

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 9<sup>th</sup> day of  
September, 2008.

CenturyTel of Missouri, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>Case No. IC-2008-0068, et al.</u></b>
	)	
Socket Telecom, LLC,	)	
	)	
Respondent.	)	

**ORDER GRANTING CENTURYTEL'S MOTION FOR SUMMARY  
DETERMINATION**

Issue Date: September 9, 2008

Effective Date: September 19, 2008

**Syllabus:** This order grants summary determination in favor of Complainants, CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel, on their complaints filed against Socket Telecom, LLC. It also denies Socket's cross-claim for summary determination.

**Background and Procedural History**

On September 5, 2007, CenturyTel of Missouri, LLC ("CenturyTel"), filed a complaint with the Missouri Public Service Commission against Socket Telecom, LLC ("Socket"). CenturyTel's complaint was assigned Commission Case No. IC-2008-0068. Socket filed its response to CenturyTel's Complaint and a counterclaim on October 12.

On October 26, Spectra Communications Group, LLC, d/b/a CenturyTel ("Spectra") filed a similar complaint against Socket. Spectra's complaint was assigned Case No. IC-2008-0127. Socket filed its response to Spectra's Complaint and a counterclaim on November 5.

At the same time Spectra filed its complaint, CenturyTel filed a motion to consolidate its complaint with Case No. IC-2008-0127. On October 30, Spectra filed a similar motion to consolidate these two cases. Socket consented to the consolidation, and the Commission consolidated the two cases on November 6, designating Case No. IC-2008-0068 as the lead case. On November 9, CenturyTel and Spectra filed responses to Socket's counterclaim.

On December 13, CenturyTel and Spectra filed a Joint Motion for Summary Determination on Interpretation of Compensation Arraignments Applicable to Local Traffic, and Legal Memorandum in Support of Joint Motion. On January 14, 2008, Socket filed its response to the complainants' motion for summary determination, along with a cross motion for summary determination. Socket supported its cross motion with a legal memorandum and affidavits from two witnesses. On February 13, CenturyTel and Spectra filed their joint response to Socket's cross motion for summary determination, supported by a legal memorandum and affidavits of two witnesses.

Also on February 13, CenturyTel and Spectra filed a Motion to Strike the Affidavits of William L. Magness and R. Matthew Kohly, the expert witness affidavits filed by Socket in support of its cross motion for summary determination. On February 25, Socket filed both a reply and a response to CenturyTel and Spectra's February 13 motion. On March 6,

CenturyTel and Spectra filed a Joint Reply on Motions for Summary Determination. Socket filed a response on March 13.

The Commission heard oral arguments on the motions for summary determination on April 9. CenturyTel and Spectra, Socket and the Commission's Staff each presented oral arguments on the pending motions. At the direction of the Commission, each filed proposed orders on August 20.

### **FINDINGS OF FACT**

Based upon the pleadings filed in this consolidated case, the Commission's final arbitration decision in Case No. TO-2006-0299, the Arbitration Order issued in Case No. TO-2006-0299, the Interconnection Agreements approved in Case No. TO-2006-0299, the two orders approving interconnection agreements issued in Case No. TO-2006-0299, and the filing memorandums submitted by CenturyTel, Spectra and Socket in conjunction with the Interconnection Agreements in Case No. TO-2006-0299, the Commission makes these Findings of Fact.

Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

CenturyTel, Spectra and Socket have presented a single key issue for Commission consideration in this case. Specifically, they ask the Commission to determine whether the Interconnection Agreements at issue establish reciprocal compensation or bill-and-keep as the compensation mechanism to be utilized by the signatories for termination of local traffic.

