-and-keep.

24 Q. Well then, say that. You are saying that
25 it implies that. Isn't there another section in 9.2.3

1 which describes that the VNXX Traffic shall be at
2 bill-and-keep? Why isn't 9.8 referring to that in
3 9.7.2?

4 A. In 9.2.3 it says that VNXX Traffic shall
5 not be deemed Local Traffic but shall be at
6 bill-and-keep.

7 Q. Is that the only section that says,
8 unambiguously, expressly, that that kind of traffic is
9 bill-and-keep? So, why isn't 9.8 just referring to
10 that?

11 A. Section 9.8 does not refer to the
12 aggregation of non-Local Traffic. VNXX Traffic is not
13 Local Traffic.

14 COMMISSIONER JARRETT: Okay. Thank you,
15 Mr. Haas.

16 MR. HAAS: Thank you.

17 COMMISSIONER MURRAY: Mr. Haas, I'm going
18 to ask you a question.

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. The final Commission decision from the
21 arbitration, Page 29, interpreting or actually
22 deciding Section 9.4.2, which 9.4.2 is
23 bill-and-keep -- the definition of bill-and-keep --
24 refers to an agreement in which neither of two
25 interconnecting parties charges the other for

1 terminating traffic that originates on the other
2 party's network.

3 And in the final Commission decision it set out
4 that Socket had proposed that bill-and-keep refers to
5 an arrangement in which neither of two interconnecting
6 parties charges the other for terminating FX Traffic
7 that originates on the other party's network.

8 And CenturyTel hadn't proposed any language on
9 that section, but the Commission decided that 47 CFR
10 51.713 defines bill-and-keep arrangements as those in
11 which neither of the two interconnecting parties
12 charge the other for termination of telecommunication
13 traffic that originates on the other carrier's
14 network.

15 Socket's language, with the removal of the
16 reference to terminating FX Traffic, is acceptable and
17 consistent with this definition.

18 Does that have any bearing on what was considered
19 by the Commission to be subject to bill-and-keep?

20 A. The Arbitrator and the Commission may have
21 thought that they were adopting bill-and-keep with
22 that provision, but it is a definition provision. It
23 doesn't then say "and this will be applied to Local
24 Traffic."

25 Q. But it specifically removed Socket's

1 language that Socket wanted included in the definition
2 that bill-and-keep would apply to terminating FX
3 Traffic; is that correct?

4 A. Yes.

5 Q. And FX Traffic --

6 A. For unexchanged traffic.

7 Q. Which is not considered Local Traffic; is
8 that right?

9 A. That may be disputed. But from the
10 Commission's decision, I would interpret their
11 decision as saying it is not Local Traffic. That it
12 is not traffic subject to the Interconnection
13 Agreement.

14 Q. And when the Commission specifically stated
15 that -- well, I don't see it right there, but I
16 thought the Commission had stated that FX Traffic was
17 non-local and that VNXX Traffic, even though it was
18 not local either, would be subjected to bill-and-keep.

19 And was that in the decision anywhere, that the
20 Commission said that VNXX Traffic would be
21 bill-and-keep?

22 A. Yes. I can't refer you to the page, but
23 the Commission decision said VNXX Traffic will not be
24 deemed local but will be subject to bill-and-keep.

25 But I don't believe there was a similar sentence

1 addressing FX Traffic.

2 Q. Would you look at Page 29 again of the
3 Commission's final decision?

4 There it appears that, when the Commission is
5 talking about Section 9.4.1, Socket proposed that all
6 Non-MCA Traffic, including Non-MCA Section 251(b) (5)
7 Traffic -- and I'm not going to read the rest of
8 them -- including VNXX Traffic shall be exchanged on a
9 bill-and-keep basis.

10 And there CenturyTel proposed no language, but the
11 Commission referred back to CenturyTel's language at
12 Section 9.2.3 addressing the appropriate application
13 of bill-and-keep saying that CenturyTel's language is
14 appropriate and that other traffic included in this
15 section has been deemed non-local through other
16 determinations in that decision.

17 It seems like a difficult way to get there, but is
18 that -- would we interpret that to mean -- okay. I
19 see 9.2.3 is really referring to ISP-bound traffic?

20 A. Well, 9.2.3 was addressing the VNXX
21 Traffic.

22 And when the Commission was addressing the
23 question in 9.4.1 they may have thought the question
24 was simply: Should we include VNXX Traffic in the
25 bill-and-keep arrangement?

1 And they may have felt, well, we already addressed
2 VNXX earlier, and we won't deem it local, but we'll
3 give it bill-and-keep status.

4 And Commissioner Murray, as an aside, I noticed as
5 I was going through the decision point list that
6 sometimes the proposals didn't match up. For
7 instance, a Socket proposal might be 9.1 and a
8 CenturyTel proposal that went with it might be 9.3, so
9 there wasn't always a one-to-one matching or they
10 weren't using the same numbers.

