

Exhibit No. _____

Issues: Article II: Definitions; Article III: General Provisions;
Article V: Interconnection; Article VI: Resale; Article VII: UNEs;
Article XIII: OSS; Article XV: Performance Measures

Witness: R. Matthew Kohly

Type of Exhibit: Rebuttal Testimony

Sponsoring Party: Socket Telecom, LLC

Case No.: TO-2006-0299

Date: April 6, 2006

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

**PETITION OF SOCKET TELECOM, LLC)
FOR COMPULSORY ARBITRATION OF)
INTERCONNECTION AGREEMENTS WITH) **CASE NO. TO-2006-0299**
CENTURYTEL OF MISSOURI, LLC AND)
SPECTRA COMMUNICATIONS, LLC)
PURSUANT TO SECTION 252(b)(1) OF THE)
TELECOMMUNICATIONS ACT OF 1996)**

**REBUTTAL TESTIMONY OF
R. MATTHEW KOHLY ON BEHALF OF
SOCKET TELECOM, LLC**

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INTRODUCTION

Q. Please state your name.

A. My name is R. Matthew Kohly.

Q. Are you the same R. Matthew Kohly that prepared Direct Testimony in this proceeding?

A. Yes.

Q. How is your rebuttal testimony structured?

A. First, I provide a general response to several of the dominant claims or themes that are repeated often in CenturyTel's Direct Testimony. As these themes relate to numerous issues, this will be the most efficient means of responding. These general issues are (1) whether CenturyTel should be excused from legal obligations because it is not AT&T Missouri (fka SBC Missouri), (2) whether Socket's size should somehow dictate the legal standard to be used in this proceeding, (3) the concept of "parity" under the federal Telecommunications Act of 1996 ("FTA 96" or "the Act"), and (4) the proper parameters surrounding the use of FX Service to ISPs. After addressing these general topics, I will focus on specific issues in the DPLs and, to the extent possible, keep them in the same order as they are presented in the DPLs.

Q. Do you have any general impressions about the direct testimony filed by CenturyTel?

A. Yes. Fourteen (14) witnesses filed direct testimony on behalf of CenturyTel. Many of these witnesses are from organizations within CenturyTel that I did not know existed or had even been told do not exist. I think that I have learned more about CenturyTel from reading this round of testimony than I have learned in attempting to

1 negotiate an interconnection agreement and working with CenturyTel in the last eighteen
2 months. In this litigated context, after months of negotiation, Socket was provided, for
3 the first time, process flow-through charts for certain ordering processes, an explanation
4 of how CenturyTel's personnel are notified of outages, and written provisioning intervals
5 for items not included in CenturyTel's CLEC Guide.

6 While it has been useful for Socket to obtain a better understanding of
7 CenturyTel's processes and concerns than CenturyTel was ever willing to provide in
8 interconnection negotiations, several of CenturyTel's 14 witnesses do not appear to be
9 familiar with the facts regarding CenturyTel's actual processes as they relate to Socket.
10 For example, CenturyTel's witness Maxine Moreau states that Socket has received above
11 parity performance in getting interconnection facilities installed.¹ In reviewing her
12 testimony, it appears that she excluded the additional time added to each order that is
13 caused by the "regulatory review" process that all of Socket's orders for interconnection
14 facilities must go through. That regulatory review process has at times added weeks to
15 the completion date of an order, but that additional time will not be reflected in
16 CenturyTel's ASR system as the order is not even entered into the system until
17 CenturyTel's Carrier Relations department completes its "regulatory review."
18 Consequently, any type of retroactive analysis that only looks at the date entered into the
19 ASR system versus the installation date will not be accurate. Perhaps Ms. Moreau's
20 location in Louisiana and her very recent move from a position with the LightCore
21 affiliate to CenturyTel's ILEC operations means her direct knowledge of the manual OSS

¹ Direct Testimony of Maxine Moreau at 58.

1 performance that CenturyTel has provided to Socket to date in Missouri will be
2 necessarily limited.

3 Other CenturyTel witnesses rely on information that is simply factually incorrect.
4 For example, CenturyTel's witness Ted Hankins justifies CenturyTel's proposed non-
5 recurring rates on the grounds that they are Missouri specific.² That is simply not true.
6 Those rates are from Verizon's generic pricing attachment, are not specific to Missouri,
7 and can be found in old Verizon interconnection agreements in other states such as Ohio,
8 Kentucky, and Wisconsin.³

9 Finally, CenturyTel's extensive, comprehensive response to Socket's arbitration
10 petition shows what CenturyTel can do when finally forced to act. It was CenturyTel that
11 cancelled Socket's interconnection agreement and forced a full re-negotiation of the
12 Parties' agreement. If CenturyTel had committed anything close to the level of resources
13 to re-negotiating the cancelled interconnection agreement that it has devoted to this
14 litigation, there would certainly have been far fewer disputed issues in Socket's initial
15 Petition for Arbitration and, most likely, fewer disputed issues at this stage as well. For
16 example, in negotiations, CenturyTel was completely unresponsive to questions about
17 performance measures during negotiations. As a result, Socket developed its own
18 performance measurements with no input from CenturyTel. In CenturyTel's direct
19 testimony, for the very first time, CenturyTel presented its proposal on performance

² Direct Testimony of Ted Hankins at 6.

³ These interconnection agreements can be found as follows:

Kentucky - http://162.114.3.165/PSCICA/2001/2001-224/2001-224_010802.pdf

Ohio - [http://dis.puc.state.oh.us/DISOCR.nsf/0/86B89E5E0043ECE985256BC900593F9B/\\$FILE/YFPS47JZFEMOE\\$I0.txt](http://dis.puc.state.oh.us/DISOCR.nsf/0/86B89E5E0043ECE985256BC900593F9B/$FILE/YFPS47JZFEMOE$I0.txt)

Wisconsin - <http://psc.wi.gov/apps%5Cvia%5Cdocument%5C5ti509%5CZTEL-.doc>

1 measures. It would have been extremely helpful if CenturyTel would have committed
2 these resources to working cooperatively during negotiations rather than stalling as long
3 as possible and then forcing the Commission to address the issues in a litigated context.

4 **OVERARCHING ISSUES**
5

6 **CenturyTel should be held to the same Section 251/252 standards**
7 **as any other ILEC, including AT&T Missouri fka SBC Missouri.**
8

9
10 **Q. Does Socket believe that CenturyTel is AT&T?**
11

12 A. No, but apparently CenturyTel thinks I do. One of the major themes running
13 throughout the 14 pieces of direct testimony filed by CenturyTel is that CenturyTel “is
14 not SBC” and should not be held to legal obligations SBC was required to meet in its
15 recent arbitration before the Commission. Tied into these claims are CenturyTel’s
16 assertions that it is a small, rural carrier rather than a Bell Operating Company (“BOC”).
17 I addressed this issue in my direct testimony but, nevertheless, I feel the need to address it
18 again because CenturyTel’s direct testimony was so fraught with those statements.⁴

19 **Q. Are you trying to hold CenturyTel to the same obligations that AT&T is required to**
20 **meet?**
21

22 A. No. I am not proposing to hold CenturyTel to any obligations that apply
23 specifically to the BOCs that are found in Section 271 of the FTA 96. I fully realize that
24 those do not apply to CenturyTel, just as they do not apply to Sprint or other ILECs.
25 However, the fact that CenturyTel is not a BOC does not mean that CenturyTel is exempt
26 from taking any action to implement the legal obligations applicable to all ILECs under

⁴ In fact, CenturyTel hired a consultant who has often been retained by AT&T/SBC in other states (Dr. Avera) to file testimony completely devoted to explaining in great detail that CenturyTel is not AT&T.

1 the Act. Sprint Missouri is almost half the size of the CenturyTel entities in Missouri, but
2 has done far more to implement its Section 251 obligations than CenturyTel has done.

3 **Q. Do you think that CenturyTel's arguments regarding AT&T are even relevant?**

4 A. No. Socket filed this case to gain a new interconnection agreement with
5 CenturyTel to replace the one that CenturyTel cancelled, as is Socket's right under
6 Sections 251 and 252. The fact that CenturyTel seeks to do as little as possible to meet
7 its Section 251 obligations is not surprising. However, no matter how you read it,
8 Section 251 and the FCC's implementing rules do not apply differently to non-RBOC
9 companies such as CenturyTel than they do to BOC companies such as AT&T.

10 **Q. Have you explained why Socket's proposed language is often similar to that**
11 **contained in the Socket's Interconnection Agreement with AT&T?**

12
13 A. Yes, I addressed this in my direct testimony, but will summarize it here for the
14 sake of completeness. The AT&T/SBC M2A replacement agreements are the most
15 recently arbitrated interconnection agreements in Missouri and contain the latest Missouri
16 PSC decisions on many issues in dispute in this proceeding. Aside from issues related
17 directly to Section 271 (which applies only to BOCs), the decisions in the M2A Orders
18 reflect the Commission's view of how the FTA 96 and the FCC's rules should be
19 implemented in Missouri interconnection agreements. Socket offered contract proposals
20 in negotiations with CenturyTel that were consistent with the Commission's recent
21 determinations, but CenturyTel refused to accept them. While I am not an attorney, it
22 does seem logical that if the Commission were asked to re-decide an issue in this
23 arbitration that was before it very recently, the outcome would be the same if the
24 underlying legal obligation is the same for AT&T and CenturyTel (since they both

1 qualify as ILECs under the FTA 96. As the M2A replacement agreements are the most
2 recently arbitrated agreements and are being used today, these agreements should also
3 have the presumption of commercial reasonableness. This view is supported by the fact
4 that two CenturyTel affiliates have opted into at least one version of the agreement that
5 resulted from recent M2A arbitrations.⁵ That agreement is nearly identical to the one
6 between Socket and SBC, with the only differences being limited provisions related to
7 interconnection.

8 Finally, it is important to clarify that CenturyTel's own failure to commit
9 resources to negotiating a new agreement forced Socket to look at alternative contract
10 language. Socket was willing to work from its existing agreement with CenturyTel as the
11 "base document" from which a successor agreement could be negotiated. CenturyTel
12 insisted, however, that the existing agreement could not be renewed. This necessitated
13 "starting from scratch" in interconnection negotiations. In those circumstances, Socket
14 looked to the interconnection agreements most recently approved by this Commission as
15 the source for contract language that properly implements ILEC obligations under the
16 FTA 96.

17 **Q. Do you think CenturyTel has presented any facts that would justify a different**
18 **decision from those in the recent AT&T/SBC M2A replacement arbitration?**

19
20 A. No.

21
22 **Q. How would you describe CenturyTel's position in the telecommunications industry?**

⁵ See Case No. LK-2006-0095, *Application of CenturyTel Solutions, LLC, and CenturyTel Fiber Company II, LLC, d/b/a LightCore, a CenturyTel Company, for approval of their adoption of an approved interconnection agreement between Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, and Xspedius Management Company of Kansas City, LLC, and Xspedius Management Company Switched Services, LLC.*

1
2 A. I think CenturyTel witness Dr. William Avera said it best, "CenturyTel is unique
3 in that it is a New York Stock Exchange Company (NYSE) that serves predominantly
4 rural communities. Moreover, in addition to stock traded on the NYSE, CenturyTel has
5 public debt issues rated by both major bond-rating agencies."⁶ However, while
6 CenturyTel may serve rural markets in other states, that does not mean that it is a small
7 company that should not be held to its obligations under the FTA 96 or afforded special
8 treatment.⁷

9 **Q. Please put CenturyTel's size into perspective with other companies.**

10
11 A. To put CenturyTel Inc.'s size into perspective, I reviewed the Forbes 2000 list
12 from 2005 to find similarly sized or similarly profitable corporations.⁸ In terms of total
13 market value, CenturyTel Inc. was listed as having a total market value of \$4.53 billion.
14 In terms of market value, CenturyTel is larger than major national corporations such as
15 Weight-Watchers International (\$4.46 billion), Petsmart (\$4.45 billion), Novellus
16 Systems (\$4.34 billion), Wendy's (\$4.31 billion), Hormel (\$4.30 billion), Ameritrade
17 (\$4.30 billion), Whirlpool (\$4.27 billion), Mazda Motor Corp. (\$4.21 billion), and
18 Mitsubishi Motor Corp (\$3.55 billion).

19 In terms of profits, CenturyTel's reported 2005 profits were \$340 million. That is
20 equal to those of Cummins, Office Depot, Radio Shack, and exceeded those of Sears &
21 Roebuck (\$330 million), Washington Post (\$330 million), Monsanto (\$320 million),

⁶ Direct Testimony of William A. Avera at 12.

⁷ Ironically, after claiming how unique CenturyTel is, Dr. Avera then used AT&T, BellSouth Corp., and Verizon Communications in the Proxy Group with CenturyTel for purposes of determining equity costs. Schedule WEA-2, at 2.

⁸ <http://www.forbes.com/2005/03/30/05f2000land.html>.

1 Nintendo (\$320 million), Southwest Airlines (\$310 million), New York Times (\$290
2 million), Charles Schwab (\$290 million), Humana Healthcare (\$280 million), Polo Ralph
3 Lauren (\$240 million), Hilton Hotel (\$240 million). This representative listing is not a
4 group of “small” businesses.

5 In fact, CenturyTel’s website proudly touts that the company is listed on the
6 Standard & Poor’s 500 (“S&P 500”), a stock market index reserved for companies with
7 market values of over \$4 billion. According to S&P, the companies included in the index
8 represent “the 500 leading companies in leading industries of the U.S. economy.”⁹

9 **Q. With respect to its capital structure, has CenturyTel taken any recent actions that**
10 **would indicate CenturyTel has substantial financial resources?**

11
12 A. Yes. On February 21, 2006, CenturyTel announced a \$1,000,000,000.00 stock
13 repurchase program. According to CenturyTel’s press release:

14 “This \$1 billion repurchase program demonstrates CenturyTel’s
15 commitment to return a substantial portion of its available cash to
16 shareholders,” said Glen F. Post III, chairman and chief executive officer.
17 “As with our previous share repurchase programs, our strong free cash
18 flow and solid balance sheet enable us to repurchase shares at attractive
19 prices that will be accretive to earnings and free cash flow per share.
20 Additionally, CenturyTel has now increased its cash dividend for the 33rd
21 consecutive year.”¹⁰

22
23 Again, this hardly sounds like the actions of the small, cash-strapped, single product
24 telecom provider as many of CenturyTel’s witnesses in this case attempt to portray.

25 Moreover, it is notable that in 2005 CenturyTel reported that it had already
26 returned over \$580,000,000.00 to shareholders in the form of share repurchases and stock
27 dividends. The company’s annual report also stated that CenturyTel “generated nearly

⁹ “S&P 500 Fact Sheet,” available at <http://www2.standardandpoors.com>.

¹⁰ http://www.centurytel.com/about/press_room/financials/Press_Release90.cfm.

1 \$965 million in net cash from operations,” and was able to “invest \$384 million in
2 network enhancements.”¹¹

3 **Q. Do you have a response to some of the statistics used by CenturyTel’s witnesses that**
4 **attempt to portray CenturyTel as a small, rural carrier?**

5
6 A. Yes. Many of the statistics are misleading and certainly do not pertain to the
7 CenturyTel entities in Missouri. For example, CenturyTel’s average number of access
8 lines per state was offered as a statistic to demonstrate the size of CenturyTel.¹² This
9 measure was apparently either intended to be misleading or was calculated by someone
10 with little knowledge of CenturyTel’s operations. That is because CenturyTel’s access
11 lines are not distributed evenly among the states in which it is an ILEC. Rather they
12 range from a high of 444,089 in Wisconsin to only 553 in Nevada.¹³ Missouri is second
13 largest with 442,138 access lines.¹⁴ According to CenturyTel’s annual report, 62% of
14 CenturyTel’s access lines are in four states and 95.2% are in twelve states.¹⁵ With this
15 type of line distribution, an average is meaningless.

16 **Q. How has CenturyTel represented its operations to its investors?**

17
18 CenturyTel represents to its investors that its serves geographically clustered
19 markets and represents that “CenturyTel’s cluster market approach helps drive operating
20 efficiencies (95 percent of CenturyTel’s access lines are in 12 states).”¹⁶

¹¹ 2005 Annual Report of CenturyTel, at 3. CenturyTel’s Annual Report is available at http://www.centurytel.com/about/investor_relations.

¹² Avera Direct at 6.

¹³ 2005 Annual Report of CenturyTel Inc. at 9.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ <http://www.centurytel.com/about/companyProfile/index.cfm>.

1 **Q. Does CenturyTel's "cluster market" approach represent CenturyTel's operations in**
2 **Missouri?**

3
4 A. Yes. The majority of CenturyTel's access lines are clustered in medium-sized
5 cities and suburban areas. In addition to being clustered, CenturyTel's ILEC areas are
6 experiencing significant growth. As noted in a recent newspaper article, Missouri is
7 experiencing "rapid growth in the metropolitan ring counties around St. Louis and
8 Kansas City and, certainly, also, even in Springfield."¹⁷ The article further stated,
9 "Missouri's Christian County, just south of Springfield, was the nation's 50th fastest-
10 growing county, with a 4.7 percent population increase, while Lincoln County, northwest
11 of St. Louis, rose 4.4 percent to capture 64th place on the national list." In addition, in
12 Mid-Missouri, Boone County had the biggest population growth, with 7,872 people since
13 2000, for a 5.8 percent growth rate.¹⁸ These are all areas served by CenturyTel and are
14 certainly clustered markets in mid-sized and metropolitan areas that are growing.

15 **Q. Does CenturyTel serve rural areas in this state as well?**

16
17 A. In addition to the cluster exchanges, CenturyTel does serve additional exchanges
18 that could generally be described as rural. However, it is also true that both AT&T
19 Missouri and Sprint Missouri serve small, rural exchanges as well.