## The Parties

1. Socket is a certificated competitive local exchange company in the State of Missouri. Socket is a Missouri limited liability company in good standing, with its principal place of business located at 2703 Clark Avenue, Columbia, Missouri 65202.<sup>1</sup>

2. Socket is a facilities-based competitive local exchange carrier that provides services in various parts of Missouri, including in exchanges served by CenturyTel and Spectra.<sup>2</sup>

3. In providing the services listed above, Socket uses its own switching and transport facilities as well as transport facilities and loops leased from other companies.<sup>3</sup>

4. CenturyTel is a limited liability company organized and existing under the laws of the State of Louisiana and is authorized to conduct business in the State of Missouri.<sup>4</sup>

5. CenturyTel is a public utility subject to the jurisdiction of the Commission and provides telecommunications services in its service areas within the State of Missouri under authority granted and tariffs approved by the Commission.<sup>5</sup>

6. CenturyTel is an incumbent local exchange carrier as defined in Section 251(h) of the Telecommunications Act of 1996 and a noncompetitive large local exchange carrier as defined in Sections 386.020, 392.361, and 392.245, RSMo.<sup>6</sup>

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<sup>1</sup> *CenturyTel of Missouri, LLC's, September 5, 2007, Complaint Regarding Post-Interconnection Dispute Resolution, and Socket Telecom's Answer to Complaint and Counter Claim filed in Commission Case No. IC-2008-0068.*

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *CenturyTel of Missouri, LLC's, September 5, 2007, Complaint Regarding Post-Interconnection Dispute Resolution, and Socket Telecom's Answer to Complaint and Counter Claim filed in Commission Case No. IC-2008-0068.*

<sup>5</sup> *Id.*

7. CenturyTel's principal place of business is located at 100 CenturyTel Drive, Monroe, Louisiana 71203, and it has local offices at 220 Monroe Street, 1<sup>st</sup> Floor, Jefferson City, Missouri 65101.<sup>7</sup>

8. Spectra is a limited liability company organized and existing under the laws of the State of Delaware and is authorized to conduct business in the State of Missouri.<sup>8</sup>

9. Spectra is a public utility subject to the jurisdiction of the Commission and provides telecommunications services in its service areas within the State of Missouri under authority granted and tariffs approved by the Commission.<sup>9</sup>

10. Spectra is an incumbent local exchange carrier as defined in Section 251(h) of the Telecommunications Act of 1996 and a noncompetitive large local exchange carrier as defined in Sections 386.020, 392.361, and 392.245, RSMo.<sup>10</sup>

11. Spectra's principal place of business is located at 100 CenturyTel Drive, Monroe, Louisiana 71203, and it has local offices at 220 Monroe Street, 1<sup>st</sup> Floor, Jefferson City, Missouri 65101.<sup>11</sup>

12. CenturyTel and Spectra are wholly owned subsidiaries of CenturyTel, Inc.<sup>12</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Spectra Communications Group, LLC d/b/a CenturyTel's October 26, 2007, Complaint Regarding Post-Interconnection Dispute Resolution, and Socket Telecom's Answer to Complaint and Counter Claim filed in Commission Case No. IC-2008-0127.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*; See also: *CenturyTel of Missouri, LLC's, September 5, 2007, Complaint Regarding Post-Interconnection Dispute Resolution, and Socket Telecom's Answer to Complaint and Counter Claim filed in Commission Case No. IC-2008-0068.*

## **Actions Prompting Complaint**

13. On, or about, December 6, 2006, Socket began submitting invoices to CenturyTel and Spectra that included charges for reciprocal compensation for its termination of CenturyTel and Spectra originated Local Traffic.<sup>13</sup>

14. Since its initial invoice, Socket has submitted reciprocal compensation invoices to CenturyTel and Spectra for amounts totaling more than \$100,000.<sup>14</sup>

15. CenturyTel and Spectra paid the first two Socket invoices containing charges for termination of Local Traffic, including Invoice No. 129, dated December 2006, in the amount of \$7,232.33, and Invoice No. 131, dated January 11, 2007, in the amount of \$3,619.08.<sup>15</sup>

16. After paying the first two invoices identified in paragraph 20 above, CenturyTel and Spectra have refused to pay subsequent Socket invoices containing charges for termination of Local Traffic.<sup>16</sup>