11 COMMISSIONER MURRAY: No wonder I go crazy
12 when I read this stuff. All right. I think that's
13 all, right now. Thank you.

14 MR. LUMLEY: Good afternoon. As I think
15 you are gathering from the prior arguments, this case
16 really comes down to just a few pages out of our
17 Interconnection Agreement.

18 I've also passed out a set of the pertinent pages.
19 What CenturyTel gave you was the entire Article V,
20 I've just given you pertinent pages from that and some
21 other pertinent pages that we have cited in our
22 materials, so a couple of our pages come out of what
23 they've given you already, but there are some pages in
24 there that weren't from that prior handout.

25 Notwithstanding the fact that we are only talking

1 about these few pages, the parties, and more
2 specifically, their attorneys, have managed to give
3 you a stack about an inch-and-a-half thick of
4 pleadings on this topic, and of course that's the way
5 attorneys tend to be.

6 And I'll certainly concede that my part of that
7 stack is thicker, although, in part, it's because we
8 are actually submitting evidence in support of our
9 motion for summary judgment -- or summary disposition
10 under your terminology.

11 But to turn immediately to the key sections which
12 have been discussed already, in Article V, Section
13 9.7.2, it describes the function of terminating Local
14 Traffic by the end-office switch, and it says that the
15 rates are set forth in Article VIIA.

16 And it's been discussed already in Article VIIA on
17 Page 4, which I've given you a copy of, there's the
18 local switching rate, which is 0.033912 per minute.
19 And the evidence undisputedly shows that that rate has
20 no application other than for this function.

21 And this all comes under the heading of
22 Inter-carrier Compensation for Transport and
23 Termination of Traffic subject to this agreement.
24 That's the heading of the start of Section 9.

25 So, we have the service and we have the rate. And

1 staff even agrees with us that if you just looked at
2 that you would say, "Yeah, that's what you have to pay
3 for that." But CenturyTel says, "No, it's
4 bill-and-keep, there's no charge."

5 On my way here I stopped at the McDonald's in
6 Wright City, and the menu says: Cafe latte; delicious
7 espresso and steaming milk, price for a large is
8 \$2.99. We have the service, and we have the price.
9 CenturyTel says, "No, coffee's free at McDonald's."

10 Literally, in my perspective, that's how absurd
11 this argument is. Staff is going to have to rewrite
12 the contract to take that out -- what's totally a
13 contradiction -- the law that they cited at the
14 beginning of their argument.

15 But beyond that, there's even more to the
16 agreement. Article V, Section 12.3 -- again, I've
17 given you a copy -- requires that the recording and
18 billing of Local Traffic must comply with the
19 Commission's Rule 29, the recording and billing of
20 Local Traffic.

21 Article III, Section 10.2, requires that a party
22 bill for Local Traffic minutes using message recording
23 technology, or PLU, which are Percentage Local Use
24 reports. And I quote: To determine the appropriate
25 local interconnection traffic usage compensation to be

1 paid, end quote.

2 Article III, Section 10.4, gives the parties the
3 express right to audit billing for Local Traffic.
4 Despite these provisions, CenturyTel says, "No, coffee
5 is free."

6 We look further in the agreement, back to Article
7 V, Section 9.2. Although it doesn't say it in these
8 words, it says that MCA Traffic is bill-and-keep.

9 What it actually says is MCA Traffic should be
10 handled the way the Commission has told the industry
11 to handle it in prior cases. But what the Commission
12 has said there is that it's bill-and-keep.

13 In Article V, Section 9.2.3 -- it's been
14 discussed -- another category of traffic is
15 bill-and-keep, it's not VNXX Traffic, it's all traffic
16 where the number has been assigned to a different rate
17 center than the rate center in which the customer is
18 physically located, and that includes FX Traffic. And
19 CenturyTel has admitted that in its pleadings, that
20 those customers have that number assignment
21 arrangement.

22 And it's been discussed -- Section 9.8 tells us we
23 can't mix compensable traffic with bill-and-keep
24 traffic.

25 There's no need in the agreement to have express

1 exceptions for MCA Traffic to be bill-and-keep and the
2 FX and VNXX Traffic to be bill-and-keep if the general
3 rule is bill-and-keep.

4 As I've shown you; the general rule requires
5 compensation, the termination function, the
6 termination rate, the provisions that say that they
7 apply for billing.

8 The requirement of compensation is consistent with
9 the Telecom Act, which requires the parties to
10 compensate each other for this terminating function
11 unless they waive the right. But we're not saying
12 that you should read into the contract language that's
13 not there by that argument, we're just showing you
14 that it's consistent with federal law the way the
15 contract reads.

16 In one breath CenturyTel is accusing us of trying
17 to read things into the argument. I'm showing you
18 we're not doing that. We're presenting the agreement
19 for you to read it for yourself.