20 **Q. Does CenturyTel benefit from serving these rural areas?**

21 A. Yes, in addition to receiving vast sums from the Universal Service Fund,
22 CenturyTel Inc. represents to its investors that serving mid-sized cities and rural areas
23 provides CenturyTel with more stability than its counterparts serving in urban areas

¹⁷ Bob Watson, Census updates show Missouri's population continues to grow, **New Tribune**, *Posted: Thursday, Mar 16, 2006 - 06:51:41 pm.*

¹⁸ *Id.*

1 because there is less competition in these areas. Socket does not dispute that assertion,
2 but that is precisely what Socket seeks to change by competing in these areas.

3 **Q. Does the fact that the CenturyTel ILECs serve some rural areas of Missouri serve as**
4 **a basis for relieving them of their Section 251 obligations or for lowering the bar on**
5 **what is required to fulfill these obligations?**

6
7 A. No, it does not. Certainly residents in rural areas are just as entitled to the
8 benefits of competition as their urban counterparts.

9 **Q. If CenturyTel believes that it should not be bound by a particular provision of**
10 **Section 251 and Section 252, is there a process it can follow to seek a waiver.**

11
12 A. Assuming that CenturyTel qualifies as having less than two percent of the nation's access
13 lines, CenturyTel can seek a waiver under Section 251(f)(2) of the unbundling
14 obligations found in Section 251(b) or Section 251(c). CenturyTel has never requested
15 such a waiver. The FTA 96 provides exemptions from its pro-competitive provisions for
16 rural ILECs only in specifically defined circumstances. Where the statutory criteria are
17 not met, the FTA 96 obligations applicable to ILECs apply to all ILECs, including
18 CenturyTel.

19 **Q. What other factors should the Commission consider when assessing CenturyTel's**
20 **requests to be exempted from its statutory obligations?**

21
22 A. I would add two things. First, when assessing CenturyTel's obligations, the
23 Arbitrator should be mindful of the promises CenturyTel made when it began providing
24 service in Missouri. I presented those commitments in my direct testimony and will not
25 repeat them here. It is worth noting that CenturyTel failed to even mention these
26 commitments in its direct testimony. Despite that omission, those commitments are still
27 binding.

1 Finally as I suggested in my direct testimony, the Arbitrator needs to consider that
2 CenturyTel, Inc., as a diversified company with many non-ILEC affiliates, has benefited
3 tremendously from the Telecommunications Act of 1996. CenturyTel reports to Wall
4 Street that:

5 CenturyTel, Inc. and its subsidiaries (the "Company") is an integrated
6 communications company engaged primarily in providing local exchange, long-
7 distance, Internet access and broadband services to customers in 26 states.¹⁹
8

9 CenturyTel further states:

10 The telecommunications industry continued its rapid evolution during
11 2005 and will experience innovation in 2006 and beyond. While this rapid
12 change brings new challenges, we at CenturyTel believe these challenges
13 are outpaced by the opportunities that we will have to offer a broad array
14 of advanced services – both to our existing customers and to new customer
15 in new markets.²⁰
16

17 CenturyTel's ability to try to take advantage of these opportunities is a result of the
18 Telecommunications Act of 1996. It would be wrong to let CenturyTel focus only on the
19 burden of meeting its obligations under the Act without considering how much the same
20 shareholders have benefited from the Act.

21
22 **Socket's size is irrelevant to the issues to be decided in this arbitration.**
23
24

25 **Q. Please discuss the issues that were raised by CenturyTel concerning Socket's size.**

26
27 A. Another theme echoed through much of CenturyTel's direct testimony is that
28 Socket is simply too small to justify implementing several of the items Socket is
29 requesting such as performance measures or developing an OSS. Other witnesses

¹⁹ CenturyTel, Inc. 3rd Quarter, 2005 10-Q Report – found at
<http://www.sec.gov/Archives/edgar/data/18926/000001892605000092/subfile.txt>

²⁰ 2005 Annual Report, CenturyTel, Inc. at 2.

1 commented that Socket failed to produce forecasts of unbundled network elements and
2 therefore drew conclusions that Socket must not be expecting to expand its operations. I
3 will address each of these claims.

4 First, I do not dispute that Socket is one of the smaller CLECs in the market. But
5 while Socket is small, that does not justify ignoring or watering down the requirements
6 for CenturyTel to implement its obligations under Section 251. Nowhere in Section 251
7 or the FCC rules is there a requirement for a CLEC to reach a certain size before it can
8 request interconnection with an ILEC, obtain unbundled network elements, or resell an
9 ILEC's services. It is rather strange that CenturyTel hopes to evade its FTA 96
10 obligations both by asserting that Socket is too small to justify steps necessary to
11 facilitate competitive entry and by also asserting that CenturyTel is too small to be
12 subject to certain obligations at all. Neither of those propositions finds any support in the
13 statutes or regulations I have reviewed.

14 Moreover, Socket plans to grow its business. Given Socket's experience with
15 CenturyTel, it is very frustrating to now be required to justify why Socket is not a bigger
16 company as a condition of getting CenturyTel to fulfill its obligations under the Act or
17 the commitments CenturyTel made when it acquired its exchanges from GTE Midwest
18 a/k/a Verizon Midwest.

19 During the course of this arbitration proceeding, CenturyTel served Socket with
20 fifty-seven data requests with sub-parts that, among other things, requested Socket to
21 provide forecasts of unbundled network elements for Socket and the CLEC industry as a
22 whole. As indicated in our response, Socket has no such forecasts as Socket does not use

1 such forecasts in the normal course of business. Socket does have sales goals in terms of
2 customer circuits but those are not tied to specific combinations of network elements, nor
3 are they specific to a given ILEC territory. For example, Socket's sales goal may be to
4 sell 1,400 Integrated Access circuits to retail customers. Such a sales goal would not
5 specify that a sales representative must sell 500 circuits provisioned via UNE loops and
6 500 that are EELs and 400 that are resold circuits. I can assure you that our sales force
7 would quickly tire of being told, "I am sorry, you cannot sell a circuit to this customer,
8 you must sell the service via an EEL instead of via a UNE loop." The UNEs are a means
9 to an end – providing services customers want – rather than an end in themselves.

10 **Q. Does Socket expect to expand its operations?**

11
12 A. Within CenturyTel's territory, the ability to expand will obviously be affected by
13 the outcome of this arbitration. Assuming a favorable outcome, Socket will expand its
14 operations.

15 Socket's ability to expand also depends upon CenturyTel's performance under the
16 interconnection agreement. Socket's growth in CenturyTel's service territory to date has
17 been constrained by CenturyTel's own practices. For example, CenturyTel has
18 consistently refused to provide combinations of UNEs, which meant that Socket could
19 only serve customers via UNEs in exchanges where it had a collocation facility. Even
20 getting to that point involved delay as CenturyTel originally refused to process our orders
21 for UNE loops. After several months, CenturyTel personnel grudgingly allowed the
22 orders to go through. Socket also requested CenturyTel provide UNE combinations on
23 several occasions. The first request was denied and the second led to the interconnection

1 agreement being cancelled by CenturyTel. The request was finally agreed to as a
2 condition of granting CenturyTel more time to negotiate after Socket's Petition for
3 Arbitration was filed.

4 Socket currently has a collocation facility within CenturyTel's main office in
5 Columbia, Missouri. Socket has been using that collocation facility to serve customers in
6 portions of the Columbia exchange via UNE DS1 loops, although it took several months
7 to begin providing service since CenturyTel refused to provision Socket's first orders for
8 UNE loops and those initial issues were not resolved until February, 2005. Now that
9 CenturyTel has agreed to begin providing UNE combinations such as DS1 EELs, Socket
10 will be able to expand its service territory to serve the remainder of CenturyTel's
11 exchanges in the Westphalia LATA via UNEs. In addition, Socket has also begun testing
12 using two-wire and four-wire xDSL-capable loops to serve customers from its existing
13 collocation arrangement. Assuming that proves feasible, it will greatly expand the
14 customer base Socket may serve.

15 Socket is currently in the process of establishing a collocation facility in the
16 Wentzville exchange. Socket plans to use the facility to serve customers in that exchange
17 via two and four wire xDSL-capable copper loops and DS1 Loops and other customers
18 throughout much of the LATA via EELs. Socket next intends to expand into
19 CenturyTel's Branson exchange and establish a similar collocation arrangement.

20 **Q. Does the fact that Socket filed this arbitration indicate how serious Socket is about**
21 **competing in CenturyTel's territory?**
22

23 It certainly does. Socket would not have spent its scarce financial resources on
24 this case if it were not serious about competing and expanding throughout CenturyTel's

1 territory. Likewise, if Socket was only interested in serving ISPs, as will be discussed
2 later, Socket would not have brought this case when CenturyTel cancelled the
3 interconnection agreement between Socket and CenturyTel.

4 **Q. What other means has Socket used to reach customers in CenturyTel's franchise**
5 **area?**

6
7 A. Socket has used special access circuits to reach customers served by wire centers
8 where it does not have a collocation facility. Generally, special access rates are
9 substantially higher than UNE TELRIC rates, so use of special access is not an
10 economical long-term solution. In addition, the rate structure varies based upon whether
11 the CLEC has a collocation facility or does not have a collocation facility. Consequently,
12 while Socket has used special access facilities to date, it is not economically feasible to
13 rely on this as a growth strategy.

14 **Q. Do you have any comments on Mr. Hankins' forecast of Socket's growth and**
15 **CLECs' growth in general?**²¹

16
17 A. Yes. I disagree with Mr. Hankins' "forecast," which is that Socket will expand its
18 order quantity of DS1 loops by 17% in the next year. Assuming a favorable outcome in
19 this arbitration, Socket will be expanding into at least two new markets in the next year
20 and will finally have UNE combinations that will allow it to expand into additional
21 coverage areas beyond only those where it is collocated. Given those structural changes,
22 Mr. Hankins' "forecast" is meaningless.

²¹ First, according to Mr. Hankins' testimony, he has retail job responsibilities and does not directly work on implementing the interconnection agreement between Socket and CenturyTel. Under the terms and conditions of the interconnection agreement between Socket and CenturyTel, Mr. Hankins should never have seen the order quantities he used in his testimony. Further, even if Mr. Hankins had access to Socket's wholesale order information, Mr. Hankins should not have publicly disclosed that information.

1 **Q. Is Socket the only CLEC interested in competing in CenturyTel's territory?**

2 A. No. Socket does not comprise the entire CLEC industry. Any Performance
3 Measures and OSS systems would be available to any carrier that adopted the
4 interconnection agreement approved by the Commission. As the Testimony of Edward J.
5 Cadieux of NuVox Communications demonstrates, other carriers do want to compete in
6 these territories. In addition to NuVox, I have heard from another carrier indicating that
7 it will likely adopt this agreement, assuming a favorable outcome.

8
9 **CenturyTel's view of "parity" is legally and factually incorrect.**

10
11
12 **Q. Do you have a response to CenturyTel's overall position with respect to its**
13 **obligations to provide services to Socket at "parity"?**

14
15 A. Several CenturyTel witnesses discuss their views of parity and then claim
16 CenturyTel provides Socket with parity treatment.²² These witnesses either use an
17 incorrect definition of parity or incorrectly apply the term.

18 **Q. Have the Parties agreed upon a definition of "Parity" for use in this Agreement?**

19
20 A. Yes. In Article III, Section 53, the Parties use the following definition of
21 "Parity":

22
23 Notwithstanding anything in this Agreement to the contrary, CenturyTel
24 shall meet any service standard imposed by the FCC or by the Missouri
25 Public Service Commission for any services or facilities provided under
26 this Agreement.

27
28 For any services that either Party is required by Applicable Law to provide
29 to the other at parity, each Party shall provide services under this
30 Agreement to the other Party that are equal in quality to that the Party
31 provides to itself. "Equal in quality" shall mean that the service will meet
32 the same technical criteria and performance standards that the providing

²² See, e.g., Moreau Direct at 6-7; Direct Testimony of Pam Hankins at 23-24.

1 Party uses within its own network for the same service at the same
2 location under the same terms and conditions.
3

4 **Q. Does providing a function such as maintenance and repair functionality at parity**
5 **with the functionality that CenturyTel provides its own end-users meet the**
6 **standards in this definition?**
7

8 A. No. Socket is not a retail customer. Socket is entitled to the same level of
9 performance that CenturyTel provides itself. The fact that a retail end user customer
10 places a call to a CenturyTel 1-800 number, hears a recording that encourages the
11 customer to check the Network Interface Device on the side of his or her house before
12 proceeding with the call and then gives the customer the opportunity to take part in a
13 customer satisfaction survey before being allowed to speak to a representative does not
14 mean that Socket is entitled to receive the same level of service from CenturyTel.

15 Unlike a retail customer, Socket will have performed trouble isolation and
16 determined that the trouble is on CenturyTel's network before Socket's technicians even
17 contact CenturyTel. Socket may also be reporting problems with 911 circuits or
18 interconnection trunks that may potentially affect several users. For these reasons,
19 Socket needs a different standard than that provided to a retail customer and is entitled to
20 the level of performance that CenturyTel provides to itself.

21 **Q. Does the fact that CenturyTel may currently use the same process with respect to all**
22 **CLECs mean that CenturyTel is providing service at parity?**
23

24 A. No. The fact that CenturyTel has no process or an inefficient process for all
25 CLECs does not mean that CenturyTel is providing services to Socket at parity.
26 CenturyTel should not be permitted to treat wholesale customers indifferently, then argue
27 that since few wholesale customers have shown up in its territory, CenturyTel should not

1 be required to treat wholesale customers any better. Yet this is exactly the approach that
2 CenturyTel asks the Commission to adopt in this case.

3 **Q. Is Socket required to meet some threshold in order to receive services or**
4 **functionality at parity?**

5
6 A. No.
7
8

9 **The use of Foreign Exchange Service to serve ISPs**

10
11 **Q. Will you explain this issue?**

12 A. Yes. This issue involves providing services to ISPs via a foreign exchange
13 arrangement. This is a service that Socket provides. This is not the only service that
14 Socket provides. It is also a service that CenturyTel provides to Internet Service
15 Providers.²³ It is also used by the subsidiary within the CenturyTel family of companies
16 that provides dial-up Internet access in CenturyTel's ILEC footprint.²⁴ CenturyTel
17 witnesses Mr. Miller and Mr. Simshaw both address this service in their direct testimony.
18 This topic has implications for several disputed issues, so I am addressing it here in a way
19 that applies to all such disputed issues.

²³ See CenturyTel of Missouri, LLC, PSC Mo. No. 1, Section 7, 1st Revised Sheet 98, ISDN-PRI Out of Calling Scope which "allows a customer, upon the customer's request, to subscribe to ISDN-PRI service from a central office outside of the local calling scope of the central office from which the customer would normally be provided local exchange access services." This service is available as a two-way or terminating only service. CenturyTel – Spectra offers an identical service.

²⁴ Based upon Socket's testing, calls dialed to numbers assigned to CenturyTel.net for the Birch Tree, Eminence, Winona and Van Buren exchanges all connect to the same terminal server identified as "vnbrmocora1.clmamocoro2.centurytel.net." Based upon the name, I assume the server is located in Van Buren, Missouri. However, the location is not important. The important part is that customers are placing locally dialed calls to reach the Internet and the CenturyTel ISP is located in another Local Calling Area.

1 Based on CenturyTel's testimony, it appears that CenturyTel's position on this
2 issue is unique among ILECs. Socket's interconnection agreements with both AT&T
3 Missouri and Sprint address the exchange of all forms of FX traffic, including VNXX
4 traffic. In its proposed contract language, Socket proposes mutual exchange and
5 compensation of such traffic under a "bill and keep" arrangement via an interconnection
6 arrangement similar to that established under the Sprint and AT&T agreements.

7 While Socket is entitled to receive reciprocal compensation for this type of traffic,
8 Socket is willing to enter into a bill-and-keep arrangement with CenturyTel as well.²⁵
9 The quid pro quo for Socket's agreement is that CenturyTel must be required to deliver
10 its originating traffic to Socket at Points of Interconnection ("POIs") established in a
11 manner consistent with Socket's proposed contract language addressing POIs.

12 **Q. Can you describe the dispute?**

13 A. One major aspect of this dispute is what traffic the Parties will exchange over
14 interconnection arrangements established under this agreement (*See* Article II, Issue 14,
15 Article V, Issue 10, and Article V, Issue 33). It is Socket's position that the Parties must
16 be permitted to exchange all ISP-bound traffic over interconnection arrangements
17 established pursuant to this Agreement. It is CenturyTel's position that it will only
18 exchange ISP-bound traffic if the originating end-user and the ISP-customer are located
19 in the same local calling area. If the originating end-user and the ISP-customer are

²⁵ In the recent M2A Successor arbitration in which Socket was involved as part of the "CLEC Coalition," the issue of intercarrier compensation for FX and VNXX traffic was not before the Commission, because AT&T/SBC and the CLEC Coalition settled the issue. The settlement resulted in contract language that calls for the exchange of traffic on a "bill and keep" basis, exactly the arrangement Socket is advocating in this proceeding.

1 located in different local calling areas, CenturyTel proposes to reserve the right to revert
2 to its advocacy position on this issue — which is that access charges do apply to all ISP-
3 bound traffic that terminates to a physical ISP location outside of the local calling area.
4 This issue also involves whether Socket is entitled to a single point of interconnection in
5 a LATA subject to the conditions found in Socket's proposed language in Article V,
6 Issue 7, or whether Socket will be required to establish a Point of Interconnection within
7 each CenturyTel local calling area for routing of Local Traffic (Article V, Issue 7,
8 Article V, Section 15 and Article V, Issue 30).

9 This dispute is unnecessarily complex as CenturyTel is making it both an
10 interconnection issue and a compensation issue. It is CenturyTel's position that it is not
11 required to even interconnect under Section 251 with Socket for the exchange of ISP-
12 bound traffic where the originating customer and the ISP are located in different local
13 calling areas. No other carrier that Socket has ever dealt with has taken that position.

