

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

Socket Telecom, LLC,)	
)	
Complainant,)	
)	
v.)	Case No. TC-2007-0341
)	
CenturyTel of Missouri, LLC and)	
Spectra Communications Group, LLC,)	
d/b/a CenturyTel,)	
)	
Respondents.)	

RESPONDENTS' LEGAL MEMORANDUM
IN SUPPORT OF MOTION FOR SUMMARY DETERMINATION

COME NOW Respondents, CenturyTel of Missouri, LLC ("CenturyTel") and Spectra Communications Group, LLC, d/b/a CenturyTel ("Spectra") (collectively "Respondents"), pursuant to 4 CSR 240-2.117, and for *their Legal Memorandum In Support of Motion For Summary Determination* respectfully state as follows:

INTRODUCTION

Respondents in their *Motion For Summary Determination* have set forth the undisputed material facts as to which there is no genuine issue in this Complaint. These facts are summarized as follows:

1. It is an uncontested and material fact that the first customer identified in the Complaint (porting request for 573-322-8421) was physically relocating out of its existing exchange from Willow Springs to St. Louis.
2. It is an uncontested and material fact that the second customer identified in the Complaint (porting request for 417-469-9090 and 417-469-4900) was physically relocating out of its existing exchange from Ellsinore to St. Louis.

The Commission need not rely solely on Respondents' verified pre-filed Rebuttal testimony as to the truth of these material facts. The Staff's verified testimony states that the Complainant has acknowledged that the customers in question are physically moving from one location to another outside the customers' existing telephone exchange area. Voight Rebuttal, page 3.

In order to proceed with its Complaint, Complainant is required to show a legal basis upon which the Commission can grant the relief requested. Simply put, Complainant must show that Respondent is legally required to port the customer numbers in question. Complainant argues that it is legally entitled to its requested relief under:

- 1) The Federal Telecommunications Act of 1996 ("the Act");
- 2) Federal Telecommunications Commission ("FCC") rules;
- 3) FCC case decisions; and
- 4) the terms of its Commission-approved interconnection agreements ("ICAs") with Respondent.

Complainant is wrong on all four counts. Even the Staff agrees that Complainant's requests are "location portability" requests under federal law and that **Respondents are not lawfully required under the specific language of the currently applicable federal law and the FCC's currently applicable existing rules and decisions to provide what is defined as "location portability"** (also sometimes referred to as "geographic portability") **in wireline porting situations.**¹ Moreover, both

¹ See Voight Rebuttal, page 8 ("Staff acknowledges that the Socket/CenturyTel Interconnection Agreement does refer generally to the Act (and by extension, to the FCC), which, in the Staff's opinion *does not require* any form of location portability such as that requested by Socket..." [emphasis by Mr. Voight]. As discussed below and in paragraphs 13-14 of Respondent's Motion For Summary Determination, the Parties' Interconnection Agreement does much more than just "refer" to the Act.

Complainant and the Staff misread, misinterpret and misconstrue Respondents' obligations under the ICAs.

The Commission should dispose of this Complaint by summary determination because the Complainant has failed to provide a legal basis upon which its requested relief can be granted. 4 CSR 240-2.117; Rule 74.04 Missouri Rules of Civil Procedure; *ITT Commercial Finance Corp. v. Mid America Marine Supply Corp.*, 854 S.W.2d 374 (Mo. banc 1993).

I. THE ACT

47 U.S.C. Section 251(b)(2) provides that a local exchange carrier, such as Respondent, has the statutory obligation “to provide, to the extent technically feasible, number portability *in accordance with the requirements prescribed by the Commission*” (*FCC*) [emphasis added]. The term “number portability” is statutorily defined 47 U.S.C. Section 153 (30):

The term “number portability” means the ability of users of telecommunications services to retain, *at the same location*, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another [emphasis added].

47 U.S.C. Section 251(d)(1) further directs the FCC “to establish regulations to implement” the statutory requirements, which it has done as discussed below. There is nothing in the language of the Act itself which requires Respondents to port the two numbers geographically as requested by Complainant. In fact, the language of the Act

specifically limits the obligation to provide “number portability” only to customers “at the same location”.²

II. FCC RULES

Pursuant to 47 U.S.C. Section 251(d), the FCC adopted its Part 52 rules. As discussed in Dr. Furchtgott-Roth’s Rebuttal Testimony, pages 7-8, there are four regulatory definitions of portability under those rules.³ The term “location portability” is defined in 47 C.F.R. Section 52.21(j) as follows: “The term *location portability* means the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience **when moving from one physical location to another.**”⁴ The definition of “number portability” in the FCC’s rule is the same as found in the statute which includes the language “at the same location”.⁵ The definition of “service provider portability” likewise applies only to service “at the same location”.⁶ The FCC has not modified its Part 52 Rules so they remain controlling by virtue of 47 U.S.C. Section 251(d), Complainant’s and Staff wishes to the contrary notwithstanding.

As indicated in Respondents’ Motion, Complainant argues that its two porting requests at issue do not constitute “location portability”, and that therefore, Respondents have the legal duty to honor the porting requests. Even the Staff does not accept this

² In recognition that Section 251 of the Act provides no legal basis for Complainant’s two porting requests, Complainant then argues that its legal basis is found in Section 252 of the Act, which governs interconnection agreements. This argument is discussed later in this brief.

³ 47 C.F.R. 52.21.

⁴ 47 C.F.R. 52.21(j). In his Rebuttal Testimony, page 19, Mr. Voight states that “in the 1996 Act the Congress defined “number portability” between carriers to include retention of telephone numbers *at the same location*” [emphasis added].

⁵ 47 C.F.R. 52.21(l).