20 But in another breath CenturyTel says that the
21 Commission's arbitration decision left no provision in
22 this agreement applying any compensation regime.

23 And it's the one that calls for an implied
24 bill-and-keep system. It tells you that the agreement
25 is silent on compensation and so you should imply a

1 bill-and-keep system. It contends that the Commission
2 made a drafting error. That's their language. So,
3 it's CenturyTel that's trying to read things into the
4 agreement that aren't there even though they start all
5 their pleadings claiming vociferously that this is an
6 unambiguous contract, which now you hear that staff
7 doesn't agree with.

8 But how could the Commission make a drafting
9 error? The Commission did not prepare this contract.
10 The two parties prepared this Interconnection
11 Agreement. The two parties voluntarily submitted to
12 the Commission, and the Commission approved it. The
13 Commission did not write this contract for the
14 parties.

15 And it was made clear in the submittal materials
16 at that time that the parties had reached different
17 resolutions in some instances than what the Commission
18 had ordered.

19 In their pleadings CenturyTel admits, and they've
20 said it again today, that the intent of the contract
21 language I'm identifying was actually to require the
22 payment of reciprocal compensation. In fact, it's
23 their own language that they proposed. They tell you
24 that, "Well, we only proposed that in conjunction with
25 this trigger, and it was only if traffic was out of

1 balance, if one party or the other had more or less,
2 that reciprocal compensation would apply."

3 But as Commissioner Murray was just discussing
4 with staff, the Commission expressly rejected that
5 trigger, and the parties accordingly deleted the
6 out-of-balance text, leaving provisions that require
7 reciprocal compensation all the time.

8 The language originally said everything it says
9 today but there was another part that said that this
10 only applies in this instance. Well, we were told to
11 delete these, it only applies in the distance. And
12 you're left with language that applies all the time.

13 Staff and CenturyTel both admit that the
14 Commission rejected both parties' bill-and-keep
15 proposals in its decision. As Commissioner Murray was
16 just discussing, Socket had a proposal for total
17 bill-and-keep. It was rejected.

18 CenturyTel says, "Well, the parties simply left
19 this contract language in, we were too busy to deal
20 with it, we didn't have time to edit the contract
21 correctly."

22 That's in their materials, that's exactly what
23 they say. And they invent this concept of inert
24 contract language or vestigial contract language.
25 Well, even staff doesn't agree that that's a

1 legitimate proposition under the law, and they both
2 tell you that this is just another contract to be
3 interpreted under Missouri contract law.

4 Well, Missouri contract law says that you are
5 supposed to find meaning to all the provisions of the
6 contract. And we cited the Phillips case for that
7 proposition, and ironically, CenturyTel cites it in
8 their footnote in the pleadings trying to cite it back
9 against us, so everybody agrees with the propositional
10 law; contract language is supposed to have meaning.

11 We're accused of trying to read something into the
12 contract that's not there. But what's really going on
13 is people are trying to get you to erase things that
14 are in the contract.

15 As staff told you; disagreement does not equal
16 ambiguity. This contract, on its face, unambiguously
17 requires the parties to pay each other compensation
18 for terminating Local Traffic. And I want to
19 emphasize; this is a reciprocal provision. Socket's
20 not here trying to argue that CenturyTel has to pay us
21 and we don't have to pay them. This language operates
22 both ways, it's a two-way street.

23 Perhaps the greatest irony of the case, the
24 evidence shows that when the parties were preparing
25 this contract to be submitted for approval Socket once

1 again expressly proposed to change the agreement to a
2 total bill-and-keep arrangement, and CenturyTel
3 steadfastly refused.

4 Again they say, "We were just too busy to deal
5 with this language." And then they come up with this
6 convoluted, nonsensical, subcontradictory, post hoc
7 rationalization that goes all over the place, and by
8 the time they are done they've contradicted themselves
9 12 times, they've mis-cited the Commission's order,
10 and it's a whole thing of a house of cards that
11 collapses on itself.

12 As Mr. Kohly explains, the result of CenturyTel
13 refusing to change the contract to a bill-and-keep
14 arrangement led him to understand that they wanted it
15 to be a reciprocal compensation regime.

16 So, Socket -- the agreement was being approved and
17 they immediately set to work to develop the billing
18 systems required to accomplish that, and they began
19 billing.

20 CenturyTel admits that the invoices were labeled
21 as billing reciprocal compensation for local calling.
22 And at first they paid the invoices, and then they
23 stopped, and then we had dispute resolution, and here
24 we are.

25 This is not a dispute over the definition of

1 traffic. Even today CenturyTel admitted that Local
2 Traffic can include ISP-Bound traffic if it's actually
3 going from one place to another in the local calling
4 scope. On the other hand, if it's Foreign Exchange or
5 VNXX, that's clearly bill-and-keep. There's no
6 dispute about that.