17. To date, CenturyTel and Spectra have not billed Socket for reciprocal compensation related to terminating Local Traffic under the Interconnection Agreements.<sup>17</sup>

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<sup>13</sup> CenturyTel of Missouri, LLC's, September 5, 2007 *Complaint Regarding Post-Interconnection Dispute Resolution*, and Socket Telecom's *Answer to Complaint and Counter Claim* filed in Commission Case No. IC-2008-0068, and Spectra Communications Group, LLC, d/b/a CenturyTel's October 26, 2007 *Complaint Regarding Post-Interconnection Dispute Resolution*, and Socket Telecom's *Answer to Complaint and Counter Claim* filed in Commission Case No. IC-2008-0127. See also: *CenturyTel and Spectra's Joint Motion for Summary Determination*, filed on December 13, 2007, *Socket Telecom's Response to CenturyTel's Motion for Summary Determination and Socket Telecom's Cross Motion for Summary Determination*, filed on January 14, 2008, and *CenturyTel's Joint Response to Socket Telecom's Cross Motion for Summary Determination*, filed on February 13, 2008.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

18. Pursuant to Article III, Section 18 of the Interconnection Agreements, the parties engaged in dispute resolution negotiations. However, the parties were unable to resolve their dispute within the time required by the Agreements for such negotiations.<sup>18</sup>

### **The Interconnection Agreements**

19. The question of how the parties will handle intercarrier compensation for termination of local tariff is governed by their Interconnection Agreements.

20. Socket has separate, but identical, (other than incumbent name) Interconnection Agreements with CenturyTel and Spectra.

21. Those Interconnection Agreements were not negotiated between the parties, but were instead arbitrated before the Commission pursuant to Section 252 of the Telecommunications Act of 1996<sup>19</sup> in Case No. TO-2006-0299.<sup>20</sup>

22. The Commission approved the interconnection agreements that resulted from the arbitration on October 3, 2006.<sup>21</sup>

23. The approved Interconnection Agreements provide that the signatories will interconnect their respective networks for the mutual exchange of “Local Interconnection Traffic” as defined in the agreements, including “Local Traffic.”<sup>22</sup>

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<sup>18</sup> CenturyTel of Missouri, LLC’s, September 5, 2007 *Complaint Regarding Post-Interconnection Dispute Resolution*, and *Socket Telecom’s Answer to Complaint and Counter Claim* filed in Commission Case No. IC-2008-0068, and Spectra Communications Group, LLC d/b/a CenturyTel’s October 26, 2007 *Complaint Regarding Post-Interconnection Dispute Resolution*, and *Socket Telecom’s Answer to Complaint and Counter Claim* filed in Commission Case No. IC-2008-0127.

<sup>19</sup> 47 U.S.C. Section 252.

<sup>20</sup> See: The two orders approving Interconnection Agreements issued on October 3, 2006, in Case No. TO-2006-0299, and the Interconnection Agreements executed by Socket Telecom, LLC, and CenturyTel of Missouri, LLC, and Socket Telecom, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel, and subsequently filed on September 15, 2006 in Case No. TO-2006-0299. See also: *CenturyTel and Spectra’s Joint Motion for Summary Determination*, filed on December 13, 2007, *Socket Telecom’s Response to CenturyTel’s Motion for Summary Determination* and *Socket Telecom’s Cross Motion for Summary Determination*, filed on January 14, 2008, and *CenturyTel’s Joint Response to Socket Telecom’s Cross Motion for Summary Determination*, filed on February 13, 2008.