14 With respect to the compensation issue, CenturyTel's dispute is not whether or
15 not CenturyTel should be required to pay reciprocal compensation on ISP-bound traffic
16 (as is generally the disputed issue when this is raised in arbitrated proceedings). Instead,
17 CenturyTel has taken the position that it can assess some type of access charges on
18 Socket for traffic originated by CenturyTel's own end-users and bound for Socket.²⁶

²⁶ CenturyTel has never fully explained the jurisdiction of those access charges, how those access charges do not conflict with ESPs' exemption from paying access charges or how the access charges would be assessed. For example, if CenturyTel is permitted to charge Socket some sort of originating access charge, it would seem logical that Socket could assess some sort of terminating access charges on CenturyTel. None of this is addressed in CenturyTel's proposed contract language. The fact this is unaddressed makes it a certainty that there will continue to be disputes if Socket's contract language does not prevail.

CenturyTel's unique views, which make this both an interconnection issue and a compensation issue, mean that determining the proper treatment of this type of traffic is vitally important to Socket and it is also vastly different from the way the issue has been presented to the Commission in other cases.

Q. What is the basis for CenturyTel's claim that it is not required to interconnect for the exchange of FX-ISP Traffic?

A. My understanding is that the basis of CenturyTel's position is its belief that the traffic being exchanged is interstate in nature and, therefore, was not included in the Section 251(b)(5) traffic the FCC was addressing in its rules and orders.²⁷

Q. Do you agree with that position?

A. No.

Q. Why is CenturyTel obligated to exchange ISP-bound traffic with Socket through POIs established under this Agreement?

A. Under the FTA 96 and the FCC rules implementing the Act, ILECs are required to interconnect for purposes of providing exchange services and exchange access services to end-user customers.²⁸ ISPs purchase exchange services from local exchange carriers in order to provide ISP service. This is recognized in Socket's proposed definition of Information Access Traffic and Internet Service Providers (Article II, Issues 14 and 15). While the traffic may not be local, the services the Enhanced Service Providers, including

²⁷ Direct Testimony of Calvin Simshaw at 40.

²⁸ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (1996) ("Local Competition Order") at ¶ 26: The Commission finds that telecommunications carriers may request interconnection under section 251(c)(2) to provide telephone exchange or exchange access service, or both. If the request is for such purpose, the incumbent LEC must provide interconnection in accordance with section 251(c)(2) and the Commission's rules thereunder to any telecommunications carrier, including interexchange carriers and commercial mobile radio service (CMRS) providers."

1 Internet Service Providers, are purchasing are exchange services and, therefore, the
2 Parties are required to interconnect for the exchange of this traffic.

3 **Q. Can you please explain why the location of the modem is not relevant for**
4 **interconnection or compensation purposes?**

5
6 A. Yes. In the ISP Remand Order, the FCC held that “traffic delivered to an ISP is
7 predominantly interstate access traffic subject to section 201 of the Act.”²⁹ The FCC
8 unambiguously concluded that intercarrier compensation for traffic bound for ISPs is not
9 governed by FTA § 251(b)(5), but rather by § 201 of the Communications Act (which
10 provides the statutory basis for the FCC’s jurisdiction over interstate services). It was
11 this assertion of jurisdiction over all ISP-bound traffic that permitted the FCC to impose
12 the interim compensation regime it established in the ISP Remand Order. As the FCC
13 put it:

14 Having found that ISP-bound traffic is excluded from section 251(b)(5) by
15 section 251(g), we find that the Commission has the authority pursuant to
16 section 201 to establish rules governing intercarrier compensation for such
17 traffic. Under section 201, the Commission has long exercised its
18 jurisdictional authority to regulate the interstate access services that LECs
19 provide to connect callers with IXCs or ISPs to originate or terminate calls
20 that travel across state lines. Access services to ISPs for Internet-bound
21 traffic are no exception.³⁰

22
23 The FCC held that, like other rates regulated under its interstate jurisdiction, intercarrier
24 compensation for calls to ISPs is subject to federal, not state, jurisdiction. The ISP
25 Remand Order could not be clearer in asserting that intercarrier compensation for all

²⁹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and CC Docket No. 99-68, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98, Order on Remand and Report and Order at ¶ 1 (April 27, 2001) (“ISP Remand Order”).

³⁰ *Id.* at ¶ 52.

1 traffic bound for ISPs is subject to federal jurisdiction. For example (with emphasis
2 supplied in each quote):

3 For the foregoing reasons, consistent with our longstanding precedent, we
4 find that we continue to have jurisdiction under section 201, as preserved
5 by section 251(i), to provide a compensation mechanism for ISP-bound
6 traffic.³¹

7 ***

8 [T]he service provided by LECs to deliver traffic to an ISP constitutes, at a
9 minimum, “information access” under section 251(g) and, thus,
10 compensation for this service is not governed by section 251(b)(5), but
11 instead by the Commission’s policies for this traffic and the rules adopted
12 under its section 201 authority.³²

13
14 This Order does not preempt any state commission decision regarding
15 compensation for ISP-bound traffic for the period prior to the effective
16 date of the interim regime we adopt here. Because we now exercise our
17 authority under section 201 to determine the appropriate intercarrier
18 compensation for ISP-bound traffic, however, state commissions will no
19 longer have authority to address the issue.³³

20
21 The Commission has historically dictated the pricing policies applicable to
22 services provided by LECs to information service providers, although
23 those policies differ from those applicable to LEC provision of access
24 services to IXC. Prior to the 1996 Act, it was the Commission that
25 determined that ESPs either may purchase their interstate access services
26 from interstate tariffs or (at their discretion) pay a combination of local
27 business line rates, the federal subscriber line charges associated with
28 those business lines, and, where appropriate, the federal special access,
29 surcharge. See note 105, *infra*. We conclude that section 251(g) preserves
30 our ability to continue to dictate the pricing policies applicable to this
31 category of traffic.³⁴

32
33 This [interim pricing] interim regime affects only the intercarrier
34 compensation (i.e., the rates) applicable to the delivery of ISP-bound
35 traffic. It does not alter carriers’ other obligations under our Part 51 rules,

³¹ *Id.* at ¶ 65.

³² *Id.* at 30.

³³ *Id.* at ¶ 82.

³⁴ *Id.* at ¶ 39, n.70.

1 47 C.F.R. Part 51, or existing interconnection agreements, such as
2 obligations to transport traffic to points of interconnection.³⁵
3

4 The FCC's decision was based on its view of the interplay between Section 251(b)(5)
5 regarding reciprocal compensation and Section 251(g). The FCC made clear that its
6 holding did not, as the paragraph quoted above states, intended to "alter carriers' other
7 obligations under our Part 51 rules ... such as obligations to transport traffic to points of
8 interconnection." The FCC took jurisdiction over the intercarrier compensation due for
9 ISP-bound traffic, but did not alter interconnection obligations arising under Section 251.

10 **Q. Did the FCC condition its jurisdiction over intercarrier compensation for ISP-**
11 **bound traffic on whether the traffic was bound for an ISP within a caller's state-**
12 **defined local calling area?**
13

14 A. No, it did not. In the ISP Remand Order, the FCC described how a customer
15 reaches the Internet as follows.

- 16 • Typically, when the customer wishes to interact with a person, content, or
17 computer, the customer's computer calls a number provided by the ISP that is
18 assigned to an ISP modem bank.³⁶
19
- 20 • In most cases, an ISP's customer first dials a seven-digit number to connect to the
21 ISP server before connecting to a website³⁷
22
- 23 • Internet calls operate in a similar manner: after reaching the ISP's server by
24 dialing a seven-digit number, the caller selects a website (which is identified by a
25 12-digit Internet address, but which often is, in effect, "speed dialed" by clicking
26 an icon) and the ISP connects the caller to the selected website.³⁸
27
- 28 • Although it is true that "information access" is necessarily initiated "in an
29 exchange area," the MFJ definition states that the service is provided "*in*
30 *connection with* the origination, termination, transmission, switching, forwarding

³⁵ *Id.* at ¶ 78, n.149.

³⁶ *Id.* at ¶ 58.

³⁷ *Id.* at ¶ 61.

³⁸ *Id.*

1 or routing of telecommunications traffic to or from the facilities of a provider of
2 information services” *United States v. AT&T*, 552 F. Supp. at 229 (emphasis
3 added). Significantly, the definition does not further require that the transmission,
4 once handed over to the information service provider, terminate within the same
5 exchange area in which the information service provider first received the access
6 traffic.³⁹

7
8 In fact, the FCC went to great lengths to clarify that its Order did not rest on distinctions
9 between “local” and “non-local” ISP-bound calls.

10 For purposes of the FCC’s analysis, there is no meaningful difference between an
11 ISP-bound call originating and routing to an ISP in the same local exchange area and one
12 that originates and routes to an ISP in a different exchange. When two carriers
13 collaborate to complete the “Internet communication,” the call is declared “interstate”
14 and subject to the FCC’s compensation regime.

15 The FCC made certain to clarify that, unlike its earlier *Declaratory Order*
16 asserting ISP-bound traffic is interstate (which was also reversed and remanded by the
17 D.C. Circuit) and unlike the 1996 *Local Competition Order*, the interpretation of the FTA
18 in the ISP Remand Order did not rest on distinctions between “local” and “non-local”
19 ISP-bound calls. The FCC made this point explicitly in paragraph 34:

20 This analysis differs from our analysis in the Local Competition Order, in
21 which we attempted to describe the universe of traffic that falls within
22 subsection (b)(5) as all “local” traffic. We also refrain from generically
23 describing traffic as “local” traffic because the term “local,” not being a
24 statutorily defined category, is particularly susceptible to varying
25 meanings and, significantly, is not a term used in section 251(b)(5) or
26 section 251(g).⁴⁰
27

³⁹ *Id.*, n. 82.

⁴⁰ *Id.* at ¶ 34.

1 The FCC emphasized this point by removing all references to the word “local” from the
2 revised reciprocal compensation rules it adopted in the ISP Remand Order.⁴¹

3 **Q. How are the Parties supposed to exchange this type of traffic?**

4
5 **A.** The Parties are required to exchange all ISP-bound traffic as well as all other
6 Local Interconnection Traffic through POIs established under this Agreement. Subject to
7 the conditions set forth in Socket’s proposed contract language, Socket believes that it is
8 entitled to a single POI per LATA. Mr. Turner will address the conditions being offered
9 by Socket for establishing additional Points of Interconnection.

10 **Q. Is Socket entitled to a single Point of Interconnection as long as that point is**
11 **technically feasible?**

12
13 **A.** The answer is clearly “Yes.” The Arbitrator and the Commission reached this
14 same conclusion in the recent M2A replacement arbitration. With respect to CenturyTel,
15 the Staff Report in Case No. TO-2006-0068, *FullTel, Inc. v. CenturyTel of Missouri,*
16 *LLC*, provided the same conclusion. Specifically, the Staff Report states,

17 FullTel requests a single POI to serve Ava, Mansfield, Willow Springs
18 and Gainesville. With respect to this request and only addressing these
19 four exchanges, federal rules and the Commission in its M2A order
20 indicate FullTel can establish one POI within CenturyTel’s service
21 territory as long as it is “technically feasible.” CenturyTel would have the
22 burden to show why it is technically infeasible for FullTel to only
23 establish one POI.⁴²

24
25 Most telling is that Mr. Simshaw himself recognizes this as he cites to positions
26 advocated in the FCC’s Intercarrier Compensation Docket and then acknowledges that

⁴¹ *Id.* at Appendix B – Final Rules: “Part 51, Subpart H, of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows: ... Sections 51.701(a), 51.701(c) through (e), 51.703, 51.705, 51.707, 51.709, 51.711, 51.713, 51.715, and 51.717 are each amended by striking ‘local’ before ‘telecommunications traffic’ each place such word appears.”

⁴² Case No. TO-2006-0068, *FullTel, Inc. v. CenturyTel of Missouri, LLC*, Staff Report at 8.

1 the FCC has yet to rule in the Intercarrier Compensation proceeding.⁴³ Until the FCC
2 rules on this issue, the rules remain the same and Socket is entitled to a single point of
3 interconnection per LATA. Mr. Simshaw's position would be very comparable to my
4 asserting that I was told the FCC was going to reinstate UNE-P and asking CenturyTel to
5 go ahead and include that in this interconnection agreement. I doubt CenturyTel would
6 be willing to do that and I would not bring that issue to arbitration. If the FCC does issue
7 a decision that changes these rules, the Parties will address that through the agreed upon
8 change in law process.

9 **Q. Do you have a response to Mr. Simshaw's statements that a single point of**
10 **interconnection is "appropriate only as an entry vehicle during the initial period of**
11 **CLEC entry into a LATA"?⁴⁴
12**

13 A. Yes. Again, there is nothing in the FCC rules that support Mr. Simshaw's claim.
14 In the recent SBC M2A replacement arbitration, SBC made the same baseless argument,
15 albeit with a much higher threshold for triggering additional POIs. There is no limitation
16 on single POIs being available to CLECs that are "entering a market." This is merely
17 CenturyTel's attempt to phase out over time a CLEC's ability to choose to establish a
18 single POI per LATA, when in fact no such phase-out has ever been envisioned under the
19 law. A CLEC may voluntarily agree to establish more than one POI, but only a single
20 POI per LATA is required under current law. For that reason, SBC's attempt to impose a
21 24 DS1 threshold in the recent M2A replacement arbitration was rejected by the

⁴³ Simshaw Direct at 34.

⁴⁴ *Id.* at 13.

1 Arbitrator.⁴⁵ Likewise, there is no basis for Mr. Simshaw's much smaller 24 DS0 or
2 single DS1 threshold.

3 **Q. Mr. Simshaw makes the claim that allowing Socket to have a single Point of**
4 **Interconnection would not be "technically feasible" and cites capacity limitations as**
5 **the reason.⁴⁶ Do you have a response?**
6

7 A. Yes. A lack of current capacity does not equate to a POI not being technically
8 feasible as that term is defined by the FCC. Later, Mr. Simshaw's own testimony
9 recognizes this as he acknowledges that the underlying facility can be upgraded, but then
10 protests CenturyTel's obligation to pay for the upgrade.⁴⁷ His plan for shifting those
11 costs to Socket is to require Socket to establish additional POIs. Once again, this is an
12 issue of cost and who should be responsible for getting its originating traffic to the POI
13 and when additional POIs should be established, not about whether the requested point of
14 interconnection is technically feasible.

15 **Q. Can you provide the definition of "technically feasible"?**

16 A. Yes. The FCC rules contain the following definition:

17 *Technically feasible.* - Interconnection, access to unbundled network
18 elements, collocation, and other methods of achieving interconnection or
19 access to unbundled network elements at a point in the network shall be
20 deemed technically feasible absent technical or operational concerns that
21 prevent the fulfillment of a request by a telecommunications carrier for
22 such interconnection, access, or methods. A determination of technical
23 feasibility does not include consideration of economic, accounting, billing,
24 space, or site concerns, except that space and site concerns may be
25 considered in circumstances where there is no possibility of expanding the
26 space available. The fact that an incumbent LEC must modify its facilities
27 or equipment to respond to such request does not determine whether

⁴⁵ TO-2005-0066, Final Arbitrator's Report Section V at 8.

⁴⁶ Simshaw Direct at 22.

⁴⁷ *Id.*

1 satisfying such request is technically feasible. An incumbent LEC that
2 claims that it cannot satisfy such request because of adverse network
3 reliability impacts must prove to the state commission by clear and
4 convincing evidence that such interconnection, access, or methods would
5 result in specific and significant adverse network reliability impacts.
6

7 A recent Fifth Circuit federal court decision sets forth a summary of ILEC obligations
8 related to interconnection as follows:

9 [A]n ILEC must provide a CLEC interconnection within its network at
10 any technically feasible point. The FCC has determined that technical
11 feasibility does not include consideration of economic, accounting, or
12 billing concerns. Further, the FCC has stated that § 251(c)(2) allows
13 competing carriers to choose the most efficient points at which to
14 exchange traffic with incumbent LECs, thereby lowering the competing
15 carriers' costs of, among other things, transport and termination of traffic.
16 Recognizing that ILEC networks were not designed to accommodate
17 third-party interconnection, the FCC notes that ILECs are nevertheless
18 required to adapt their facilities to interconnection or use by other carriers,
19 and must accept the novel use of, and modification to, its network
20 facilities to accommodate the interconnector.
21

22 Section 251 of the Act, entitled "Interconnection," imposes on ILECs the
23 duty to provide, for the facilities and equipment of any requesting
24 telecommunications carrier, interconnection with the local exchange
25 carrier's network . . . at any technically feasible point within the carrier's
26 network . . . on rates, terms, and conditions that are just, reasonable, and
27 nondiscriminatory. Meanwhile, § 51.703 of the FCC regulations, entitled
28 "Reciprocal Compensation for Transport and Termination of
29 Telecommunications Traffic," prohibits an ILEC from assessing charges
30 on any other telecommunications carrier for telecommunications traffic
31 that originates on the [ILEC]'s network.⁴⁸
32

33 CenturyTel has an affirmative obligation to adapt its network to accommodate
34 interconnection and neither economics nor the fact that a LEC must modify its facilities
35 or equipment to accommodate the requested interconnection play a role in determining
36 whether a requested POI is technically feasible.

⁴⁸ *Southwestern Bell Tel. Co. v. Public Utilities Comm'n*, 348 F. 3d 482, 486 (5th Cir. 2003) (citations omitted).