7 It's not a dispute about the precision of Socket's
8 invoices. Mr. Kohly has provided full explanation,
9 and CenturyTel says, "Well, we don't know anything
10 about that."

11 It's not a dispute about prior proposals in the
12 arbitration, prior positions. It's not even a dispute
13 about what the Commission may or may not have decided.
14 There's no estoppel, it's not been litigated before.
15 And again, the Commission rejected bill-and-keep
16 proposals in the case.

17 It's simply a dispute over the meaning of a few
18 pages out of this contract that requires CenturyTel to
19 pay Socket reciprocal compensation for the termination
20 of Local Traffic, and vice versa.

21 This contract was voluntarily submitted by the
22 parties and it was approved by the Commission. It's
23 not to be rewritten, it's not subject to appeal, it's
24 just to be applied and enforced.

25 Presumably, CenturyTel thought it wouldn't be

1 sending Socket any compensable traffic, assumed it
2 would all be VNXX Traffic, and it was surprised to
3 find that Socket actually has real Local Traffic.

4 Well, regardless of that, you can't take it all
5 back. The contract stands as approved on its face.

6 From all the admissions and contradictions from
7 CenturyTel, Socket is entitled to relief on its
8 counterclaim. We ask the Commission to grant Socket's
9 motion for summary determination and deny CenturyTel's
10 competing motion. Thank you.

11 JUDGE VOSS: Commissioners?

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Mr. Lumley, under the interconnection
14 agreement, what traffic is compensated at
15 bill-and-keep?

16 A. What traffic is subject to bill-and-keep?
17 The MCA traffic. Which, as the evidence shows, Socket
18 currently doesn't offer traffic in the MCA areas, but
19 if it did it would be subject to bill-and-keep, as the
20 entire industry has been for many years, and the
21 traffic that --

22 Whether you call it FX or VNXX, what the agreement
23 says is if the customer has been assigned a phone
24 number with a rate center that's different than its
25 physical location, and this goes back to other cases

1 we have in front of you, but if they are being allowed
2 to have a local calling scope that wouldn't ordinarily
3 be associated with their physical location, that's at
4 bill-and-keep. And the Commission expressly required
5 that.

6 Q. What's the rationale behind bill-and-keep
7 being applied to MCA Traffic?

8 A. If you go back to the Commission's orders
9 as MCA evolved, there was a great deal of concern
10 because -- and MCA was actually evolving when there
11 was not local competition. So, originally, these
12 concerns came up because you had local calling scopes
13 that were going, for example, outside of what would
14 have been Southwestern Bell territory into an
15 adjoining ILEC's territory.

16 So, we had multiple companies participating in
17 this structure. And one or the other was concerned
18 that, if they were paying each other on that traffic,
19 given that only local rates were being charged, and
20 furthermore, the company at the calling end isn't
21 charging anybody anything, theoretically -- I mean,
22 they are charging their customer but not the calling
23 party -- the Commission said, you know, we're not
24 going to allow transit charges, we're not going to
25 allow access charges, we're not going to allow

1 anything, it's going to be bill-and-keep.

2 So, that's how it all emerged, and that was before
3 competition. And if you recall, and it might actually
4 have been just before you were appointed to the
5 Commission, I'm not sure, but there was actually a
6 dispute about whether CLECs could participate in the
7 MCA. And there was a Commission report decision on
8 that. And again, the Commission reinforced these
9 ideas that, you know, this is not to benefit customers
10 given local calling scopes that, you know, match their
11 community of interest and that kind of thing. We're
12 not going to let one company or the other charge you
13 for it.

14 Q. Now, in other Interconnection Agreements
15 that you are familiar with, how is Local Traffic
16 treated in terms of compensation?

17 A. I think you can find a wide range of them.
18 I mean, they would all be consistent on MCA, because I
19 don't think the Commission has allowed any deviation
20 from that. But other than that I think you can find
21 quite a variety.

22 Q. And you can find reciprocal compensation in
23 some of the others?

24 A. As far as I know. I mean, yes.

25 Q. Specifically set out, or just not

1 mentioned?

2 A. No, specifically set out. And some may
3 have this out-of-balance concept that CenturyTel is
4 proposing, others may not.

5 Q. Which would you say is more frequent,
6 bill-and-keep or reciprocal compensation for Local
7 Traffic?

8 A. I'd be speculating. I don't have that
9 information.

10 COMMISSIONER MURRAY: I don't have any
11 other questions. Thank you.

12 QUESTIONS BY COMMISSIONER JARRETT:

13 Q. Mr. Lumley, would you walk me through 9.8?
14 I'm having a real tough time getting that clear in my
15 mind. What exactly does that mean?

16 A. I think, if you break it down, the first --
17 the small roman numeral one says that we are not
18 overriding other forms of arrangements.

19 So, you know, this is an Interconnection
20 Agreement, it has its subject matter. We're not
21 trying to address, for example, the wireless traffic.
22 So, I mean, that first part is just saying don't try
23 and take this somewhere else and use it.