<sup>21</sup> *Id.*

24. “Local Traffic” as defined in the Interconnection Agreements includes “Section 251(b)(5) Traffic” and local “ISP Traffic,” as those terms are defined in the agreements.<sup>23</sup>

25. The Interconnection Agreements contain the following language at Section 9.7.2: “Termination includes the tandem switching of Local Traffic at the terminating carrier's end-office switch.”<sup>24</sup>

26. The Interconnection Agreements contain a schedule of termination rates in Article VIIA.<sup>25</sup>

27. Termination rates are indicative of reciprocal compensation arrangements.

28. The existence of Section 9.7.2 and Article VIIA suggest that the Interconnection Agreements call for reciprocal compensation for Local Traffic.<sup>26</sup>

29. The Interconnection Agreements contain the following language at Section 9.8, Subsection 2: “Nothing in this section shall be interpreted to allow either party

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<sup>22</sup> CenturyTel of Missouri, LLC's, September 5, 2007 *Complaint Regarding Post-Interconnection Dispute Resolution*, and Socket Telecom's *Answer to Complaint and Counter Claim* filed in Commission Case No. IC-2008-0068, and Spectra Communications Group, LLC d/b/a CenturyTel's October 26, 2007 *Complaint Regarding Post-Interconnection Dispute Resolution*, and Socket Telecom's *Answer to Complaint and Counter Claim* filed in Commission Case No. IC-2008-0127. See also: *CenturyTel and Spectra's Joint Motion for Summary Determination*, filed on December 13, 2007, *Socket Telecom's Response to CenturyTel's Motion for Summary Determination and Socket Telecom's Cross Motion for Summary Determination*, filed on January 14, 2008, and *CenturyTel's Joint Response to Socket Telecom's Cross Motion for Summary Determination*, filed on February 13, 2008.

<sup>23</sup> *Id.*

<sup>24</sup> See: The two orders approving Interconnection Agreements issued on October 3, 2006, in Case No. TO-2006-0299, and the Interconnection Agreements executed by Socket Telecom, LLC, and CenturyTel of Missouri, LLC, and Socket Telecom, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel, and subsequently filed on September 15, 2006 in Case No. TO-2006-0299.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*



to aggregate traffic other than Local Traffic for the purpose of compensation under the bill-and-keep arrangement described in this section.”<sup>27</sup>

30. The language prohibiting aggregating traffic other than Local Traffic for the purpose of bill-and-keep compensation suggests that Local Traffic may be aggregated for the purpose of compensation under bill-and-keep.<sup>28</sup>

31. Section 9.8 suggests that the Interconnection Agreements apply bill-and-keep to Local Traffic.<sup>29</sup>

32. The Interconnection Agreements do not contain a definitive declaration that bill-and-keep applies to Local Traffic nor do they contain a definitive declaration that reciprocal compensation applies to Local Traffic, but rather contain conflicting inferences as to the intended compensation method for Local Traffic.<sup>30</sup>

### **The Final Arbitration Decision**

33. While the Interconnection Agreements contain conflicting and confusing language about the appropriate method of compensation for termination of local traffic, any confusion in the Interconnection Agreements is irrelevant to the Commission’s decision in this case, because the question of the appropriate method of compensation is ultimately resolved by the Commission’s final arbitration decision.

34. The first ordered paragraph of the Commission’s final arbitration decision required CenturyTel, Spectra and Socket to file interconnection agreements that conformed to the Commission resolutions contained in the body of that decision.

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

35. CenturyTel, Spectra and Socket intended the Interconnection Agreements to comply with the Commission's final arbitration decision in Case No. TO-2006-0299.<sup>31</sup>

36. CenturyTel, Spectra and Socket agree, and the Commission finds that the Interconnection Agreements, approved by the Commission in Case No. TO-2006-0299, comply with the Commission's final arbitration decision in that case.<sup>32</sup>

37. No party to Commission Case No. TO-2006-0299 asked the Commission to decide between reciprocal compensation and bill-and-keep for termination of Local Traffic.

38. As discussed on pages 24-32 of the final arbitration decision, CenturyTel and Spectra asked the Commission to adopt one version of bill-and-keep for termination of Local Traffic, and Socket asked the Commission to adopt an alternate version of bill-and-keep for termination of Local Traffic.