1 **Q. Does Mr. Simshaw's assertion of a single POI not being technically feasible because**
2 **of current capacity limitations concern you?**

3
4 A. Absolutely. Mr. Simshaw's assertion that a lack of current capacity equates to a
5 POI not being technically feasible causes grave concerns and clearly demonstrates that
6 there must be a definitive threshold for requiring additional POIs. If left to "technically
7 feasible," I believe there will be numerous, on-going disputes between the parties as
8 Mr. Simshaw has already stated that CenturyTel will base its view of technically feasible
9 on whether it presently has capacity in place.

10 **Q. What is the basis of your concern?**

11 A. My concern is based upon Socket's experience with CenturyTel. As I stated in
12 my direct testimony, CenturyTel is the only carrier that Socket is interconnected with that
13 has raised and continues to raise capacity issues as a reason that it cannot interconnect.

14 This concern is the reason that Socket is offering to establish additional Points of
15 Interconnection when traffic exceeds certain thresholds rather than when CenturyTel
16 believes it can prove that Socket's existing POI is no longer technically feasible or that
17 the amount of capacity exchanged at that POI cannot be expanded.

18 **Q. How was this issue resolved in the M2A replacement arbitration?**

19
20 A. In deciding when additional POIs may be required in the M2A replacement
21 arbitration, the Arbitrator ruled "SBC Missouri may require an additional POI in a LATA
22 when it can establish that the CLEC's use of a single POI is no longer technically
23 feasible."⁴⁹ Based upon that ruling and to avoid numerous disputes regarding when a
24 single POI is no longer technically feasible, the POI threshold in that arbitration was set

⁴⁹ TO-2005-0066, Final Arbitrator's Report Section V at 8.

1 at an OC12. Socket has been unable to reach an agreement with CenturyTel on what
2 should be the appropriate traffic threshold for triggering additional POIs.

3 As its Final Offer, Socket has changed its original proposed contract language to
4 require additional POIs when traffic exceeds an OC3 level. This is a substantially lower
5 level that was approved in the M2A replacement agreements and gives CenturyTel the
6 right to use a clear, defined threshold to prove that additional POIs are required.

7 **Q. Does the fact that Socket may provide service to ISP customers using FX service**
8 **change anything regarding Points of Interconnection?**

9
10 A. The answer is no. Socket sells services to ISPs out of local business tariffs, just as
11 CenturyTel does. While CenturyTel claims it is unfair, it provides the same service.

12 The use of FX service does not increase CenturyTel's marginal costs as
13 Mr. Simshaw claims. Either way, CenturyTel is required to deliver that traffic to the
14 POI. Using Mr. Simshaw's example of a customer in Ava and a POI in Branson, if
15 CenturyTel's Ava customer places a call to a Socket customer located in Ava, CenturyTel
16 is obligated to carry that call to the POI in Branson. Socket would be obligated to carry
17 that call back to Ava. Likewise if CenturyTel's customer in Branson places a call to an
18 ISP served by Socket via FX service, CenturyTel would carry that call to the same POI in
19 Branson and Socket would carry that call to the ISP. Either way, CenturyTel's costs are
20 the same. The only way for CenturyTel to avoid those costs is to force Socket to
21 establish another POI in Ava.

22 **Q. Is it appropriate for CenturyTel to shift its trunking costs to Socket by requiring**
23 **additional POIs?**
24

1 A. No. CenturyTel's proposal to require additional POIs regardless of the technical
2 feasibility imposes an unfair portion of the trunking costs on Socket. The FTA states that
3 a CLEC cannot be required to pay for termination of the ILEC's traffic.⁵⁰ CenturyTel's
4 proposal that Socket establish additional POIs is akin to requiring Socket to pay for
5 circuits over which CenturyTel's traffic terminates and is directly in violation of the
6 FCC's rules⁵¹ and is contradictory to the FCC's *Virginia WorldCom* decision.⁵²

7 **Q. Do you have any comments regarding Mr. Simshaw's claims about fairness?**

8
9 A. Yes. Under the FCC's rules, Socket is required to establish a POI on
10 CenturyTel's network. When a call is originated by a CenturyTel customer to a Socket
11 customer, Socket must carry that call back to its switch and then on to the customer. That
12 requirement imposes costs on Socket and those costs should not be ignored as
13 Mr. Simshaw so easily does. As to fairness, CenturyTel is doing nothing more than
14 asking the Commission to shift the costs of interconnection from CenturyTel to Socket in
15 ways that the FTA 96 and the FCC's rules do not permit. These issues have been
16 extensively addressed by the FCC's rules, in the *Virginia Arbitration*, and by this
17 Commission in the M2A successor proceedings. The Commission should not rule
18 contrary to those established precedents in this case.

⁵⁰ 47 C.F.R. 51.703(b) prohibits one LEC from charging another carrier for transporting telecommunications traffic that originates on the LEC's network.

⁵¹ *Id.*

⁵² *In re Petition of WorldCom, Inc. Pursuant to §§ 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Va. State Corp. Comm'n re Interconnection Disputes with Verizon Va. Inc., & for Expedited Arbitration*, Memorandum Opinion & Order, 17 FCC Rcd 27039, 27064-5 DA 02-1731 (¶ 53) (2002) ("*Virginia WorldCom Order*"). "The petitioners' proposals, therefore, are more consistent with the Commission's rules for section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network."

1 Finally, Socket would be well within its rights to seek reciprocal compensation
2 for CenturyTel's delivery of this type of traffic. A recent decision from Washington
3 required Qwest to pay reciprocal compensation on all traffic, including ISP-bound traffic
4 provisioned via FX service. In short that decision requires that Qwest:

5 comply with the FCC's ISP Remand Order and fulfill its contractual
6 obligations to compensate PacWest for all ISP-bound traffic, including
7 VNXX traffic. The Commission determines the interim compensation
8 mechanism in the ISP Remand Order to apply to all ISP-bound traffic,
9 regardless of the point of origination and termination of the traffic.⁵³

10
11 **Q. Is there anything else that you would like to bring to the attention of the Arbitrator?**

12
13 **A.** Yes. The Arbitrator should be mindful of the interconnection requirements found
14 in the interconnection agreement that CenturyTel's two competitive affiliates have with
15 SBC.⁵⁴ Under the Agreement adopted by the two CenturyTel affiliates, the Arbitrator
16 ruled that each party is obligated to carry their own originating traffic to the terminating
17 carrier's switch.⁵⁵ In instances where one party is terminating more traffic than another
18 party, the party originating more traffic will incur a greater expense. Generally, this type

⁵³ Docket UT-053036, *Pac-West Telecomm, Inc., Petitioner v. Qwest Corporation, Respondent*, Order No. 5, Final Order Affirming and Clarifying Recommended Decision, issued by the Washington State Utilities and Transportation Commission, February 10, 2006 at 1.

⁵⁴ Case No. LK-2006-0095, Application of CenturyTel Solutions, LLC, and CenturyTel Fiber Company II, LLC, d/b/a LightCore, a CenturyTel Company, for approval of their adoption of an approved interconnection agreement between Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, and Xspedius Management Company of Kansas City, LLC, and Xspedius Management Company Switched Services, LLC, Order Approving Adoption of Interconnection Agreement. Updated 11/1/05.

⁵⁵ TO-2005-0066, Final Arbitrator's Report Section V at 10 where the Arbitrator found that, "Each Party is financially responsible for facilities on its side of the POI. A Party that agrees to carry traffic that originated on or transited its network to the terminating carrier's nearest tandem may require the other Party to reciprocate.

1 of interconnection arrangement is sought by a company with more terminating than
2 originating usage.

3 If Socket were to have that same arrangement with CenturyTel, CenturyTel would
4 be required to deliver its originating traffic at Socket's switch, just as SBC must do with
5 Lightcore and CenturyTel Solutions. I find it amazing that CenturyTel complains about
6 carrying its own originating traffic to a Point of Interconnection on its network where all
7 traffic is exchanged while its competitive affiliates have adopted agreements that require
8 the ILEC to deliver its customer's originating traffic to LightCore's switch.

9 Socket has proposed a very reasonable compromise. The parties will exchange all
10 traffic at POIs established under Socket's proposed conditions set forth in its contract
11 language and the compensation will be bill and keep. On the other hand, CenturyTel
12 offers a myriad of contract language referring to extraneous documents and reserving the
13 right to revert to advocacy positions that are not set out in its proposed language.

14 From Socket's perspective it is clear that Socket is entitled to a single point of
15 interconnection. It is also clear that Socket is entitled to reciprocal compensation.
16 However, Socket is waiving that right in order to secure a reasonable resolution of this
17 issue.

18 **Q. Setting aside the services to ISPs, how would requiring Socket to establish a POI in**
19 **each Local Calling Area affecting Socket's ability to provide other services?**
20

21 **A.** The answer is that it would obviously have a negative impact on Socket's ability
22 to expand into additional markets as it would obviously increase costs. When Socket
23 begins to provide voice services in a local calling area, Socket has to secure 911 facilities
24 for that Local Calling Area. Those facilities have a cost. In addition, Socket needs to

1 lease facilities to reach the customer premise such as EELs. Requiring Socket to
2 establish a POI in that exchange would also mean that Socket has to obtain a minimum of
3 an additional DS-1 of trunking capacity. By increasing the costs, Socket will need to
4 make sure that it can serve enough customers to justify these additional costs as well as the
5 direct marginal cost of serving the customer. This will certainly preclude entry into
6 smaller markets where Socket will only be able to serve a few customers.

7
8 **ARTICLE II – DEFINITIONS**

9
10 **Issue 2: Should the Agreement contain a definition of an accepted term that**
11 **describes the means of communication between CenturyTel and Socket?**

12
13 **CenturyTel Alternative Issue Statement: Should the parties ICA include a**
14 **definition of “Accessible Letter”?**
15

16 This issue should be considered with Article III, Issue 9. If the Arbitrator selects Socket’s
17 language on Article III, Issue 9, the Arbitrator should also adopt Socket’s language on this
18 definitions issue. If the Arbitrator adopts CenturyTel’s language on Article III, Issue 9, then
19 there should be no definition of “Accessible Letter.”
20
21

22 **Issue 6: Can CenturyTel avoid its obligation to provide currently available**
23 **services at parity by shifting the ability to provide those services to an**
24 **affiliate?**
25

26 **CenturyTel Alternative Issue Statement: Should the parties’ ICA extend**
27 **obligations to CenturyTel affiliates?**
28

29 **Q. Can you summarize Mr. Simshaw's direct testimony on this issue?**

30 **A.** Mr. Simshaw claims that Socket’s proposed language is an attempt to bind third
31 parties to this interconnection agreement. He also claims that if Socket’s language were

1 adopted, it would not be technically feasible to implement since CenturyTel would be
2 required to somehow integrate affiliate operations.

3 **Q. What is your response?**

4 A. As I stated in my direct testimony, Socket's proposed language does not in any
5 way bind third parties to this agreement. It does impose the obligation upon CenturyTel
6 to determine if an affiliate has the service or facility available at the time Socket places an
7 order. Given CenturyTel's reliance upon affiliates to provide network facilities, Socket's
8 request is completely reasonable. Otherwise, CenturyTel would be able to avoid
9 unbundling obligations by practicing a "just in time" inventory practice with respect to
10 network facilities.

11 **Q. Does Socket's proposed language require CenturyTel to integrate its Affiliates'**
12 **operations into CenturyTel's own operations?**

13
14 A. No. Socket expects only the same amount of integration that CenturyTel has for
15 itself. For example, if Socket places an order for transport facilities and CenturyTel
16 determines that it does not have capacity, CenturyTel would only be obligated to
17 undertake the same process it would if CenturyTel itself needed transport along that
18 same route in determining whether an affiliate has the capacity.

19 **Q. What about Mr. Simshaw's claim regarding the lack of a definition for "Affiliate"?**

20
21 A. Mr. Simshaw is wrong. The Parties have already agreed upon a definition of
22 "Affiliate" in Article II, Section 1.5.

23
24 **Issue 14: Should the definition of Information Access Services, and consequently,**
25 **Information Access Traffic be consistent with existing industry and**
26 **regulatory standards?**
27

1 **CenturyTel's alternative issue statement: How should the ICA define "Information**
2 **Access" and "Information Access Traffic"?**

3
4 **Issue 15: Which Party's definition of "Internet Service Provider" should be used?**

5
6 **Q. Is there any area of agreement on these issues?**

7 A. Yes. Mr. Simshaw and I are in agreement on one thing -- that is these definitions
8 will directly affect how the Parties treat ISP-bound traffic. I addressed that premise in
9 my introduction and won't burden the Arbitrator with repeating that entire argument here.
10 In short, the Arbitrator has to decide whether the ISP Remand Order, the FCC's
11 Intercarrier compensation mechanism, and a LEC's duty to interconnect apply to all ISP-
12 bound traffic as Socket contends or whether the ISP Remand Order, the FCC's interim
13 compensation mechanism, and a LEC's duty to interconnect apply only to "local" ISP-
14 bound traffic as CenturyTel contends. Rather than repeat the arguments in my
15 Introduction, I will add just one thing. Generally, when CLECs and ILECs disagree over
16 an FCC rule, decision, or a court's decision, they fall into two general opposing sides.
17 While there may be some differences between various ILECs and CLECs, the differences
18 are not usually that great. Here, CenturyTel is taking a position that I am not aware of
19 any other ILEC having taken. Rather than focus on ISP-bound traffic as a compensation
20 issue, CenturyTel is focusing on this as interconnection issue and going so far as to
21 dispute a CLEC's right to interconnect for the exchange of ISP-bound service provision
22 via an FX arrangement. Even when the FCC looked into the ISP issue, it did so only in
23 the context of compensation and specifically noted,

24 This interim regime affects only the intercarrier *compensation* (i.e., the rates)
25 applicable to the delivery of ISP-bound traffic. It does not alter carriers' other

obligations under our Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection.⁵⁶

It should certainly raise a flag to the Arbitrator that CenturyTel is at odds with entire industry.

Q. Mr. Simshaw states that both Parties' definitions refer to the ISP Remand Order. Is that correct?

A. No. Socket's original definition of "ISP traffic" referred to the ISP Remand Order, but I have withdrawn that definition in favor of a simple definition for "ISP" and a reference that "ISP traffic" is merely traffic to and from an ISP. Socket eliminated the reference to the ISP Remand Order in order to avoid the controversy that would unnecessarily infect the Interconnection Agreement if a dispute arises in the future concerning the interpretation of that FCC order. As I stated in my direct testimony, that is one inherent flaw in both of CenturyTel's definitions as well as the fact that they are erroneous.

Issue 16: Should the ICA include a definition of "IntraLATA Toll Traffic"?

CenturyTel's Alternative Issue Statement: How should the parties' ICA define "IntraLATA Toll Traffic"?

Q. Why does Mr. Simshaw oppose Socket's proposed definition of IntraLATA toll?

A. Mr. Simshaw's stated concern is that carriers in the future will be tempted to argue that intraLATA traffic has been converted to non-access traffic because there is no longer any retail usage-based charge. That is not the case at all. Socket's proposed definition would only require there to be a separate retail charge, just as the FCC's definition does today.

⁵⁶ ISP Remand Order, n. 149.

1 The separate charge does not have to be usage-based. Mr. Simshaw's concerns are
2 misplaced. As Socket's definition tracks with the FCC's definition of Telephone Toll
3 Service, it should be adopted in order to prevent anomalies in how calls are rated and
4 billed.

5
6 **Issue 34 and Article VII, Issue 32: Which Party's Definition of Dedicated Transport**
7 **is appropriate?**
8

9 **Q. What is the primary difference between the Parties on this issue?**

10 A. Socket proposes to include dedicated transport between a CenturyTel end office
11 and a Spectra end office (and vice versa) as well as between two CenturyTel end offices
12 or between two Spectra end offices. CenturyTel wants dedicated transport restricted to
13 routes between only CenturyTel end offices or between only Spectra end offices.

14 Based upon CenturyTel's direct testimony, Socket revised its definition to be
15 more limited in order address CenturyTel's stated concerns about requiring the
16 CenturyTel entities to provide dedicated transport between two switches that are not
17 directly connected by facilities owned by either CenturyTel or Spectra.

18 "Dedicated Transport" is defined as CenturyTel interoffice transmission facilities
19 dedicated to a particular CLEC or CLEC's customer that is within CenturyTel's
20 network, connecting CenturyTel switches or wire centers within a LATA.
21 **Dedicated transport also includes interoffice transmission facilities between**
22 **CenturyTel of Missouri, LLC's network and Spectra Communications**
23 **Group, LLC d/b/a CenturyTel's network and vise-versa that directly connect**
24 **two switches or wire centers within a LATA without making use of transit or**
25 **switching facilities of a third party LEC.** Dedicated Transport does not include
26 transmission facilities between CenturyTel's network and Socket's network or the
27 location of Socket's equipment.
28

29 This change may not eliminate the core of the dispute, but it should limit it.

1 **Q. Mr. Busbee claims the FCC’s definition of unbundled dedicated transport does not**
2 **require one incumbent LEC to provide a Dedicated Transport route between its**
3 **wire center or switch and the wire centers and switched of other incumbent LECs,**
4 **even when the incumbent LECs are owned by the same holding company. Do you**
5 **have a response?**

6
7 A. First, as pointed out in my direct testimony, while CenturyTel-Spectra and
8 CenturyTel-Missouri may be separate legal entities, they are fully-integrated, managed
9 jointly, operating under the same name, and operating within the same LATA. Mr.
10 Busbee does not refute that. In reviewing the Triennial Review Remand Order, I found
11 nothing that directly addressed this situation when it considered unbundled dedicated
12 transport. While CenturyTel, Inc. may have tax or USF reasons for maintaining separate
13 legal entities, that does not change the fact that these entities are owned, operated, and
14 managed as a single entity. It would take affirmative action on CenturyTel’s part to
15 operate otherwise. For that reason, I believe that it is appropriate to treat them as one
16 entity.