24 Part two is saying you can't abuse this
25 bill-and-keep arrangement, whether it's the MCA

1 arrangement or the FX slash VNXX arrangement, by
2 piling other traffic in with that.

3 And here's the part where I disagree with what's
4 been said is, you know, the Commission's order, which
5 basically adopted a part of CenturyTel's proposed
6 language, says that this traffic is deemed not to be
7 local.

8 Well, if it's not local you say it's not local,
9 you know. What they've said is we're deeming it not
10 to be local, we're going to treat it differently, and
11 we're going to subject it to bill-and-keep. So, as I
12 read this, it's meant to avoid abuse of the
13 bill-and-keep exceptions.

14 And where I think staff in particular in its
15 analysis has gone in the wrong direction is under
16 principles of contract interpretation we're supposed
17 to make everything work together. We're not supposed
18 to seize on one clause and have it override another.

19 So, they're saying, you know, let's interpret 9.8
20 and as a result let's read 9.7.2 out of the contract.
21 I don't think that's permissible. If you read them
22 together it sensibly prohibits the parties from
23 abusing the bill-and-keep exceptions. Now, is it
24 written with absolute clarity? No. I'm not going to
25 stand here and tell you that.

1 Q. What I'm not understanding is where it says
2 "other than Local Traffic."

3 It says: Nothing in this section shall be
4 interpreted to allow either party to aggregate traffic
5 other than Local Traffic for the purpose of
6 compensation under the bill-and-keep arrangement.

7 That seems to me that the party is allowed to
8 aggregate Local Traffic.

9 It says: Nothing in this section shall be
10 interpreted to allow either party to aggregate traffic
11 other than Local Traffic.

12 So, it sets out Local Traffic and says basically
13 that this section can be interpreted to allow parties
14 to aggregate Local Traffic for the purpose of
15 compensation under the bill-and-keep arrangement.

16 A. I agree with what you are saying, and I was
17 trying to say the same thing.

18 Q. Okay.

19 A. But the key words are "the bill-and-keep
20 arrangement described in this section." Well, that is
21 MCA Traffic and the FX and VNXX Traffic. That's the
22 bill-and-keep arrangement described.

23 So, you are not allowed to try and abuse those
24 exceptions by putting long distance calls in there or
25 anything that's not local. And again, those are local

1 calls. The Commission said -- adopting this
2 language -- we are going to deem this one category not
3 to be local, but it still is local.

4 The only bill-and-keep arrangements described in
5 the section are the MCA and the VNXX and FX
6 exceptions. And so, to harmonize things together,
7 this is saying you can't abuse those sections by
8 pulling these other kinds of, you know, long distance
9 and wireless traffic in with them.

10 Q. And are either of those, MCA or VNXX, are
11 they Local Traffic?

12 A. In my opinion, yes, they are. It's a
13 disputed point, but what the Commission said, again,
14 is that we are going to deem the VNXX not to be local.
15 They didn't say they find it not to be local, which
16 would be the straightforward thing to do if it's not,
17 they said we are going to deem it, we are going to
18 treat it differently.

19 Q. And is MCA Traffic local?

20 A. Yes. It's part of your local phone bill.
21 Sometimes it's mandatory. Sometimes there's an
22 optional charge depending on where you are.

23 COMMISSIONER JARRETT: Thanks.

24 JUDGE VOSS: I want to make sure I'm
25 understanding.

1 You are saying that the word "deemed" in 9.2.3 is
2 saying that they shall not treat it as local for
3 purposes of this section?

4 MR. LUMLEY: Correct.

5 JUDGE VOSS: Which is Section 9. But yet
6 you are saying Section 9.8, when they are talking
7 about Local Traffic, they are talking about traffic
8 that for Section 9 they have deemed to be treated as
9 not local?

10 MR. LUMLEY: Well, it's referring back to
11 these other things. The section starts talking about
12 the access traffic and the wireless traffic. You are
13 not to abuse these exceptions. That's the way of
14 harmonizing this language with the rest of it.

15 Now, again, you know, I'm not standing here
16 telling you I would have written it that way. And I'm
17 not telling you that it's King's English or anything
18 like that. But contracts have these problems. And
19 that's why the principles of contract interpretation
20 tell us to read things together and not to override
21 one with the other.

22 COMMISSIONER JARRETT: I just have one
23 further question.

24 I mean, looking at that, it seems to me, under
25 your interpretation, really, the words "other than

1 Local Traffic" would be superfluous, wouldn't they?

2 I mean, you are arguing that they allow either
3 party to aggregate traffic for the purpose of
4 compensation under bill-and-keep.

5 A. No. I'm not trying to read those words
6 out. I'm saying that this caveat is telling you not
7 to try and pull non-Local Traffic into these
8 exceptions. Could it be more complete? Could it
9 state: We don't want you pulling anything that's not
10 subject to bill-and-keep in with bill-and-keep
11 traffic? Sure, it could be stated better, but I'm not
12 trying to read those words out.