39. No party in Commission Case No. TO-2006-0299 asked the Commission to adopt any method of reciprocal compensation for termination of Local Traffic.

40. As discussed at Section 9.2.2 on page 27 of the final arbitration decision, CenturyTel and Spectra proposed bill-and-keep for termination of local traffic but proposed moving to reciprocal compensation rates set forth in Appendix A if either party was terminating more than 60 percent of the parties' total terminated minutes for local traffic, excluding local traffic that is also information access traffic. In other words, CenturyTel's proposal would have moved to reciprocal compensation if the minutes terminated by the parties were out of balance.

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<sup>31</sup> *Id.*

<sup>32</sup> *Notice of Filing of Conformed Agreements* filed by Century Tel of Missouri, LLC and Spectra Communications Group, LLC, in Case No. TO-2006-0299 on September 15, 2006; and the *Filing Memorandum*, filed in Case No. TO-2006-0299 on September 19, 2006.

41. The Commission rejected CenturyTel and Spectra's proposal to move to a reciprocal compensation arrangement if the minutes terminated were out of balance, stating at page 27:

CenturyTel's language addresses bill-and-keep generally, which corresponds more closely with Socket's language at Section 9.4.1 and 9.4.2. The Commission cannot make a ruling on CenturyTel's language since it refers to a compensation arrangement contained in Appendix A which does not appear to be in the record.

42. As discussed at Section 9.4.1 on page 29 of the final arbitration decision, Socket proposed all non-MCA Traffic, including Non-MCA Section 251(b)(5) Traffic, Non-MCA ISP Traffic, Non-MCA Foreign Exchange Traffic including VNXX Traffic be exchanged on a bill-and-keep basis.

43. Concerning Socket's proposal, the final arbitration decision states at page 29 :

CenturyTel's language in Section 9.2.3 addressing the appropriate application of bill-and-keep is appropriate. Other traffic included in this section has been deemed non-local traffic through other determinations.

44. In the final arbitration decision at Section 9.2.3 on pages 27-28 the Commission decided that VNXX Traffic shall not be deemed Local Traffic but shall be at bill-and-keep.

45. As discussed at Section 9.4.2 of the final arbitration decision, on pages 29-30, Socket had proposed to define bill-and-keep to refer to an arrangement in which neither of the two interconnecting parties charges the other for terminating FX Traffic that originates on the other party's network.

46. At Section 9.4.2 of the final arbitration decision, on pages 29-30, the Commission found that the language proposed by Socket, with the removal of the reference to terminating FX traffic, was acceptable and consistent with Section 251(b)(5) of the Telecommunication's Act of 1996 which imposed the duties on each local exchange

carrier to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

47. In the final arbitration decision, the Commission rejected only those parts of the two bill-and-keep proposals that were in dispute. Specifically, the Commission rejected Socket's proposal to apply bill-and-keep to all Non-MCA Traffic, and similarly, the Commission rejected CenturyTel and Spectra's proposal for an out-of-balance provision.

48. In its final arbitration decision, the Commission intended that the parties' Interconnection Agreements apply bill-and-keep to the exchange of Local Traffic.

49. The reciprocal compensation contract language contained in the Interconnection Agreements at Section 9.7.2 and the termination rates set forth in Article VIIA are surplusage left over from CenturyTel and Spectra's out-of-balance proposal, which the Commission rejected.

### **Public Interest**

50. On a matter where there is no genuine issue as to any material fact, the Commission finds that it is in the public interest to resolve that matter by summary determination without an evidentiary hearing inasmuch as the time and cost to hold hearings on a matter when there is no genuine issue as to any material fact would be contrary to the public interest.