17 Finally, the FCC’s definition Dedicated Transport does not preclude the
18 arrangement Socket is seeking as Mr. Busbee alleges. Section 51.319(e) states as
19 follows: “for purposes of this definition, dedicated transport includes incumbent LEC
20 transmission facilities between wire centers or switches owned by incumbent LECs”
21 In the FCC’s discussion of dedicated transport in the *TRRO*, the FCC sets up its
22 unbundling rulings in terms of whether CLECs have or could be expected to have
23 deployed their own fiber transport facilities. The ILECs’ unbundling obligation is
24 eliminated depending on the classification of the wire center on each end, classification
25 that is determined by whether a threshold number of fiber optic collocators or a threshold

1 number of business lines, or both are present. There is nothing in the FCC's discussion in
2 the *TRRO* that indicates that entities that are affiliates controlled by the same legal entity
3 should not be treated as one entity. To do otherwise, would allow ILECs to fracture their
4 companies into multiple affiliates and thereby eliminate their unbundling obligations.

5 **Q. What are the consequences of the Arbitrator not selecting Socket's proposed**
6 **language?**

7
8 A. A large number of CenturyTel-Spectra end offices directly subtend CenturyTel-Missouri
9 tandem offices. In addition, I understand these offices do not have a direct connection to
10 other Spectra end offices. Without the use of EELs, which require interoffice transport,
11 there is no economic manner in which to serve these exchanges. These exchanges would
12 essentially be "written off" for having competitive alternatives. That outcome would be
13 inconsistent with the purposes of the Chapter 392 of the Missouri statutes as set forth in
14 Section 392.185, which are Section 392.185(3) - Promote diversity in the supply of
15 telecommunications services and products throughout the state of Missouri and Section
16 392.185(7) - Promote parity of urban and rural telecommunications services;

17 As I stated in my direct testimony, these two CenturyTel ILECs are operated as a
18 single entity and that single functional operating entity is currently capable of providing
19 dedicated transport between exchanges served by CenturyTel – Missouri and CenturyTel
20 - Spectra. The Arbitrator should accept Socket's proposed definition and ensure that
21 CenturyTel does not avoid its Section 251 obligations merely through a corporate fiction.

ARTICLE III - GENERAL PROVISIONS

Issue 2: Should the payment due date be 45 calendar days or 20 business days from the bill date?

Q. Can you briefly describe this issue?

A. Yes, this issue concerns the number of days that payment is due after the bill date. Socket is proposing 45 days after the bill date while CenturyTel is proposing 20 business days after the bill date. Twenty business days equates to approximately 30 days.

Q. In your Direct Testimony, did you state how many separate bills Socket receives?

A. Yes, I did. I need to revise that statement as I included retail bills that Socket receives from CenturyTel. Socket does receive 8 separate wholesale bills in two different formats. As Socket expands its operations both geographically and through additional customers in current serving areas, that will increase.

Q. Can you summarize Ms. Hankins' response to Socket's proposal?

A. Ms. Hankins opposes Socket's proposed language on the grounds that Socket's demands are unreasonable because of the length of the bills and because CenturyTel has other options that would make bills available to Socket sooner. Nowhere does she address the fact that CenturyTel's bills are the most error-prone of any carrier that Socket deals with.

I have addressed the issue of Socket's size and growth earlier in this rebuttal testimony. Needless to say, Socket is looking for systems and processes that will scale as Socket expands. Manual processes that require extensive auditing do not scale well.

1 **Q. Have you looked into Ms. Hankins proposed alternative billing media that she**
2 **describes and states would get the bills to Socket earlier?**

3
4 A. We are currently in the process of evaluating whether to receive CABS bills
5 electronically, but have experienced delays in that assessment because of inadequate
6 information from CenturyTel. But even assuming this is a suitable alternative for Socket,
7 it still leaves significant delay between the bill date and the due date. In my direct
8 testimony, I mentioned that Socket has experienced receipt of bills an average of 13 days
9 after the bill date. Ms. Hankins' proposed alternative would provide the bill 5-7 days
10 after the bill date for Ensemble bills and within one week for CABS bills. While this
11 would be an improvement, it still does not leave room for auditing the bills.

12 **Q. What is the primary source of the problem with getting the bills audited in a timely**
13 **manner?**

14
15 A. In addition to the time of receipt factor, CenturyTel appears to have no internal
16 controls for billing accuracy. As an added example, Socket received a bill since the filing
17 of my direct testimony that contains charges for number porting. That particular bill had
18 over \$600 in toll charges on it that were associated with the number prior to Socket
19 porting the number away from CenturyTel. Rather than bill the former customer,
20 CenturyTel just slapped those charges onto Socket's wholesale bill and billed Socket. As
21 a result of CenturyTel's action, Socket's auditor had to investigate why charges would
22 appear on Socket's bill, determine that these charges were associated with a ported
23 number, file a billing dispute, determine the amount to withhold, and remit payment.
24 This routinely happens. So, while Socket receives longer bills from SBC, those bills
25 generally do not have nearly as many errors and subsequent billing disputes. Even then,

1 SBC's bills seem to have a common cause for the error that makes them easier to audit
2 rather than seemingly random charges that must be tracked down to determine what
3 happened.

4 **Issue 6: Should changes in standard practice be governed by the process proposed**
5 **by Socket?**
6

7 **Q. Can you update the Arbitrator on the status of this issue?**

8 A. Yes. The issue of the proper means of notification has basically been resolved. Socket
9 is willing to accept an e-mail only notice process. Based upon representations by
10 CenturyTel's counsel, I understand that CenturyTel is agreeing to an e-mail notification
11 process. Socket's proposed contract language is as follows;

12 54.5 Notification will be provided via email to designated Socket
13 contacts. CenturyTel shall designate a qualified person who can be
14 contacted by Socket to provide clarification of the scope of the change and
15 timeline for implementation. Either Party may request the assignment of
16 project team resources for implementation of the change. Notwithstanding
17 the foregoing, Socket reserves its right to request changes to be delayed or
18 otherwise modified where there is an adverse business impact on Socket,
19 with escalation through the dispute resolution process.
20

21 That leaves the remaining issue as the degree to which the Parties will work
22 cooperatively to implement changes. Socket proposes the ability for either Party to
23 request the assignment of a project team to implement the change. CenturyTel opposes
24 this and instead want to simply provide someone Socket may contact to provide
25 clarification of the scope of the change and timeline for implementation.

26 **Q. What is the basis for CenturyTel's opposition to the ability of either Party to request**
27 **the assignment of project team resources for the implementation of a change?**
28

29 A. Ms. Hankins' stated objections are that Socket's request is unreasonable given the
30 burden and the cost and the potential for abuse.

1 **Q. What is your response?**

2 A. Well, I obviously disagree. First, this is a mutual provision so that either
3 company may request such resources. Certainly, Socket has every financial incentive not
4 to wastefully request such resources, as it will also be costly to Socket. As to the
5 potential for abuse, I dismiss that for the same reasons. While CenturyTel bemoans its
6 size, Socket is even smaller. Socket does not have employees sitting around looking for
7 ways to tie up CenturyTel's employees.

8 Secondly, I believe the implementation of this contract will require process
9 changes that will affect Socket. These need to be accomplished as cooperatively as
10 possible for the benefit of both companies and the customers they serve. It is doubtful
11 that most changes will even require a project team. However, Socket still believes that
12 option is important.

13 **Q. Doesn't the language that gives Socket the ability to request that the implementation**
14 **of the change be delayed provide Socket with a safeguard?**

15 A. Not necessarily. First, there is no guarantee that CenturyTel will delay the
16 implementation at Socket's request. More importantly, Socket's goal is not to delay
17 changes but to be ready to implement those changes.
18

19 **Issue 9: Should the Agreement contain an obligation and a process for**
20 **CenturyTel to communicate official information to Socket?**
21

22 **Q. Can you update the Arbitrator on the status of this issue?**
23
24

1 A. Yes. During very recent negotiations, CenturyTel indicated that it would provide notice
2 of changes via e-mail as well as updates on their website and proposed the following
3 language:

4 Sec. 32.2 Except as otherwise specified elsewhere in this Agreement,
5 CenturyTel shall communicate official information to Socket via the
6 CenturyTel website, with email notification of such postings. This process
7 shall cover a variety of subjects, including updates on products/services
8 promotions; deployment of new products/services; modifications and price
9 changes to existing products/services; cancellation or retirement of
10 existing products/services; and operational issues.
11

12 But when asked if the e-mail would contain the actual information or simply state that a
13 change had been made to website, the CenturyTel representatives were unsure.

14 **Q. What still remains in dispute?**

15 A. The only item remaining in dispute is the content of the email notice. Socket's
16 proposed language specifies the notice will be via e-mail. As such the e-mail should
17 contain the complete content of the official information. CenturyTel's new proposed
18 language still leaves room for an e-mail to be sent that simply says, "Check the website, it
19 has changed." Socket believes that is still unacceptable as it still shifts the burden to
20 Socket to find out what has changed.

21 In addition, Socket's proposed language is more comprehensive as it lays out the
22 process for designating who will receive the e-mail notice and how to change the
23 recipients of that notice. For these reasons, the Arbitrator should adopt Socket's
24 proposed language.
25

ARTICLE V – INTERCONNECTION

Q. Before addressing specific issues, do you have an overall response with respect to disputed Interconnection Issues?

A. Yes. I previously addressed the issues surrounding the treatment of ISP traffic in the introduction and will not repeat them again here but would refer the Arbitrator to that discussion. There are several general issues that are specific to interconnection that I also want to address.

There is a conflict between CenturyTel's attempts to portray Socket as unreasonably dictating terms of interconnection and CenturyTel's stated preference for having flexibility, cooperation, and mutual agreement when it comes to establishing interconnection arrangements. As the Arbitrator considers this issue, he should be mindful that the FCC has already addressed the issue of "flexible" interconnection rules and rejected a request by rural carriers requesting that the FCC adopt rules that permit flexibility in establishing interconnection points.

Overall, Socket has seen very little cooperation from CenturyTel when it comes to implementing the Federal Telecommunications Act of 1996 ("FTA"). With respect to interconnection, CenturyTel's performance has been poor and CenturyTel has used its position as the incumbent monopoly to delay or refuse interconnection rather than cooperate with Socket. When it has delayed or refused interconnection, CenturyTel never once attempted to prove to the Missouri Commission that Socket's proposed point of interconnection was not technically feasible. When CenturyTel did process Socket's requests, CenturyTel generally would bill Socket non-cost based special access charges

1 for interconnection facilities. This practice was based upon its position that ISP traffic
2 was beyond the scope of the interconnection agreement as well as its position that Socket
3 was required to interconnect on CenturyTel's switch or in a collocation cage.

4 For those reasons, any contract language that requires mutual agreement of the
5 parties or does not define the process to be followed causes great concern to Socket. That
6 is also not what the Act and the rules implementing the Act require because the CLEC
7 has the right to choose the point of interconnection and the ILEC must honor the CLEC's
8 choice unless it can prove to the state commission that the requested interconnection is
9 technically infeasible.⁵⁷ The same standard holds true for indirect interconnection, as it is
10 a Section 251(c) obligation as well. The FCC established these requirements because it
11 recognized that the ILEC was in a position to abuse its monopoly power and had little
12 incentive to provide for interconnection with CLECs.⁵⁸ CenturyTel's actions are
13 consistent with the FCC's concerns. Because of its past experience with CenturyTel,
14 Socket proposes language that is intended to protect its rights and interests in this
15 interconnection agreement.

16 **Q. Has the FCC addressed requests to allow flexibility in establishing POIs or permit**
17 **different requirements for establishing POIs based upon differences between**
18 **carriers and regions?**

19
20 A. Yes, it has. In setting national rules that apply to carriers, the FCC stated,

21 We have considered the economic impact of our rules in this section on
22 small incumbent LECs. For example, the Rural Telephone Coalition
23 argues that the Commission should set interconnection points in a flexible
24 manner to recognize the differences between carriers and regions. We do
25 not adopt the Rural Telephone Coalition's position because we believe

⁵⁷ *Local Competition Order* at ¶ 203; 47 C.F.R. 51.305(e).

⁵⁸ *Local Competition Order* at ¶216 and 218.

1 that, in general, the Act does not permit incumbent LECs to deny
2 interconnection or access to unbundled elements for any reason other than
3 a showing that it is not technically feasible. We believe that this
4 interpretation will advance the procompetitive goals of the statutes.”⁵⁹
5

6 The FCC did recognize one exception to this standard. Section 251(f) of the 1996 Act
7 provides relief to certain small LECs from the regulations implementing the Act, but
8 CenturyTel has not attempted to request a rural carrier exemption from the Act’s
9 provisions. Moreover, this is not the proper forum for CenturyTel to initiate such a
10 request.

11 By arguing for “flexibility,” CenturyTel is simply rearguing issues that were
12 resolved a decade ago. Many of these issues are issues that most of the industry accepts
13 as settled. One example of this, CenturyTel’s attempt to require the CLEC to negotiate
14 the location and types of traffic traversing particular POIs, is housed under the guise of
15 flexibility and network security but it should be denied.

16 **Q. Do you have any comments on the examples of agreements that Mr. Simshaw puts**
17 **forward as examples where CenturyTel has negotiated an equitable resolution?**⁶⁰
18

19 A. In his direct testimony, Mr. Simshaw holds up recent agreements between
20 CenturyTel and MCI and between CenturyTel and CD Telecom as instances where
21 CenturyTel has reached agreements with CLECs over interconnection issues and urges
22 the arbitrator to look at these as reasonable outcomes. As an industry observer, and based
23 upon my experience with CenturyTel, these do not seem like agreements that should be
24 held up as products resulting from mutual negotiations.

⁵⁹ *Local Competition Order* at ¶ 206.

⁶⁰ Simshaw Direct at 35.

1 On November 4, 2004, MCImetro Access Transmission Services, LLC, Brooks
2 Fiber Communications of Missouri, Inc. and Intermedia Communications, Inc.
3 (collectively hereinafter referred to as “MCI”), filed a complaint (hereinafter referred to
4 as the “MCI Complaint”) against CenturyTel with the Missouri Public Service
5 Commission. The MCI Complaint concerned CenturyTel’s refusal to establish
6 interconnection or port numbers because the traffic in question was ISP traffic.⁶¹
7 According to the MCI Complaint, CenturyTel’s actions had “negative impacts on its
8 ability to provide local services to the public.”⁶² After several joint requests to suspend
9 the procedural schedule, MCI and CenturyTel filed a Status Report indicating they would
10 file an amendment to their interconnection agreement to in order to settle the dispute.⁶³
11 The MCI Complaint was settled when MCI agreed to the Agreement being put forward
12 by Mr. Simshaw as the product of mutual negotiation.⁶⁴

⁶¹ *MCImetro Access Trans. Svcs., LLC, Brooks Fiber Comms. of Mo., Inc., and Intermedia Comms, Inc., vs. CenturyTel of Mo., Inc.*, Mo. PSC Case No. LC-2005-0080 (“MCI Arbitration”), Direct Testimony of Darin Dickinson (“Dickinson Direct”) at 7. “Ultimately, on September 21, 2004 Olga Shewmaker of CenturyTel sent Lora Tubs, an MCI provisioner (who had responsibility over implementation of these ASRs) an e-mail stating that Susan Smith, CenturyTel Manager of Carrier Relations, had instructed her to deny our augment orders. CenturyTel’s representatives now asserted that Brooks did not have a local interconnection agreement with CenturyTel and that it did not have an approved forecast to support ordering/installing any local trunks. CenturyTel closed the e-mail by stating that the three augment ASR’s and the related facilities were being cancelled.” *See also* Dickinson Direct at 9. “On or about April 16, 2004 MCI submitted ASR’s to CenturyTel to establish interconnection in Columbia, Missouri in order to interconnect the Intermedia switch in St. Louis, Missouri, with CenturyTel’s switches serving the Columbia calling area. We also submitted LRN and NPA-NXX code information to migrate ISP-bound traffic to the requested facilities. On June 10, 2004 Lora Tubbs of MCI received an e-mail from Camille Stevens of CenturyTel stating that MCI’s ASR for interconnection trunking in Columbia, MO was on hold for regulatory/legal issues.”

⁶² *MCI Complaint* at 6.

⁶³ *MCI Arbitration*, Joint Status Report at 1 (April 8, 2005).

⁶⁴ *Appl. of MCImetro Access Trans. Svcs., LLC for Approval of an Amendment to its Interconnection Agreement With CenturyTel of Mo., LLC Pursuant to § 252(e) of the Telecommunications Act of 1996, Appl. for Approval of an Amendment to the Interconnection Agreement Between MCImetro Access Trans.*

1 Similarly, the arrangement with CD Telecom resulted from a dispute as well. CD
2 Telecom filed a petition for a permanent injunction in the Cole County Circuit Court.⁶⁵
3 According to the CD Telecom Petition, CenturyTel was terminating interconnection
4 arrangements and blocking calls to CD Telecom's customers.⁶⁶ The *CD Telecom Cole*
5 *County Suit* was settled on November 9, 2004, when the Court issued a Consent Order of
6 Preliminary Injunction ("Consent Order") that essentially deferred the substance of the
7 dispute to the PSC, through the Sec. 251-252 negotiation/arbitration process. Regarding
8 CenturyTel's behavior, the Consent Order specifically stated,

9 IT IS FURTHER ORDERED that until the Public Service Commission
10 issues its final decision in that case and the new interconnection agreement
11 becomes effective, Defendant CenturyTel of Missouri, LLC be and hereby
12 is restrained from terminating, reducing or otherwise changing any
13 interconnection services provided to or affecting Plaintiff or Plaintiff's
14 customers, specifically including but not limited to changes to the dialing
15 patterns or routing of calls between or involving customers of the parties
16 and modifications to the programming of Plaintiff's or its customer's
17 NXX codes (telephone numbers) in the Defendant's switches, without
18 Plaintiff's written consent.⁶⁷
19

20 Following the issuance of the Consent Order, CD Telecom filed a Petition for Arbitration
21 with the Commission on February 16, 2005.⁶⁸ More than seven months later, CD
22 Telecommunications, CenturyTel of Missouri, and Spectra submitted interconnection

Svcs, LLC and CenturyTel of Mo., LLC, Missouri PSC Case No. LO-2005-0383, Application at 4 (April 22, 2005).