13 COMMISSIONER MURRAY: Mr. Lumley, it
14 appears that you are saying that VNXX is Local Traffic
15 and MCA is Local Traffic and that is why -- well, but
16 you are saying they are exceptions to the reciprocal
17 compensation treatment of Local Traffic?

18 MR. LUMLEY: Yes, that they are expressly
19 made exceptions. Yes, ma'am.

20 COMMISSIONER MURRAY: And that the 9.8
21 provision, what it says: Nothing in this section
22 shall be interpreted to allow either party to
23 aggregate traffic other than Local Traffic for the
24 purpose of compensation.

25 Are you then indicating that any Local Traffic --

1 I mean, it appears that any aggregation of any Local
2 Traffic would be acceptable for the purpose of
3 compensation under bill-and-keep?

4 MR. LUMLEY: I wouldn't read it that way.
5 I would read it as an incomplete prohibition. It
6 doesn't grant permission to do anything. It prohibits
7 a particular thing. I would agree with you that's an
8 incomplete prohibition. I would agree that it would
9 be abuse to combine any compensable traffic with
10 bill-and-keep traffic.

11 And I would also remind the Commission that
12 CenturyTel, in its pleadings, expressly says that this
13 section does not confirm a bill-and-keep arrangement.
14 It's just a vestige according to them.

15 It's a set of prohibitions that, I think if one
16 was trying to write a more complete set of
17 prohibitions against abuse you could do it, but it
18 does not permit anything expressly.

19 And no matter how many times you read it, it
20 doesn't get any better.

21 COMMISSIONER MURRAY: Thank you.

22 MR. LUMLEY: I've tried it, too.

23 JUDGE VOSS: We are going to discuss a
24 little bit of rebuttal, and then I have a couple
25 procedure-type questions that I have for each party.

1 MR. HILL: This has been a little
2 torturous, I think. And I think what the Commission
3 and Your Honor is coming to realize is the unique set
4 of circumstances that created this agreement.

5 Section 9.8 cannot be read consistently with
6 9.7.2. Section 9.8 references a bill-and-keep
7 arrangement that the parties contemplated in some form
8 would be adopted and placed into the agreement to
9 govern the very traffic that 9.8 says will be
10 aggregated; Local Traffic.

11 Local Traffic is not VNXX Traffic. It's been
12 deemed to be non-local despite the fact that in my
13 reply brief I admit that I said it had been deemed
14 local. It had been deemed non-local, and I apologize
15 for that.

16 However, there are numerous provisions in this
17 agreement that sit there idly because they have no
18 application. There is a definition of FX Traffic in
19 the agreement. Nowhere else in the agreement is FX
20 even mentioned.

21 There are provisions in this agreement, that
22 relate to reciprocal compensation, that were intended
23 by CenturyTel only to apply in the event that it
24 was triggered by a very specific bill-and-keep
25 provision, which the provision was rejected by the

1 Commission. There is no provision left that could
2 then point and say Section 9.7.2 is applicable.

3 Section 9.8 is another provision that was placed
4 there because these agreements had been negotiated and
5 drafted for months and then we were given a week or
6 two to go forward and conform to the Commission's
7 determination.

8 Yes, during negotiations, when the parties
9 recognized what had happened with the final Commission
10 decision, the fact that despite both parties proposing
11 bill-and-keep that the Commission had ordered both of
12 those provisions to be -- had rejected those
13 provisions and pulled them from the agreement, they
14 contemplated cleaning it up and putting in their
15 provision that adopted bill-and-keep expressly.

16 The parties could not reach agreement on that, and
17 one of the reasons is Socket continued to advocate or
18 proffer the exact same provision that the Commission
19 had just rejected. Whether it wants to debate the
20 differences between FX and VNXX Traffic, included a
21 reference to FX Traffic and tried to, again, such as
22 it lost during the arbitration, apply it in the
23 conforming process to treat it as bill-and-keep under
24 the conformed agreement. Of course, we rejected it.
25 They were trying to gain ground they had lost in the

1 arbitration.

2 Bottom line is the parties, for various reasons,
3 could not agree on what bill-and-keep provision. They
4 didn't have very clear guidance from the Commission,
5 quite honestly, in the final Commission decision.

6 And in the end, because any provision that would
7 have applied in compensation regime to Local Traffic
8 had been rejected by the Commission, the parties
9 agreed to follow the conformed agreements as -- well,
10 specifically, the intercarrier compensation terms
11 exactly as required by the final Commission decision.

12 And that was basically an agreement to exchange
13 the traffic but with no corresponding provision that
14 would have applied the compensation regime to that, if
15 in fact it was the functional equivalent of
16 bill-and-keep, even if not expressed.