⁶ 47 C.F.R. 52.21(q).

interpretation. Staff witness Voight on page 8 of his verified Rebuttal Testimony states: “The Staff acknowledges that the Socket/CenturyTel Interconnection Agreement does refer generally to the Act (and by extension, to the FCC), which, in the Staff’s opinion *does not require* any form of location portability such as that requested by Socket...” [emphasis by Mr. Voight]. *See, also*, Voight Rebuttal, page 20: “However, as a federal matter, the Staff tends to agree with what it understands is Dr. Furchtgott-Roth’s position: The federal definition of location portability for landline telephone service has not morphed into something different than the customer’s physical location, and there are no specific FCC regulations requiring CenturyTel to honor Socket’s porting request in this case.”

III. FCC DECISIONS

A number of FCC cases have addressed the issue of implementing the number portability statutory requirement. In its First Report and Order and Further Notice of Proposed Rulemaking, *Telephone Number Portability* (“First Order”), the FCC required all carriers to provide “service provider portability”, which it made synonymous with the statutory definition of “number portability”. It also expanded the portability obligation to porting between wireline and wireless carriers (“intermodal portability”).⁷ In this order, the FCC specifically declined to mandate “location portability” between wireline carriers.⁸

The FCC in its Second Report and Order, *Telephone Number Portability* (“Second Order”),⁹ and in related subsequent proceedings, again considered wireline to

⁷ 11 F.C.C.R. 8352 (1996).

⁸ 11 F.C.C.R. 8352, at 8443.

⁹ 12 F.C.C.R. 12, 281 (1997).

wireline portability but again decided not to change the definition of “location portability” nor require it among wireline carriers, even within the same exchange area.¹⁰

Dr. Furchtgott-Roth correctly summarizes the current state of FCC decisions and federal precedent when he states: “...neither Congress nor statute nor the FCC authorizes any and all forms of portability to include location portability.”¹¹ The FCC has reviewed, considered and deliberately decided not to require geographic portability in wireline porting situations.¹²

Complainant can not direct the Commission to *any* FCC case precedent to show that Respondents are in any way required to port the two telephone numbers specified in the Complaint. As discussed in Respondents’ Motion, Complainant’s reliance on FCC precedent involving wireless carriers is even rejected by the Staff.¹³

IV. ICAs

Despite Complainant’s and the Staff’s assertions regarding the ICAs, it is unequivocally clear that Complainant and the Staff have misread, misinterpreted and misconstrued Respondents’ obligations under the ICAs. The Parties’ mutual obligation under the Parties’ Interconnection Agreements is defined under and bound by the following two sections:

¹⁰ FCC, RM 8535, Second Memorandum Opinion and Order on Reconsideration, Released October 20, 1998, cited in relevant part in Furchtgott-Roth Rebuttal, page 11.

¹¹ Furchtgott-Roth Rebuttal, page 9.

¹² FCC, RM 8535, Second Memorandum Opinion and Order on Reconsideration, Released October 20, 1998.

¹³ Respondent’s Motion, page 6; Voight Rebuttal, page 26.

SCOPE AND INTENT OF AGREEMENT

Pursuant to this Agreement, and *to the extent required by the Act* and other applicable provisions of federal and state *law*, the Parties will extend certain arrangements to one another..." [emphasis added].

ARTICLE XII: LOCAL NUMBER PORTABILITY – PERMANENT NUMBER PORTABILITY

1.1 CenturyTel and Socket shall provide to each other, on a reciprocal basis, Permanent Number Portability (PNP) *in accordance with requirements of the Act* [emphasis added].

There are no other terms in the Agreements that supersede or trump the above definitive overriding terms which limit the Parties' portability obligations to the requirements of the Act and applicable law.

CONCLUSION

It is important for the Commission to recognize and understand that there have been no allegations that Respondent has refused or is refusing to port numbers when customers switch carriers, or even relocate, *within* the customer's existing exchange. Again, according to the Staff: "Socket witness Kohly acknowledges that CenturyTel ports numbers to Socket when customers move, so long as the customer is not physically moving outside the exchange area (Kohly direct testimony, page 8, line 16,; page 33, line 20; page 34, line 20)." Voight Rebuttal, pages 16-17.

Complainant's two porting requests identified in its Complaint are requests for Respondent to provide "location portability". As discussed above, Respondent is not obligated or otherwise required by current applicable federal law, current applicable FCC

rules or decisions, or under the terms of the ICAs to provide “location portability” generally, and specifically, it is not required to port the specific ISP customer numbers that constitute the basis of the Complaint. For these reasons, the Commission should grant Respondent’s Motion For Summary Determination in this case.

Respectfully submitted,

/s/ Charles Brent Stewart

Charles Brent Stewart Mo. Bar 34885
STEWART & KEEVIL, L.L.C.
4603 John Garry Drive, Suite 11
Columbia, Missouri 65203
Tel: (573) 499-0635
Fax: (573) 499-0638
Email: stewart499@aol.com

And

/s/ Larry W. Dority

Larry W. Dority Mo. Bar 25617
FISCHER & DORITY, P.C.
101 Madison, Suite 400
Jefferson City, Missouri 65101
Tel: (573) 636-6758
Fax: (573) 636-0383
Email: lwdority@sprintmail.com

Attorneys for CenturyTel of Missouri, LLC
and Spectra Communications Group, LLC,
d/b/a CenturyTel

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by electronic mail or mailed, First Class, postage prepaid, to the following parties on the 14th day of June, 20, 2007.

/s/ Charles Brent Stewart

William K. Haas
Deputy General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Office of the Public Counsel
P.O. Box 2230
Jefferson City, Missouri 65102

Carl J. Lumley
Leland B. Curtis
Curtis, Heinz, Garrett & O'Keefe
130 Bemiston, Suite 200
St. Louis, Missouri 63105