⁶⁵ *CD Telecomms, LLC, v. CenturyTel of Mo., LLC*, Cole County Circuit Court Case No. 04CV325755 ("CD Telecom Cole County Lawsuit") Petition for Permanent Injunction, Including Petition for Preliminary Injunction and Application for Temporary Restraining Order ("CD Telecom Petition")

⁶⁶ *CD Telecom Petition* at 3-4.

⁶⁷ *CD Telecom Cole County Lawsuit*, Consent Order Granting Preliminary Injunction at 2 (November 4, 2004).

⁶⁸ *CD Telecomms, LLC's Petition for Arbitration of an Interconnection Agreement with CenturyTel, Inc., CenturyTel of Mo., LLC, and Spectra Communications, LLC*, Mo. PCS Case No. XO-2005-0277, ("CD Telecom Arbitration")

1 agreements and addendums for the Commission's approval pursuant to Section 252(e)(1)
2 of the Telecommunications Act of 1996 in Case Numbers TK-2006-0125 and TK-2006-
3 0126. In doing so, the parties represented that they had resolved the issues in the CD
4 Telecom Arbitration.

5 While Mr. Simshaw is correct that these were negotiated settlements, resolution that
6 requires court orders to stop unilateral actions or to eliminate delays in being able to
7 serve customers do not seem to me to be good examples of bilateral negotiations reached
8 through a mutual spirit of compromise.

9 **Q. Has Socket had similar experiences with CenturyTel?**

10 A. Yes, Socket had had experiences similar to MCI and CD Telecom. CenturyTel has
11 threatened to disconnect Socket's network. Socket also has had orders for
12 interconnection facilities rejected because of a lack of an approved forecast. This
13 occurred even though Socket provided forecasts on a regular basis and CenturyTel has
14 never presented a defined approval or rejection process or even specifically rejected a
15 forecast. Additionally, Socket has had orders for interconnection facilities processed
16 only to be billed special access rates for the facilities that connect Socket's facilities
17 located in the CenturyTel end-office to CenturyTel's switch.

18 **Q. Why did CenturyTel take such actions?**

19 A. My understanding is that the basis for these actions was CenturyTel's view that the
20 traffic was ISP-bound and, therefore, outside of the scope of our existing interconnection
21 agreement.

1 **Q. Did Socket previously enter into agreements similar to those that Mr. Simshaw**
2 **described?**

3 A. Yes.

4 **Q. Why did Socket enter into this type of agreement with CenturyTel?**

5 A. CenturyTel was trying to settle Socket's appeal of Case No. TO-2005-0066. As
6 part of the settlement process, Socket entered into an interim Interconnection Agreement
7 with CenturyTel-Spectra and modified its existing Interconnection Agreement with
8 CenturyTel-Missouri. Socket entered into these Agreements for two main reasons. First,
9 CenturyTel was billing special access charges for facilities being used for interconnection
10 and these charges were significantly higher than the charges for interconnection facilities.
11 Socket disputed each of these bills in a timely fashion over a twelve-month period.
12 During this time, CenturyTel provided a single response denying Socket's claim on the
13 grounds that the traffic was not local and simply kept billing Socket special access rates.
14 Although the charges were disputed, Socket's potential liability kept accruing during the
15 delays.

16 Second, CenturyTel was forcing Socket to interconnect in each local calling area
17 that was not served by a remote switch and billing Socket special access rates for
18 interconnection facilities that Socket believed were on CenturyTel's side of the POI.

19 Given these facts, and the upcoming likely arbitration of an interconnection
20 agreement, Socket elected to enter into the temporary agreements so that it could focus
21 on this case to correct the injustices of those interim agreements. .

22 **Q. Going forward, do you expect the relationship with CenturyTel to improve?**

1 A. While I certainly hope so, I seriously doubt it. To believe otherwise would be to
2 choose hope over experience. A review of the disputed issues confirms this, as
3 CenturyTel is unwilling to even provide a single point of contact for interconnection
4 issues. Another factor that causes me concern is that this section on Interconnection was
5 one of the least-negotiated sections of the ICA and but it remains the most contentious.
6 Socket urges the Arbitrator to keep this in mind as he considers CenturyTel's testimony
7 that urges the Commission to approve language requiring mutual agreement or containing
8 undefined processes.

9 **Issue 5A: What methods and procedures should be included in the ICA to ensure**
10 **interconnection arrangements are established and augmented efficiently?**

11
12 **Q. What is purpose of Socket's proposed language?**

13
14 A. As I indicated in my direct testimony, Socket's goal with its language is to make
15 the process of interconnecting with CenturyTel proceed as smoothly as possible. Socket
16 is not attempting to unbundle CenturyTel's personnel, impose unreasonable SBC-style
17 obligations upon CenturyTel, seek new ways to file complaints, or cause CenturyTel
18 hundreds of millions of dollars in expense as Mr. Miller complains. Socket is simply
19 seeking a defined process for achieving interconnection with CenturyTel.

20 My experience with CenturyTel has shown that a defined process is necessary to
21 get timely results. CenturyTel does not have a defined process and opposes establishing
22 a defined process now. Open-ended language that requires mutual agreement or requires
23 the parties to agree to a process in the future is simply not workable. This problem will
24 be compounded if there is no single entity or person to work with to establish
25 interconnection, a proposal that CenturyTel continues to oppose

1 When Socket establishes interconnection with Sprint or SBC, there is a single
2 point of contact who facilitates the project. If it is a new interconnection (as opposed to
3 an augment) that person coordinates among the various departments within their
4 company, just as I do within Socket, to schedule a Network Interconnection meeting. At
5 that meeting, the details and responsibilities are worked out between the parties. If Sprint
6 or SBC were to ever assert that they lacked capacity to support Socket's interconnection
7 request, I would expect that we would address at the Network Interconnection meeting
8 the details of when capacity would be available. These meetings generally take less than
9 an hour and the parties are able to begin placing orders. This process benefits both
10 parties as everyone understands what will occur, who needs to order what, and when it
11 will be accomplished. If an order is not received, the parties know to expect an order and
12 can contact the other party to determine why the order was not received.⁶⁹

13 In establishing interconnection with CenturyTel, the process is not defined and
14 has changed over time. Currently, we submit orders via an ASR. When CenturyTel
15 receives the order, it is sent to Carrier Relations where Susan Smith reviews the order in
16 what CenturyTel has called the "Regulatory Review." If she is out of the office, the order
17 sits until she returns. Our understanding of the Regulatory Review is that Socket's order
18 is checked to see if Socket has an approved forecast and whether the order matches the
19 forecasted amount. If the order is greater than the forecasted amount or requests two-way

⁶⁹ In contract to this cooperative process with other ILECs, when we use CenturyTel's e-mail ordering systems for LSRs, Socket has experienced lost orders because the orders were captured by CenturyTel's spam filter or CenturyTel changed the e-mail address with no notice. As there had been no Network Interconnection Team ("NIT") meeting or other contact, the order was missing for several weeks and CenturyTel did not know to expect the order.

1 trunks when one-way trunks are reflected on the forecast, the order is rejected. I believe
2 that there is no check to determine whether capacity is available.

3 In the past, Socket's orders frequently were rejected or converted from orders for
4 Interconnection Facilities into Special Access orders because of CenturyTel's position
5 regarding the treatment of ISP-bound traffic. Rather than continue to have an undefined
6 process and more opportunities for dispute, Socket seeks to define the process and have a
7 single point of contact to resolve issues that arise as we establish interconnection with
8 CenturyTel. Mr. Miller acknowledges in his testimony that CenturyTel uses such a
9 person in these types of projects.⁷⁰

10 In addition to establishing processes for achieving interconnection, Socket seeks
11 to address specific problems that have occurred between the parties in the past. Those
12 problems include delays in having an order worked because CenturyTel did not believe
13 the capacity was necessary and has no defined process addressing that issue,
14 CenturyTel's refusal to provide basic information necessary to achieve interconnection,
15 and CenturyTel's claims that it lacked capacity to achieve interconnection.

16 **Q. What do you think of Mr. Miller's claims about the burdens of Socket proposed**
17 **language?**

18
19 A. Mr. Miller's testimony is just not realistic. Mr. Miller generally addresses
20 Socket's proposed language by creating outlandish examples and then explaining how
21 these extreme examples could potentially harm CenturyTel. Mr. Miller complains that
22 the single point of contact has to be dedicated full-time, 365 days a year to Socket. That
23 is not true. It does not even need to be a single person but could be a team or

⁷⁰ Direct Testimony of Guy Miller ("Miller Direct") at 9, lines 15-19.

1 organization that has the responsibility to coordinate interconnection projects and be
2 knowledgeable of the process. It also does not have to be dedicated solely to Socket so
3 the costs certainly should not be attributed solely to Socket. Socket is only trying to
4 avoid having to coordinate from outside the company among CenturyTel's business units
5 and have a knowledgeable resource to work with on these types of projects. As I
6 discussed in my direct testimony, Socket is willing to assign a single point of contact.

7 Even more outlandish, Mr. Miller claims CenturyTel could be exposed to
8 hundreds of millions of dollar of construction costs because Socket could conspire to
9 require CenturyTel to construct new, unneeded, network facilities in order to consume its
10 capital. In doing so, he simply dismisses the agreed-upon protections of Article III,
11 Section 12.6, which allows CenturyTel to recover the cost of stranded plant from Socket.
12 Of course, it does require CenturyTel to demonstrate that the charges are based upon
13 costs or that the facility was constructed as a result of Socket's order, but that is only
14 reasonable if Socket is going to be required to pay these charges.

15 Assume Socket submits an order for interconnection facilities and CenturyTel
16 disagrees that Socket needs the facilities. If CenturyTel does have capacity to provide for
17 interconnection, Socket's proposed contract language at Section 2.5.2 would require
18 CenturyTel to complete Socket's order. If CenturyTel had concerns, however, it could
19 request the parties discuss them. If its concerns were not addressed by Socket,
20 CenturyTel could invoke the agreed-upon dispute resolution process.

21 If CenturyTel asserted that it lacked capacity to provision Socket's order, Socket
22 proposes contract language at Section 2.4 that requires CenturyTel to provide a detailed

1 explanation, identify capacity that it is reserving for its own use, and submit a
2 construction plan setting forth the timeline for adding the additional capacity. If Socket
3 is not satisfied with that response, Socket will have to invoke the agreed-upon dispute
4 resolution process.

5 If CenturyTel then proceeds to construct facilities, the agreed-upon language in
6 Article III, Section 12.6 would apply. This language allows CenturyTel to impose a
7 stranded plant or discontinued service order charge for facilities ordered by Socket but
8 then not used by Socket. It was my hope that by agreeing to the language in Article III,
9 Section 12.6 that provides CenturyTel with protection at Socket's risk, CenturyTel would
10 back off its "mutual agreement" proposals.

11 On the other hand, CenturyTel's solution would shift to Socket its obligations for
12 being responsible for facilities on CenturyTel's side of the POI and require Socket to pay
13 all facility costs, both non-recurring or recurring. That is unreasonable.

14 **Q. Are there other instances where CenturyTel is required to proceed with completing**
15 **Socket's order while invoking the dispute resolution process?**

16
17 A. Yes. This is similar to the process used when Socket places an order for UNEs
18 and CenturyTel asserts the facilities are declassified. As stated in the TRRO, "the
19 incumbent LEC must provision the UNE and subsequently bring any dispute regarding
20 access to that UNE before a state commission or other appropriate authority."⁷¹

21 **Q. Do you have a response to Mr. Miller's claims that Socket is ignoring the mandates**
22 **of "¶203 of the First Report and Order that each carrier must retain responsibly for**
23 **the management, control, of and performance, of its own network"?**

⁷¹ *In the Matter of Unbundled Access to Network Elements*, WC Docket No. 04-313, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, at ¶ 234 (rel. Feb. 4, 2005) ("TRRO")

1
2 A. Mr. Miller's claims are unfounded. In quoting from ¶203, Mr. Miller omits the
3 next sentence, which states how the carriers are supposed to retain responsibly for the
4 management, control, of and performance of its own network. In that next sentence, the
5 FCC further states, "Thus, with regard to reliability and security, to justify a refusal to
6 provide interconnection or access at a point requested by another carrier, incumbent
7 LECs must prove to the state commission, with clear and convincing evidence, that
8 specific and significant adverse impacts would result from the requested interconnection
9 or access."⁷² CenturyTel always has that option but has not raised that issue with respect
10 to any of Socket's proposals in this arbitration.

11 **Q. Finally, Mr. Miller raises the issue of ISP Traffic in this issue and asserts that is**
12 **another reason to choose CenturyTel's language. Do you have a response?**
13

14 A. Yes. I fail to understand how ISP traffic is related to Socket's proposed language
15 regarding establishing a point of interconnection unless CenturyTel seeks to use "mutual
16 agreement" or requiring the CLEC to pay for the facilities to enforce its views that ISP
17 traffic should be handled under tariff rather than under this Agreement. The issues
18 regarding the proper treatment of ISP-bound Traffic are dealt with elsewhere in the
19 Agreement and in this Arbitration and they should not cloud discussion of the procedures
20 for achieving interconnection.

21 Mr. Miller goes so far as to state that his understanding of the law is that a "CLEC
22 must provide telecommunications services in a market before or at least simultaneously

⁷² *Local Competition Order at ¶ 203.*

1 with the provision of ISP service in order to quality for interconnection.”⁷³ I think this
2 quote clearly shows CenturyTel’s intent and demonstrates why Socket should not have to
3 negotiate the terms with CenturyTel at the time it wants to establish a point of
4 interconnection. First, Mr. Miller ignores the fact that ISPs do purchase
5 telecommunications services.⁷⁴ Even more amazing, it is not possible for Socket to
6 provide a telecommunications service in CenturyTel’s territory unless Socket first
7 interconnects with CenturyTel. I truly foresee CenturyTel not being willing to “mutually
8 agree” upon the type and location of a POI until Socket either provides a
9 telecommunications service to someone other than an ISP (which is not possible because
10 you need to interconnect before you can begin to provide a telecommunications service)
11 or brings a customer forward and demonstrates to CenturyTel that the customer wants to
12 purchase a telecommunications service from Socket. This would analogous to requiring
13 Wal-Mart to produce a potential customer before getting a building permit to build the
14 store.

15 Clearly, this interconnection agreement should not include undefined processes
16 that allow CenturyTel to serve as a gatekeeper to the entrance of a competitor’s entry into
17 the local market. The “mutual agreement” proposal would be particularly detrimental if
18 Socket is required to establish multiple POIs, as each one will require Socket to meet
19 CenturyTel’s requirements and to obtain CenturyTel’s permission to establish
20 interconnection in a manner acceptable to CenturyTel.

⁷³ Miller Direct at 23.

⁷⁴ This issue is also address in Article II, Issues 14 and 15. CenturyTel’s failure to recognize that Information Access Service are telecommunications services or that ISPs use LEC services make it critical for the Arbitrator to select Socket’s proposed definitions on both of these issues.

1 In short, Socket's proposed language provides a reasonable approach to
2 establishing interconnection arrangements and one that will avoid future disputes.
3 CenturyTel remains free to assert Socket's proposed interconnection arrangement is not
4 technically feasible. As such, Socket's proposed language is consistent with FCC rules.

5
6 **Issue 8: Which Party's language should be adopted regarding indirect**
7 **interconnection?**
8

9 **Q. Based upon Mr. Miller's direct testimony, can you describe the dispute?**

10
11 A. Yes. This dispute is very similar to the previous dispute regarding Socket's right
12 to interconnect in any manner it chooses so long as such interconnection is technically
13 feasible. Like the previous issue, CenturyTel seeks to impose conditions on Socket's
14 right to indirectly interconnect with CenturyTel.⁷⁵ This right was affirmed in the M2A
15 Successor Arbitration.⁷⁶

16 CenturyTel also repeats claims that it is not SBC; however, those claims do not
17 change the fact that the interconnection rules apply to all carriers except those that qualify
18 for an exemption under Section 251(f).⁷⁷ Because CenturyTel has sought no exemption,
19 it is subject to the same rules as other incumbent carriers and Socket has the same right to
20 interconnect indirectly as long as such interconnection is technically feasible.

⁷⁵ See 47 U.S.C. 251(a)(1). "Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."

⁷⁶ Case No. TO-2005-0036, Final Arbitrator's Report, Article V pg. 6. and Section I(C). Transit Traffic, pg. 3 -5

⁷⁷ *Local Competition Order* at ¶ 206.

1 Therefore, CenturyTel's unfounded claims should be rejected for the reasons
2 explained in my direct testimony.⁷⁸

3 **Q. Do you have a response to Mr. Miller's claims about Socket attempting to supplant**
4 **access arrangements?**

5
6 A. There is nothing in Socket's proposed language that does that. The rates for
7 transit traffic are set forth in Article V, Issue 10 and should be dealt with there rather than
8 here.

9
10 **Issue 9: Should interconnection facilities compensation be based on each Party**
11 **taking responsibility for bringing its facilities to the POI?**
12

13 **Q. What is your response to Mr. Simshaw's testimony regarding this issue?**

14 A. Mr. Simshaw fails to fully address the implications of CenturyTel's proposed language
15 by trying explain CenturyTel's proposal as merely clarifying that collocation terms shall
16 apply when the POI is at a collocation arrangement or as language that, "merely
17 incorporates the terms and provisions of the otherwise applicable access tariffs."⁷⁹ In
18 offering this meager description of CenturyTel's intent, Mr. Simshaw fails to address the
19 primary implication of CenturyTel's proposed language, which is that it would
20 incorporate terms of the existing agreement between Socket and CenturyTel.