17 Now, I need to respond to a number of issues and a
18 number of things that were raised by both staff and
19 Socket's counsel Mr. Lumley.

20 But before I do that, Commissioner Jarrett, I'd
21 like to address -- I understand that you have some
22 questions regarding 9.7.2 and, specifically, where it
23 points to rates.

24 Under this contract principle that you have to try
25 to give meaning to everything, I would suggest to you

1 that the primary rule of contract interpretation in
2 Missouri is you try to ascertain the intent of the
3 parties and you give effect to that. And it's the
4 primary rule.

5 And to the effect you cannot -- to the effect that
6 comes in conflict with other rules of interpretation
7 and construction, that must come first and foremost.
8 You have to follow the party's interpretation. That
9 is why it's so important to understand why Section
10 9.7.2 is even in the agreement in the first place.

11 The greatest irony in this case is that Socket
12 never asked for reciprocal compensation, CenturyTel
13 never asked for reciprocal compensation, this
14 Commission never granted reciprocal compensation in
15 the arbitration, and yet Socket is here today half
16 claiming that the agreement says it's reciprocal
17 compensation.

18 It's in a specific contract revision of 9.7.2 that
19 talks about what constitutes termination of traffic,
20 and it points to a rate. It does nothing more than
21 what the bill-and-keep provision we referenced
22 earlier, 9.4.2, does. It describes the compensation
23 regime and it says that there will be no charge. It
24 could very easily have pointed to the pricing
25 attachment and have a rate of zero. Those two

1 provisions both describe specific regimes, but
2 standing alone they don't apply themselves to a
3 specific exchange of traffic or a particular type of
4 traffic.

5 Commissioner Murray, I'd like to respond to the
6 questions you raised. I sense that you essentially
7 asked the question: What happened in the arbitration
8 proceeding? And if you don't mind, I'd like to give
9 you CenturyTel's version of what happened.

10 I think the key to understanding this is that
11 CenturyTel offered two provisions in arbitration.
12 None of them was specific to Local Traffic. And this
13 is the Local Traffic that had an out-of-balance
14 provision in it. Which, interestingly enough, also
15 said that, in the event traffic went out of balance,
16 ISP Traffic at all times would remain subject to
17 bill-and-keep. That was CenturyTel's Local Traffic
18 proposal.

19 They also offered a VNXX proposal, which hopefully
20 was adopted by the Commission, that addressed
21 specifically only VNXX Traffic.

22 Socket, for its part, offered another
23 bill-and-keep provision, the all Non-MCA provision,
24 that included the FX Traffic and the VNXX Traffic and
25 a host of other things.

1 If you look through the final Commission decision,
2 Socket Section 9.4.1 was rejected, the Commission
3 rejected its bill-and-keep proposal. CenturyTel
4 Section 9.2.2, its bill-and-keep to be out-of-balance,
5 was rejected.

6 What the Commission adopted was CenturyTel's
7 9.2.3, which specifically addressed the bill-and-keep
8 treatment of VNXX Traffic. In doing so, the
9 Commission said: The Commission finds that
10 CenturyTel's language is consistent with the ISP
11 Remand Order and there is nothing prohibiting a
12 bill-and-keep arrangement in that order.

13 Now, I've read the ISP Remand Order several times.
14 It specifically applies to Local Traffic and local
15 internet traffic. That is the scope of the order.
16 And I tell you that to suggest that, when the
17 Commission wrote that, when it adopted Section 9.2.3,
18 it perhaps thought that it was adopting bill-and-keep
19 with respect to all Local Traffic, because it cited
20 that reference.

21 I think, also, the key to understanding what
22 happened is, when the Commission rejected Socket's
23 proposed bill-and-keep provision in 9.4.1, it said
24 that CenturyTel's language in 9.2.3 addressing the
25 appropriate application of bill-and-keep is

1 appropriate, again suggesting that the Commission
2 thought it had already adopted a bill-and-keep
3 provision that applied to the very Local Traffic for
4 which Socket was proffering a provision.

5 COMMISSIONER MURRAY: What section was
6 that?

7 MR. HILL: It's at the final Commission
8 decision, Page 29.

9 COMMISSIONER MURRAY: Thank you.

10 MR. HILL: Now, I think it's probably worth
11 saying, to the extent we are looking back at extrinsic
12 evidence and what happened in the arbitration and what
13 happened in the negotiations, that all this
14 constitutes extrinsic evidence outside the four
15 corners of the agreement, and none of it really is
16 admissible or relevant until or unless the Commission
17 determines the agreement to be ambiguous.

18 But I'm here to tell you that today that Socket
19 and CenturyTel, in any event, think that there are
20 unambiguous terms in the agreement that should simply
21 be interpreted by the Commission. But if the
22 Commission determines that the agreement is ambiguous
23 it can grant neither party's motion for summary
24 determination.

25 I need to respond to the suggestion to what

1 happened in the conforming negotiations as well.