### **CONCLUSIONS OF LAW**

The Missouri Public Service Commission has reached the following conclusions of law:

## Jurisdiction

This Commission has jurisdiction and authority over telecommunications companies that provide service within Missouri.<sup>33</sup> The Commission has jurisdiction to interpret and enforce interconnection agreements it has approved.<sup>34</sup>

## Standard of Review for Summary Determination

Commission Rule 4 CSR 240-2.117, which is titled “Summary Disposition,” authorizes the Commission to decide all or any part of “a contested case by disposition in the nature of summary judgment or judgment on the pleadings.”

Commission Rule 4 CSR 240-2.117(1), provides, in relevant part:

(A) Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period.

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(E) The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

This is not a case seeking a rate increase, or a case subject to an operation of law date. Moreover, as set out below, to grant summary determination in this case will not be “otherwise contrary to law” since no genuine factual dispute remains for hearing,<sup>35</sup> one of

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<sup>33</sup> Sections 386.250(2), 386.320, 386.330, and 392.240, RSMo 2000; and Section 392.200, RSMo (Cum. Supp. 2007).

<sup>34</sup> *Bellsouth Telecommunications, Inc. v. MCI Metro Access Transmission Services*, 317 F.3d 1270, 1274 (11<sup>th</sup> Cir. 2003); *See also: SWBT v. Connect Comm.*, 225 F.3d 942, 947 (8<sup>th</sup> Cir. 2000).

<sup>35</sup> *Determination on the Pleadings, In the Matter of the Cancellation of the Certificate of Service Authority and Accompanying Tariff of ConnectAmerica, Inc.*, Case No. TD-2003-0582 (Nov. 4, 2004). *See also Order Denying Motion for Determination on the Pleadings, Tony Walker v. Kansas City Power & Light Company*,

the parties is entitled to a determination in its favor as a matter of law,<sup>36</sup> and the contents of the parties' pleadings,<sup>37</sup> and the Commission's final arbitration decision, make it plain that the merits of this controversy can be fairly and fully decided in a summary manner. Moreover, the public interest clearly favors the quick and efficient resolution of this matter by summary determination without an evidentiary hearing<sup>38</sup> inasmuch as "[t]he time and cost to hold hearings on [a] matter when there is no genuine issue as to any material fact would be contrary to the public interest."<sup>39</sup> Therefore, the Commission may finally dispose of this case on the basis of the law and the undisputed material facts before it.<sup>40</sup>

### **Summary Determination Regarding Interpretation of the Interconnection Agreements**

For summary determination to be proper, there must not be a dispute among the parties as to any issue of material fact, the party seeking summary determination must be entitled to judgment as a matter of law, and the Commission must determine that granting

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Case No. EC-2006-0451 (Aug. 28, 2006) (*denying request for determination on the pleadings under 4 CSR 240-2.117(2) as contrary to law and the public interest where it was obvious that the parties did not agree on the essential facts underlying the complainant's claim for relief*); *McGuire v. Dir. of Revenue*, 174 S.W.3d 87, 89 (Mo. App. E.D. 2005) (*a motion for judgment on the pleadings should be denied where there is a genuine issue of material fact on the face of the pleadings*).

<sup>36</sup> *Determination on the Pleadings, In the Matter of the Cancellation of the Certificate of Service Authority and Accompanying Tariff of ConnectAmerica, Inc.*, Case No. TD-2003-0582 (Nov. 4, 2004); *Neel v. Strong*, 114 S.W.3d 272, 274 (Mo. App. E.D. 2003) ("A motion for judgment on the pleadings is properly granted . . . if, from the face of the pleadings, the moving party is entitled to judgment as a matter of law.")

<sup>37</sup> The pleadings referenced include *CenturyTel and Spectra's Joint Motion for Summary Determination on Interpretation of Compensation Arraignments Applicable to Local Traffic*, Socket's response to that joint motion, *Socket's Cross Motion for Summary Determination*, and *CenturyTel and Spectra's response to Socket's cross motion*.

<sup>38</sup> See, e.g., *Determination on the Pleadings, The Staff of the Missouri Public Service Commission v. Taney County Utilities Corporation*, Case No. WC-2004-0342 (Oct. 19, 2004).