21 The existing temporary agreement requires Socket to establish multiple POIs in
22 each LATA and also requires traffic to be exchanged on a bill-and-keep basis. That
23 agreement also expires upon the effective date of the agreement resulting from this

⁷⁸ Direct Testimony of R. Matthew Kohly at 61 and 63.

⁷⁹ Simshaw Direct at 36.

1 arbitration. If CenturyTel's language in this section were approved, it would conflict
2 with Socket's proposed requirements for establishing points of interconnection.

3 Rather than being content to address issues surrounding points of interconnection
4 in straightforward manner, CenturyTel takes every opportunity to attempt to sneak terms
5 and conditions into the agreement that would require multiple point of interconnection.
6 This is simply one of those attempts. CenturyTel's language should be rejected.

7
8 **Issue 10: What language should the ICA include regarding Intercarrier**
9 **compensation for transport and termination of traffic?**
10

11
12 **Q. What is your response to Mr. Simshaw's direct testimony on this issue?**

13 A. Mr. Simshaw's direct testimony supporting CenturyTel's proposal focused only
14 VNXX traffic and CenturyTel's language, which he asserts would make this traffic
15 subject to access charges unless the Socket were to put a POI in each local calling area.
16 If Socket were to establish a POI in each local calling area, CenturyTel would agree that
17 this traffic would be subject to bill-and-keep, but his direct testimony failed to address
18 any other aspect of CenturyTel's proposed language.

19 **Q. Does Mr. Mr. Simshaw's direct testimony correctly portray what CenturyTel's**
20 **language actually does?**
21

22 A. I do not believe so. CenturyTel's proposed language does require Socket to
23 establish a POI at every CenturyTel end office in order for VNXX traffic to be exchanged
24 on a bill-and-keep basis. If Socket fails to establish a POI at every CenturyTel end office,
25 "CenturyTel reserves the right to revert to its advocacy position on this issue which that

1 access charges do apply to all ISP-bound traffic that terminates to a physical ISP location
2 outside of the local calling area.”⁸⁰

3 First, ignoring the merits of CenturyTel’s position, an end office is very different
4 than a local calling area. In the Columbia local calling area, for example, CenturyTel has
5 approximately 8 end offices, possibly more depending upon how that term is defined.
6 CenturyTel’s proposed contract language would require Socket to interconnect at each of
7 these end offices. Secondly, it is not at all clear how access rates would be applied to this
8 traffic. From a network standpoint, how would this traffic be identified? Mr. Simshaw
9 puts forward no means to separate this traffic from other types of traffic. If the traffic
10 were identified, would the access rates be interstate or intrastate access rates? Would
11 CenturyTel assess originating access rates while Socket assessed terminating access rates
12 on these calls? That seems only equitable.

13 There is also the possibility Socket could charge CenturyTel terminating access
14 rates while CenturyTel would not be able to charge originating access rates. That
15 certainly could be Socket advocacy’s position, one that is supported by the fact that this
16 section of proposed contract language is entitled “Transport and Termination of Traffic”
17 and is also consistent with the “calling party pays” compensation scheme that generally
18 exists between LECs. While either of these outcomes could produce a cash windfall for
19 Socket, especially if intrastate access rates were assessed because terminating intrastate
20 access rates are higher than originating access rates, it is still not sound public policy.

⁸⁰ CenturyTel’s proposed language at Section 9.2.3.

1 First, as I discussed in the introduction, this result would based upon an incorrect
2 reading of the ISP-Remand Order's requirements that Intercarrier compensation for all
3 LEC-to-LEC ISP-bound traffic derive from the FCC's interim regime. It would also
4 ignore the exemption that Enhanced Service Providers, including ISPs, have from paying
5 access charges. Secondly, it would only increase the potential for arbitrage as carriers
6 would seek opportunities to collect access rates; whether on the originating end or on the
7 terminating end of the call. It also raises questions about whether either party's end-users
8 would be forced to pay toll charges to reach the Internet. That outcome is certainly
9 contrary to sound public policy, as the nation's goal is to increase access to the Internet
10 rather than restrict access or increase consumer costs to access the Internet.

11 Without even considering the merits of CenturyTel's argument, CenturyTel fails
12 to even provide any definitive contract language and absent that, none of these questions
13 can be answered. That will certainly lead to ongoing disputes and continued delay.

14 **Q. What about the other aspects of CenturyTel's proposed contract language?**

15 A. Mr. Simshaw failed to provide any direct testimony supporting other aspects of
16 CenturyTel's proposed language that I see as problems. For example, CenturyTel's
17 proposed language requires an *additional* agreement before types of traffic other than
18 Local Traffic may be exchanged. That is problematic as it still leaves open questions that
19 will not be resolved in this arbitration. CenturyTel's proposed language still does not
20 have any contract language regarding FX traffic but merely states, "CenturyTel
21 anticipates providing compromise language shortly." CenturyTel provides FX service
22 today and that traffic will be exchanged between CenturyTel and Socket. Until there is

1 some additional language agreed upon as required by CenturyTel's proposed contract
2 language, does CenturyTel intend to block that traffic from reaching CenturyTel's end-
3 users? That is unknown and not addressed in CenturyTel's proposed language or its
4 testimony. CenturyTel's proposed contract language addresses MCA transit traffic but
5 does not address other types of transit traffic. None of these were even addressed by Mr.
6 Simshaw.

7 **Q. Finally, Mr. Simshaw complained that Socket's proposed contract language would**
8 **permit Socket to collect reciprocal compensation for ISP-bound traffic provisioned**
9 **via an FX service and further states that is inconsistent with the outcome of the SBC**
10 **M2A Replacement Arbitrations.⁸¹ Do you have a response?**

11
12 **A.** Yes. First, I am glad to see Mr. Simshaw recognize that a decision in the M2A
13 Replacement Arbitration may have some precedential value in this case. More
14 importantly, as I indicated in my introduction, Socket has modified its proposed contract
15 language to only have a bill and keep option. The language Socket proposes is not the
16 language Mr. Simshaw criticizes in his direct testimony. Socket's willingness to accept
17 bill and keep as the only option in this agreement for reciprocal compensation is further
18 proof that Socket is serious about resolving issues between the parties and that it
19 conceded a major issue to CenturyTel.

20 Therefore, by adopting Socket's proposed language on this issue and on Issue 7
21 regarding Network Interconnection Provisions as well as rejecting CenturyTel's attempts
22 to reargue or circumvent the Interconnection and Compensation provisions through
23 extraneous language in other issues, the outcome would be the same as in the M2A
24 Successor Arbitration; albeit with lower traffic thresholds for establishing additional

⁸¹ Simshaw Direct at 38.

1 POIs. This all that Socket is seeking. The Arbitrator should adopt Socket's proposed
2 language because it is the same framework as the M2A Successor but with lower
3 thresholds.

4
5 **Issue 11: What are the appropriate rates, terms and conditions for compensation**
6 **for transit traffic?**
7

8 **Q. Do you have a response to Mr. Miller's testimony?**
9

10 A. Yes. First, Mr. Miller is arguing the right of CLECs to interconnect indirectly
11 with CenturyTel in this issue just as he did in Issue 8. Mr. Miller is also arguing about
12 network issues and the traffic limits on indirect interconnection just as he did in Issue 8.
13 These are inappropriate for the reasons set forth in my direct testimony and rebuttal
14 testimony on Issue 8.

15 **Q. Do you have any response to the remainder of Mr. Miller's testimony?**

16 A. Yes. Mr. Miller's criticisms of Socket's proposed language simply do not match
17 Socket's proposed language. For example, Mr. Miller complains that Socket's proposed
18 language does not require the originating party to be financially responsible for the traffic
19 it originates.⁸² This is not an accurate statement. Section 10.2.1 of Socket's proposed
20 language specifically states, "the Transit Rate is charged by the Transit Provider to the
21 Originating Party." Further, Mr. Miller complains that Socket opposes CenturyTel's
22 proposal to establish its own agreements with third parties."⁸³ That obligation is already
23 addressed in Issue 30 where the parties agreed upon language regarding agreements with

⁸² Miller Direct at 31.

⁸³ *Id* at 31-32.

1 third parties. Elsewhere, Mr. Miller complains Socket is attempting to use change in law
2 provisions to somehow bind CenturyTel into unfavorable terms. I have no idea why he
3 raises those issues here as the change in law process is in addressed in Article III and
4 agreed upon between the parties. It seems Mr. Miller is simply creating inconsistent and
5 fictional arguments and proposing contract language that is inconsistent with already
6 agreed-upon language.

7 I addressed the deficiencies of CenturyTel's proposed language in my direct
8 testimony.⁸⁴ Socket's language is simple, straight-forward because it specifies that the
9 transit rate must be cost-based (Section 10.2.2) except for MCA traffic which is
10 exchanged on a bill-and-keep basis, requires the Transit provider to pass the CPN when
11 one is provided (10.2.3), indemnifies the transit provider from lawful third-party charges
12 (10.2.4), and requires that neither the transit provider or the terminating party be required
13 to function as a billing intermediary (10.2.6). The Socket language should be approved.

14
15 **Issue 15: Should the Parties be required to mutually agree to establish one IP in**
16 **each CenturyTel local calling area?**
17

18
19 **Q. Did CenturyTel address this issue in direct testimony?**
20

21 **A.** I did not find any CenturyTel direct testimony that addressed this issue. Socket
22 objects to CenturyTel's proposal for the reasons stated in my direct testimony. In
23 addition, I would raise another objection that I did not previously state. This requirement
24 is not limited to local calling areas where Socket seeks to originate traffic or seeks to
25 open an NPA-NXX code so that traffic may terminate to Socket. Without that limitation,

⁸⁴ Kohly Direct at 71-72.

1 it could be interpreted to require Socket to establish a ubiquitous network throughout all
2 of CenturyTel's territory immediately. That is not reasonable and is inconsistent with the
3 FCC's rules, as CLEC's are not required to replicate the ILEC's network as a condition
4 of market entry.

5
6 **Issue 17: How should expenses be divided for trunking facilities on each Party's**
7 **side of a POI?**
8
9

10 **Q. Do you have any response to Mr. Simshaw's direct testimony on this issue?**
11

12 A. Yes. Mr. Simshaw did not separately address this issue and, instead, addressed in
13 this issue in conjunction with Issue 9. In doing so, Mr. Simshaw acknowledges that the
14 parties have agreed to the language in Section 8.1, which is the cross-reference in
15 Socket's modified language.⁸⁵ Mr. Simshaw also acknowledges that the parties agree
16 that each party is responsible for the costs and facilities on its of the POI.⁸⁶ Based upon
17 these two statements, I do not believe there should be any further dispute.

18
19 **Issue 18: Should CenturyTel's language regarding joint planning criteria that is**
20 **already included in Article III be repeated in Article V?**
21
22

23 **Q. After reading Mr. Miller's testimony, do you have a response?**
24

25 A. Yes. Socket is and has always been willing to discuss items that will facilitate
26 provisioning and efficient use of network. In fact, the agreed-upon language referenced
27 by Mr. Miller in Article III requires Socket to do so.⁸⁷ CenturyTel proposes to expand

⁸⁵ Simshaw Direct at 36.

⁸⁶ *Id.* at 35.

⁸⁷ Miller Direct at 47

1 that agreement by adding additional language. My primary concern with CenturyTel's
2 proposed language is Section 12.4 is Item (ii) – compensation arrangements to reflect
3 CenturyTel's and Socket's proportionate use of the trunking. As set forth in 12.4, this
4 would require the parties to establish compensation arrangements to reflect CenturyTel's
5 and Socket's proportionate use of the trunking.

6 I see this is another means for CenturyTel to reargue the issue of each party's
7 financial responsibility for getting their facilities and trunking to the POI. There is
8 simply no need to for this language and it conflicts with already agreed upon language in
9 Section 8.1 stating that, "Each Party is responsible for bringing its facilities and trunks to
10 the POI."

11 As to the other items in Section 12.4, Mr. Miller fails to explain what they
12 actually mean. As there were few detailed negotiations of these provisions, I do not want
13 to address them further at this time until I have a full, detailed explanation of them
14 instead of contractual terms accompanied by rhetoric. The Commission should reject
15 CenturyTel's unsupported proposal.

16
17 **Issue 20: Should this Article recognize that terminating carriers may rely on**
18 **terminating records for billing the originating carrier?**
19

20 **Q. What is your response to Mr. Miller direct testimony on this issue?**

21 A. Socket changed its contract language just before testimony was filed to address
22 CenturyTel's concerns. As a result, Mr. Miller's testimony addresses issues that are no

1 longer in dispute.⁸⁸ Therefore, his testimony is no longer necessary. The only item
2 remaining in dispute is Socket's proposed Section 12.3.3 that states;

3 12.3.3 - The terminating carrier will use the originating and terminating
4 caller identification numbers or Automatic Number Identification as
5 defined in 4 CSR 240, 29.020(4) to determine the jurisdiction of the call.
6

7 I explained the need for this language in my direct testimony.⁸⁹

8 **Q. Do you have a response to Mr. Miller's criticisms?**

9 A. Yes. Mr. Miller claims that Socket's language is an attempt to implement VNXX
10 or roaming VoIP as a local call and then addresses how numbers should be assigned.
11 That is a different issue than how calls should be rated. Mr. Miller's criticisms of
12 Socket's proposed language are misplaced. This is Socket's attempt to incorporate
13 industry standard practices regarding how calls are rated. As noted in my direct
14 testimony, the FCC explained:

15 It is standard industry practice for telecommunications carriers to compare
16 the NPA/NXX codes of the calling and called party to determine the
17 proper rating of a call. As a general matter, a call is rated as local if the
18 called number is assigned to a rate center within the local calling area of
19 the originating rate center. If the called number is assigned to a rate center
20 outside the local calling area of the originating rate center, it is rated as a
21 toll call. These local calling areas are established or approved by state
22 commissions.⁹⁰
23

24 First, Socket is only attempting to incorporate standard industry practices into this
25 agreement and ensure that neither party deviates from such practices. Second, Socket
26 seeks to include this language to protect against anti-competitive and anti-consumer self-

⁸⁸ Miller Direct at page 49 through page 52, line 6.

⁸⁹ Kohly Direct at 73-75.

⁹⁰ *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking at ¶ 141 (rel. March 3, 2005) (footnotes omitted).

1 help practices such as addressing disputes over the treatment of ISP calls by the
2 originating carrier assessing toll charges on its own customers that place “non 1+” calls to
3 a CLEC’s ISP customers. In Michigan, CenturyTel was fined \$500 per violation per day
4 for using this practice. In upholding the Michigan PSC decision, the reviewing court
5 stated,

6 In light of the anti-competitive nature of CenturyTel’s actions and the fact that
7 they were directed against an innocent customer, the fine of \$500 per violation per
8 day does not appear excessive or unwarranted.⁹¹
9

10 Lastly, CenturyTel’s witness, Mr. Simshsaw, just recently alluded to CenturyTel
11 invoking this practice against another CLEC in Missouri.⁹² This makes Socket’s
12 proposed language all the more critical.

13
14 **Issue 21: Should service ordering, provisioning, and maintenance standards be**
15 **included in the ICA?**
16

17 **Q. What is your reaction to Mr. Miller’s testimony on this issue?**

18 A. Once again, Mr. Miller is exaggerating and making erroneous statements. Socket
19 is not attempting to undermine CenturyTel’s right to establish its own processes and
20 procedures. However, to the extent they affect Socket, Socket needs to have a say in
21 those processes and procedures. I see no merit to his claims that Socket is seeking to
22 impose the terms of this agreement on every other CLEC or business partner of
23 CenturyTel. These claims are nonsensical.

⁹¹ No. 219388, Michigan Court of Appeals, *CenturyTel of Michigan, Inc., d/b/a CenturyTel, Appellant, v. Michigan Public Service Commission, and BRE Communications LLC, d/b/a Phone Michigan*, at 8 (April 13, 2001).

⁹² TC-2006-0068 (FullTel, Inc., Complainant, v. CenturyTel of Missouri, LLC, Respondent), Hearing held March 22, 2006, Transcript, pg. 82.

1 In the General Terms and Conditions section of this ICA, the parties have already
2 agreed-upon language that addresses the role of the CenturyTel CLEC Service Guide and
3 how changes in standard practices will be made. Socket simply does not believe that it is
4 necessary to refer the CLEC Service Guide in this section as that is already covered in the
5 General Terms and Conditions. Socket also seeks to avoid a potential conflict or
6 introduce any ambiguity with respect to interconnection obligations. For that reason,
7 CenturyTel's language should be rejected.

8
9 **Issue 24: In the event one carrier is unable to provide meet-point billing data,**
10 **should that carrier be held liable for the amount of unbillable charges?**

11
12
13 **Q. What is the purpose of Socket's proposed language?**

14
15 A. Socket proposes language that specifies that in the event a party fails to provide
16 meet point billing data to the other party, the party that fails to deliver the data will be
17 liable for the amount of unbillable charges. The purpose of the language is to ensure that
18 both parties have the ability to collect from interexchange carriers the terminating fees
19 they are due. Socket's proposed language came from Section 2.6, Attachment 6,
20 Appendix C – Interconnection Billing and Recording in the interconnection agreement
21 that Socket and CenturyTel are currently operating under, which is the AT&T – GTE
22 Interconnection Agreement.

23 **Q. Do you have a response to Mr. Miller's direct testimony on this issue?**

1 A. Mr. Miller appears to propose some additional language that would include
2 exceptions for when either party is liable for the amount of unbillable charges.⁹³ On the
3 next page, however, he states that, “because of the significant practical and operational
4 problems associated with CenturyTel’s proposed language, the Commission should reject
5 that language.”⁹⁴ Given that he states there are problems associated with CenturyTel’s
6 language, I am not sure what exactly he is proposing.