2 Socket again said that it tried to present this
3 bill-and-keep provision to try to remedy what we have
4 just described as a question mark as to what the
5 Commission actually did with respect to Local Traffic.

6 The provision that it offered and told us was a
7 final offer was the very same provision that the
8 Commission had rejected. It attempted to apply
9 bill-and-keep regime to all Non-MCA Traffic as well as
10 FX Traffic.

11 Which probably shouldn't surprise you that
12 CenturyTel thinks that FX Traffic and VNXX Traffic are
13 not the same, and indeed they are not, from a
14 regulatory perspective and a pricing perspective and a
15 facilities perspective.

16 Even Socket agrees. Because within the provision
17 it says: FX Traffic including VNXX Traffic -- would
18 suggest there's more to FX than VNXX. Of course, we
19 rejected that provision.

20 But getting back to what the parties agreed to do,
21 we agreed to conform the intercarrier compensation
22 provisions as directed by the Commission, and in doing
23 so we left no provision in the agreement that
24 specifically applies a compensation regime either
25 reciprocal compensation or bill-and-keep to Local

1 Traffic.

2 What you are left with is an agreement that is
3 silent on which regime applies. And under the rules
4 of contract interpretation the absence of a provision
5 is an absence of an obligation.

6 If the agreement does not say that you shall pay
7 or that reciprocal compensation shall apply to the
8 exchange of Local Traffic there is no obligation to
9 pay and it is essentially the functional equivalent of
10 the bill-and-keep regime.

11 It's also worth noting that, understanding that we
12 were asking the Commission to approve an agreement
13 that didn't have a provision addressing the
14 compensation for Local Traffic, that is the reason
15 CenturyTel wrote in its Statement of Compliance and
16 Noncompliance -- and I quote -- "That certain terms
17 simply conform to the determination of the Commission
18 where the parties could not reach agreement after
19 arbitration."

20 Admittedly, we did reach agreement with Socket on
21 some other provision post-arbitration. On this one we
22 did not, and that's the reason we filed that statement
23 in our Statement of Compliance and Noncompliance.

24 The other thing -- and then I'll close -- is that
25 I need to respond to Mr. Lumley's suggestion that

1 CenturyTel's payment of the first two invoices
2 essentially constitutes an acknowledgement that we
3 thought that the agreement called for reciprocal
4 compensation. Nothing is further from the truth.

5 In fact, we agree that we paid the first two
6 invoices. It was done so by mistake, and it was
7 quickly rectified. But the clearest example of the
8 interpretation that CenturyTel gave to the agreement
9 is this: It is undisputed in this case that
10 CenturyTel has never billed -- not once -- Socket for
11 reciprocal compensation under this agreement.

12 JUDGE VOSS: Staff?

13 MR. HAAS: Nothing further, Your Honor.

14 JUDGE VOSS: Do you have anything else that
15 you would like --

16 MR. LUMLEY: I think it will all be
17 redundant. So, unless you have questions, I'll let
18 you get back --

19 COMMISSIONER MURRAY: Mr. Lumley, the
20 invoices that have been sent by Socket, do they
21 include any VNXX Traffic?

22 MR. LUMLEY: No, ma'am. And if you want
23 the details in Mr. Kohly's affidavit, there's a series
24 of about ten paragraphs that goes into great detail
25 the screening process that they use to make sure they

1 are not billing anything inappropriately.

2 COMMISSIONER MURRAY: And that was filed
3 with Mr. Kohly's affidavit?

4 MR. LUMLEY: Correct. And from
5 recollection, I want to say it's roughly Paragraphs 30
6 to 39, but around that.

7 COMMISSIONER MURRAY: That may be the only
8 question I had. Thank you.

9 MR. LUMLEY: Thank you all.

10 MR. HILL: I'm sorry, Your Honor.

11 Your Honor, for the record, I'd just like to note
12 that CenturyTel currently has on file a motion to
13 strike that very affidavit of Mr. Kohly for various
14 reasons.

15 Also, note our objection that we do not concede
16 that the invoices don't include the VNXX rate.

17 JUDGE VOSS: I had a couple quick
18 questions. One compound question for both CenturyTel
19 and Socket.

20 In the event the Commission finds that the
21 Interconnection Agreement is not clear on the relevant
22 issue, and that the extrinsic evidence cannot
23 definitively clarify that agreement, would CenturyTel
24 and Socket consider mediating the issue or voluntarily
25 entering arbitration for the one issue?

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1 CERTIFICATE OF REPORTER

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4 I, Mindy Vislay, Certified Court Reporter with the
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6 within and for the State of Missouri, do hereby
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9 time and place previously described; that I then and
10 there took down in Stenotype the proceedings had; and
11 that the foregoing is a full, true and correct
12 transcript of such Stenotype notes so made at such
13 time and place.

14

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Mindy Vislay, CCR

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My commission expires March 19, 2011

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