<sup>39</sup> *Determination on the Pleadings, In the Matter of the Application of Aquila Inc. for an Accounting Authority Order Concerning Fuel Purchases*, Case No. EU-2005-0041 (Oct. 7, 2004).

<sup>40</sup> See, e.g., *Determination on the Pleadings, The Staff of the Missouri Public Service Commission v. Taney County Utilities Corporation*, Case No. WC-2004-0342 (Oct. 19, 2004).

summary determination is in the public interest.<sup>41</sup> Differing interpretations of language in an agreement does not constitute a dispute as to a material fact. Where an ambiguity exists in a contract and the court must utilize parole evidence to determine the parties' intent, a fact issue exists that generally precludes summary judgment.<sup>42</sup> However, parole evidence is not necessary to discern the signatories' intent in this case, because their stated intent in executing the Interconnection Agreements was to comply with the Commission's final arbitration decision.

### **Section 252 Reciprocal Recovery Requirement**

Socket argues that the Federal Telecommunications Act of 1996 establishes reciprocal compensation as the default arrangement if the Interconnection Agreements do not clearly establish another arrangement. Specifically, section 252(d)(2)(a) of the Act instructs state commissions that the terms and conditions for reciprocal compensation in interconnection agreements shall not be considered just and reasonable unless such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination of calls that originate on the other carrier's network. However, section 252(d)(2)(b) provides that Section 252(d)(2)(a) shall not be construed to preclude arrangements that waive mutual recovery such as bill-and-keep arrangements. Accordingly, sections 252(d)(2)(a) and (b) do not set a default mechanism of either bill-and-keep or reciprocal compensation.

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<sup>41</sup> 4 CSR 240-2.117(1)(E); See also: *All American Supply Company, v. Four Seasons Mechanical, Inc.*, 152 S.W.3d 884, 886 (Mo.App. W.D. 2005).

<sup>42</sup> *All American Supply Company, v. Four Seasons Mechanical, Inc.*, 152 S.W.3d 884, 887 (Mo. App. W.D. 2005); *Spartas Company v. Division of Design and Construction*, 131 S.W.3d 411, 417 (Mo. App.W.D. 2004); and *Tuttle v. Muenks*, 21 S.W.3d 6, 9 (Mo. App. 2000).

## Interpreting the Interconnection Agreements

A cardinal rule of contract interpretation is to ascertain the intent of the parties and to give effect to that intent.<sup>43</sup> CenturyTel, Spectra and Socket all agree that the Interconnection Agreements were intended to conform to the Commission's final arbitration decision. Therefore, the appropriate place for the Commission to look to determine if the Interconnection Agreements apply reciprocal compensation or bill-and-keep to Local Traffic is the Commission's final arbitration decision.

### **DECISION**

Consideration of the Interconnection Agreements presents a single issue for resolution. Do the Interconnection Agreements establish reciprocal compensation or bill-and-keep as the compensation mechanism to be utilized by the signatories for termination of Local Traffic?

The Interconnection Agreements do not contain a definitive declaration that bill-and-keep applies to Local Traffic nor does it contain a definitive declaration that reciprocal compensation applies to Local Traffic. However, that confusion does not imply that the Interconnection Agreements are ambiguous. It simply means that the parties did a poor job of incorporating the Commission's final arbitration decision.

In signing and submitting their Interconnection Agreements for Commission approval in Commission Case No. TO-2006-0299, Socket, CenturyTel and Spectra's intention was that all terms contained in the Interconnection Agreements comply with the Commission's final arbitration decision in that case. Accordingly, there is no material fact in dispute in this

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<sup>43</sup> *Vincent v. Schneider*, 194 S.W.3d 853, 859 (Mo. banc 2006); See also: *Butler v. Mitchell-Hugeback, Inc.* 895 S.W.2d 15, 21 (Mo. banc 1995); *Royal Banks of Missouri v. Fridkin*, 819 S.W.2d 359, 362 (Mo. banc 1991); *Knob Noster R-VIII School District, v. Dankenbring*, 220 S.W.3d 809, 816 (Mo. App. W.D. 2007); and *Spirtas Company v. Division of Design and Construction*, 131 S.W.3d 411, 416 (Mo. App. W.D. 2004).



case and, if a party is entitled to relief as a matter of law and granting summary determination is in the public interest, the Commission may grant summary determination in favor of that party.

To determine whether either party is entitled to relief the Commission must determine what compensation method for the termination of Local Traffic is appropriate under the Interconnection Agreements as determined in the Commission's final arbitration decision. First, as previously indicated, Socket's argument that Section 252(d)(2)(a) and (b) set a default mechanism of reciprocal compensation for mutual recovery of costs associated with each carrier's transport and termination of calls that originate on the other carrier's network is contrary to the express language of that section. Accordingly, the Commission rejects Socket's argument that the conflicting inferences regarding compensation for Local Traffic in the Interconnection Agreements must be resolved in favor of reciprocal compensation.

CenturyTel, Spectra and Socket each affirmed that the Interconnection Agreements comply with the Commission's final arbitration decision, accordingly the Commission looks first to that decision to determine the appropriate compensation mechanism for terminating Local Traffic under the Interconnection Agreements.

The final arbitration decision and the undisputed facts presented in this case establish the following. First, in their arbitration before the Commission, CenturyTel and Spectra proposed a version of bill-and-keep, and Socket proposed an alternate version of bill-and-keep for terminating Local Traffic. Neither proposed reciprocal compensation, except CenturyTel's proposal that reciprocal compensation be applied if termination minutes were found to be out of balance. Second, in its final arbitration decision, the

Commission rejected specific portions of the differing bill-and-keep proposals, including CenturyTel's proposed reciprocal compensation as an alternative measure, but did not reject bill-and-keep for terminating Local Traffic in its entirety. Third, in its final arbitration decision the Commission did not adopt reciprocal compensation for Local Traffic. Based upon the foregoing, it is clear that, in its final arbitration decision, the Commission required the parties to submit Interconnection Agreements that applied bill-and-keep to the exchange of Local Traffic.

Finally, the Commission finds that the public interest clearly favors the quick and efficient resolution of this matter by summary determination without an evidentiary hearing inasmuch as the time and cost to hold hearings on a matter when there is no genuine issue as to any material fact would be contrary to the public interest.

Based upon the applicable law and facts before it, the Commission finds that its final arbitration decision and, consequently, the Interconnection Agreements filed in compliance with that decision, adopt bill-and-keep for the exchange of Local Traffic. As a result, Socket's actions in billing CenturyTel and Spectra for the exchange of such traffic are inappropriate. Accordingly, the Commission shall grant the motion for summary determination jointly filed by CenturyTel and Spectra and deny Socket's cross motion for summary determination.

**IT IS ORDERED THAT:**

1. The Joint Motion for Summary Determination on Interpretation of Compensation Arraignments Applicable to Local Traffic filed by CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel, on December 13, 2007, is granted.

2. Socket Telecom, LLC's Cross Motion for Summary Determination filed on January 14, 2008, is denied.

3. Socket Telecom, LLC, shall not bill CenturyTel of Missouri, LLC, d/b/a CenturyTel, and Spectra Communications Group, LLC, d/b/a CenturyTel, for the termination of Local Traffic, as defined in the Interconnection Agreements approved by the Commission in Case No. TO-2006-0299, as such traffic shall be terminated under bill-and-keep.

4. CenturyTel's Motion to Strike the Affidavits of William L. Magness and R. Matthew Kohly is denied.

5. All pending motions, not otherwise disposed of herein, are hereby denied.

6. This order shall become effective on September 19, 2008.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Clayton, Jarrett,  
and Gunn, CC., concur.

Woodruff, Deputy Chief Regulatory Law Judge