7 **Q. Do you have a response to Mr. Miller’s criticisms of Socket’s proposed language?**

8 A. As elsewhere, Mr. Miller creates a series of unrealistic hypothetical examples and
9 then claims Socket’s proposed language is unreasonable. In doing so, he ignores the fact
10 that the parties are presently operating under this language today. CenturyTel agreed to
11 this language through its merger commitments. His unrealistic criticisms should be
12 rejected.

13 **Q. What about Mr. Miller’s concerns that Socket’s language lacks a specified**
14 **timeframe for either Party to produce the call records?**

15 A. While I think that it is unnecessary, as Socket has been more than accommodating
16 when using this provision in our current ICA to require CenturyTel to pay when it failed
17 to deliver call records and has yet to deliver, Socket is willing to include a definitive time
18 frame and proposes to add the following time frame to address CenturyTel’s concerns.
19

20 If Meet-Point Billing Data is not processed and delivered by either CenturyTel or
21 Socket **within 30 days of the call date** and, in turn, a Party is unable to bill the
22 IXC for the appropriate charges, the Party who failed to deliver the data will be
23 held liable for the amount of unbillable charges.

⁹³ Miller Direct at 58.

⁹⁴ *Id.* at 59.

1 Section 2.7, Attachment 6, Appendix C – Interconnection Billing and Recording of our
2 current ICA permits the party that did not receive the data to assess a Late Payment
3 Charge on the party that failed to provide the data after 15 days of the call data. Socket is
4 doubling that time period and is still not including language to assess a late payment
5 charge. CenturyTel should withdraw its objections to this proposal. If it does not,
6 however, the Commission should approve Socket’s final offer language.

7 **Q. What is the consequence if the Arbitrator does not select Socket’s proposed**
8 **language?**
9

10 A. This language is the only means Socket has to collect terminating access charges
11 for meet-point long distance traffic terminating to Socket via a CenturyTel tandem,
12 because CenturyTel has failed to produce the call records that Socket has been asking for
13 since October of 2004. CenturyTel has made only minimal efforts to develop a
14 procedure for processing and delivering that and has yet to do so.

15 Rejecting Socket’s proposed language would effectively deny Socket revenues to
16 which it is entitled and over which CenturyTel controls Socket’s ability to collect. That
17 will obviously affect negatively Socket’s ability to compete, as terminating access
18 revenues are a critical revenue component to its cash flow.

19
20 **Issue 26: Should each Party be required to pass calling party number (CPN)**
21 **information to the other party?⁹⁵**
22

23 **Q. What is Socket’s concern with CenturyTel’s proposed language?**

⁹⁵ Mr. Kohly’s direct testimony incorrectly referred to this issue as Issue No. 25.

1 A. As I stated in my direct testimony, I am concerned that CenturyTel's proposed
2 language attempts to create an exception of when it will pass CPN on transit traffic. If
3 the Arbitrator agrees that CenturyTel should pass CPN on transit traffic in a manner that
4 is consistent with 4 CSR 240-29.040(2), the Arbitrator should select Socket's proposed
5 language.

6
7 **Issue 31: Should Socket's proposed language regarding the exchange of**
8 **enhanced/information services traffic be included in the agreement?**
9

10
11 **Q. What is the purpose of Socket's proposed language?**

12 A. Socket's proposal recognizes the growing importance of enhanced services traffic,
13 including VoIP. CenturyTel's own annual report to shareholder recognizes that IP
14 services are driving rapid changes in the telecommunication industry and states that "the
15 advancement of IP technologies also provide us unprecedented opportunities to sell new
16 products and service over our broadband network and to expand the geographic market
17 scope of the markets we service."⁹⁶ The interconnection agreement between Socket and
18 CenturyTel needs to recognize this burgeoning growth area. The traffic that will be
19 subject to Socket's proposed contract language is IP-PSTN and undergoes a net protocol
20 change before it enters the PSTN. If Socket's language is not included, the parties will
21 not have a contractual method to carry and exchange VoIP and other enhanced services
22 traffic (collectively "IS Traffic"). Without definitive provisions in the ICA, Socket is
23 concerned that CenturyTel may attempt to refuse to interconnect for the exchange of IS

⁹⁶ CenturyTel Inc.'s 2006 Annual Report at 2.

1 traffic, or may demand undue compensation for IS or other types of traffic that it does
2 exchange with Socket.

3 **Q. Do you have a response to Mr. Miller's criticism of Socket's proposed language?**

4 A. Mr. Miller repeats CenturyTel's view that the interconnection agreement should
5 only address the exchange of local traffic, apparently leaving the exchange of all other
6 traffic to future negotiations and arbitrations. For the reasons explained elsewhere, this
7 notion should be rejected. Mr. Miller also claims that Socket's proposed compensation
8 mechanism is ambiguous (Miller Direct at 64, line 24) but then complain about the
9 compensation mechanism that Socket is seeking to impose (Miller Direct at 65, lines 2-
10 8). Simply put, Mr. Miller's claims are unfounded and similar arguments were rejected
11 by the Arbitrator and by the Commission in the M2A Successor Arbitration. As stated in
12 my direct testimony, Socket's proposed language is taken directly from the decision in
13 that case. The fact that CenturyTel is not SBC changes nothing. Clearly, the Arbitrator
14 should accept Socket's proposed language.

15
16 **Issue 32: How should the ICA define the term "Foreign Exchange"?**

17
18 **CenturyTel's alternative Issue Statement: What definition, if any, should be**
19 **included in the ICA for the term "Foreign Exchange" or "FX"?**
20

21 **Q. What is your reaction to Mr. Simshaw's direct testimony on this issue?**

22 A. Mr. Miller's focus is, once again, upon Socket's use of Foreign Exchange Service
23 to serve ISPs. Foreign Exchange ("FX") service is a service that gives an end-user (the
24 FX subscriber) an NPA-NXX that is associated with a local calling area other than the
25 local calling area where the end-user is physically located. Consequently, originating end

1 users in the calling scope with which the NPA-NXX is associated can make local calls to
2 the FX subscriber. In turn, the FX subscriber has an outbound calling scope (if the FX
3 service is used for voice) that is associated with the local calling area of the NPA-NXX.

4 Mr. Simshaw's apparent opposition to defining FX in this agreement is his belief
5 that Socket's VNXX service is not true FX service. His reasoning is not based upon
6 Socket's FX service having a different functionality than CenturyTel's FX service but
7 instead upon Socket's cost and retail price structure. I believe that Socket's cost and
8 price structure are irrelevant and what matters is the functionality that the customer
9 receives. Whether the customer obtains FX service from CenturyTel or Socket, the
10 customer receives the exact same functionality.

11 Regardless of how the service is provided, it is a sanctioned form of toll
12 avoidance. Take the example of CenturyTel's FX customer physically located in
13 Warrenton but purchasing FX service for Wentzville. That customer will receive a NPA-
14 NXX code associated with Wentzville and make and receive calls just as if he or she is
15 physically located in Wentzville while sitting in Warrenton. If that customer places a call
16 to one of Socket's customers in Wentzville, CenturyTel will not charge that customer toll
17 charges nor will CenturyTel pay Socket terminating access charges.⁹⁷ That is no different
18 than if Socket provided the same service using VNXX. There is no basis for
19 CenturyTel's attempt to single out one form of FX service out for "access treatment"
20 while protecting its own FX service from "access treatment."

⁹⁷ If CenturyTel combined its FX service with MCA service, the customer located in Warrenton will have the full inbound and outbound calling scope of the St. Louis MCA. All calls originated by or terminating to that customer will be treated by the intercarrier compensation rules associated with MCA service by every LEC in the MCA.

1 **Q. Do the other interconnection agreements that Socket operates under differentiate**
2 **types of FX service based upon how the service is provisioned for interconnection**
3 **and intercarrier compensation purposes?**
4

5 A. No. Our agreements with both Sprint and SBC treat all FX services the same and
6 use bill-and-keep as the compensation mechanism.

7 **Q. What happens if the Arbitrator does not accept Socket's proposed definition?**

8 A. CenturyTel is not proposing a definition of its own. This is a type of traffic that
9 will be exchanged between the parties because both parties are proposing language
10 elsewhere in this section related to the exchange of FX traffic. For that reason, it needs to
11 be defined. Without a definition, each party will define FX its own way and there will
12 certainly be disputes over how that traffic is handled.

13
14 **Issue 33: How should the ICA define "Local Interconnection Traffic"?**
15

16 **Q. What is your response to Mr. Simshaw's testimony on this issue?**

17 A. Again, Mr. Simshaw focuses upon VNXX traffic and asserts that Socket is trying
18 to use bad definitions to arbitrage the agreement. I disagree. Again, I see no basis for
19 singling VNXX traffic out for special treatment. It is a means to provision FX service
20 and both should be treated equally. More importantly, Mr. Simshaw simply proposes to
21 address interconnection and compensation issues by simply excluding categories of
22 traffic from definitions.

23 If the Arbitrator determines that transit traffic, ISP traffic, and FX traffic should
24 be addressed in agreements established pursuant to Section 251 and that these types of
25 traffic are to be exchanged under the terms of this agreement, then Socket's language

1 must be accepted. I addressed each of these categories of traffic in my direct testimony
2 and fully explained why they should be addressed in this agreement.

3
4 **Issue 34: Which Party's definition of "Virtual NXX Traffic" is most appropriate**
5 **for the ICA?**
6

7 **Q. Will you summarize Mr. Simshaw's direct testimony on this issue?**

8 A. Yes. Mr. Simshaw contends that CenturyTel's definition is clearer than
9 Socket's.⁹⁸

10 **Q. Do you agree?**

11 A. No. FX service (including VNXX service) is provided by a local exchange carrier
12 to retail customers. That is captured accurately in Socket's proposed definition.
13 CenturyTel's proposed definition does not capture that accurately. For example, The
14 CenturyTel definition uses the term Customer. In Article II, the parties agreed to define
15 the term "Customer" as

16 1.13 Customer - Party receiving service from the other,
17 CenturyTel or Socket, depending on the context and which Party is
18 receiving the service from the other Party.
19

20 CenturyTel's proposed definition is nonsensical as it describes a process whereby Socket
21 or CenturyTel would receive Virtual NXX Traffic from the other and should be rejected.

22
23 **ARTICLE VI – RESALE**
24
25

26 **Issue 7: Should the avoided cost discount applicable to resold services generally**
27 **apply to Nonrecurring Charges?**
28

⁹⁸ Simshaw Direct at 43.

1 **Q. How were CenturyTel's proposed avoided cost discount studies calculated?**

2 A. CenturyTel's proposed resale cost discount study as well as the resale study used
3 in the AT&T-GTE arbitration⁹⁹ were performed across all revenues and costs from all
4 regulated services and activities in Missouri. Therefore, it included all services, both
5 non-recurring and recurring. As a result, the study should apply to all services, both non-
6 recurring and recurring.

7 **Q. Could CenturyTel have performed two separate studies with one designed to**
8 **capture the discount for non-recurring activities and one designed to capture the**
9 **discount for recurring activities?**

10
11 A. It is possible. Such a study would take accounting data that separate the revenues
12 and costs for recurring activities and non-recurring activities.

13 **Q. Did CenturyTel conduct such a study?**

14 A. No. CenturyTel's study includes costs and revenues for all non-recurring and
15 recurring activities.

16 **Q. What does the resale cost discount represent and what are the consequences of not**
17 **applying it to non-recurring activities?**

18
19 A. According to CenturyTel witness Mr. Buchan, the avoided cost discount should
20 not apply to non-recurring charges ("NRCs") because "none of the costs associated with
21 these non-recurring rates would be avoided or are avoidable in a wholesale
22 environment."¹⁰⁰ But the resale cost discount represents an average across all revenues
23 and expense. If the resale cost discount for NRCs should be a lesser discount (or
24 eliminated altogether), then the resale cost discount for recurring charges must

⁹⁹ TO-97-63, AT&T Communications of the Southwest, Inc.'s Petition for Arbitration to Establish an Interconnection Agreement with GTE Midwest Incorporated.

¹⁰⁰ Direct Testimony of Kenneth Buchan at 31.

1 necessarily warrant a greater discount. This is simply the nature of averaging: If you
2 calculate an average and then remove the lower numbers from the calculation, that
3 average is no longer applicable to the remaining numbers. Instead, the new average will
4 be greater than the average was prior to removing the smaller numbers.

5 **Q. What implications does this have for CenturyTel's position?**

6 A. CenturyTel can't have it both ways. If CenturyTel wants to lower or eliminate the
7 discount for NRCs, then it must also give Socket a better discount for recurring charges.

8
9 **Issue 34: What resale rates should be included in the ICA?**
10

11 **Q. Can you summarize the dispute with respect to the resale discount?**

12 A. CenturyTel is proposing new resale cost discount studies in this case. These
13 studies differ from the resale discount analysis previously performed by the PSC. These
14 studies produce a lower resale discount rate primarily because Mr. Buchan has assumed a
15 lesser percentage of avoidable costs than the Commission has previously permitted. I do
16 not believe there is any justification for the lesser percentage of avoidable costs, which
17 would result in a lower resale discount.

18 **Q. What is the standard for determining whether costs are avoidable when calculating**
19 **the resale discount?**

20 A. In calculating the resale discount, state commissions are supposed to make "an
21 objective assessment of what costs are reasonably avoidable when a LEC sells its
22 services wholesale."¹⁰¹ In defining the standard for "avoidable," the FCC rejected the

¹⁰¹ FCC First Report and Order ¶ 911.

1 idea that a LEC must actually experience a reduction in its operating expenses for a cost
2 to be considered “avoided” for purposes of section 252(d)(3).¹⁰² In support of this ruling,
3 the FCC noted that to do so would be to allow incumbent LECs to sustain artificially high
4 wholesale prices by declining to reduce their expenditures to the degree that certain costs
5 are readily avoidable.

6 **Q. Given that, what are some of your disagreements with Mr. Buchan’s resale**
7 **analysis?**

8
9 A. Mr. Buchan utilized an avoided cost ratio of 25% for product management and
10 90% for sales and product management. The basis for this was an Alabama decision for
11 which he provided no explanation. In Missouri, which is the state jurisdiction pertinent
12 to this arbitration, the Commission previously authorized an avoidable cost ratio of 50%
13 for product management and 90% for sales and product management. The Missouri
14 Commission’s previous decision is more relevant than an unexplained Alabama decision.

15 As part of the resale discount analysis, Mr. Buchan also puts forward a study that
16 is intended to determine the avoidable service order activities in order to determine the
17 overall avoidable customer service expenses.¹⁰³ At the heart of this study are the
18 Avoided Time Ratios which are “CenturyTel’s estimate of the time that would be
19 avoided offering the services on a strictly wholesale, rather than retail, basis.”¹⁰⁴
20 Therefore, the credibility of these estimates is critical to the accuracy of the study.
21 CenturyTel assumed that 50% of the Install and Change Order time was avoidable, that

¹⁰² *Id.*

¹⁰³ Buchan Direct at 27.

¹⁰⁴ *Id.* at 28.

1 25% of the time associated with Disconnect and Outside Moves was avoidable, and that
2 there would be no avoidable time and even additional time with Suspend and Restore
3 Order.

4 **Q. Do you believe these assumptions are appropriate?**

5 A. No. Each of these assumptions was based upon avoided time using manual
6 processes for accepting and processing the orders. For example, the avoided time for
7 Installs and Moves was offset by “additional time required to fill out a firm order
8 commitment” and complete other paperwork; the avoided time for Disconnects and
9 Moves is offset by the assumption the time saved by reduced customer contacts “is
10 largely offset by additional orders required for a function that is automated for retail
11 customers;” and Suspend and Restore Orders have no avoidable cost because “under a
12 wholesale environment, manual orders are created” that are not created in a retail
13 environment and, as a result, time was actually doubled.¹⁰⁵ These assumptions are
14 unreasonable given that Mr. Buchan’s basic premise is to estimate the percentage of
15 avoidable costs if 100% of the services were offered on a wholesale basis rather than a
16 retail basis.

17 As I noted earlier, the FCC defines avoidable costs as those that can be avoided,
18 whether the company chooses to avoid it or not.¹⁰⁶ In describing each of CenturyTel’s
19 assumptions, CenturyTel acknowledges that it has automated systems for its retail
20 operations but then proposes to use more time-intensive manual processes for processing
21 wholesale orders. If CenturyTel were focused on 100% wholesale, it must be assumed

¹⁰⁵ Buchan Direct at 28.

¹⁰⁶ TO-97-63, AT&T-GTE Arbitration, Final Arbitration Order at 110.

1 there would be automated systems in place for accepting and processing wholesale orders
2 and the avoidable expenses should reflect that. For this reason alone, CenturyTel's
3 proposed avoidable time ratios and the resulting estimates of customer services avoidable
4 cost must be rejected. Instead, the Arbitrator should use the FCC default percentage
5 previously used by the Commission.

6 **Q. What percentage of avoidable customer service expense did the Commission**
7 **previously authorize?**

8
9 A. The Commission previously authorized a 90% avoidable cost discount for
10 customer services.

11 **Q. Have you performed a wholesale cost analysis?**

12 A. Yes. For each of the CenturyTel affiliates, I prepared a wholesale cost analysis
13 using the same methodology used by the Commission in TO-97-63 which used the FCC's
14 defaults. The analysis resulted in a wholesale discount of 21.18% for CenturyTel –
15 Missouri and 26.8% for CenturyTel – Spectra.¹⁰⁷ As inputs to this study, detailed in the
16 attached Exhibit RMK-1, I used public filings by CenturyTel at the Commission.¹⁰⁸

17 For each of my analyses, I used the FCC default values for avoidable costs
18 previously used by the Missouri Commission. I calculated my avoidable indirect
19 expenses using the same calculation as Mr. Buchan as “the total avoidable expenses
20 calculated for marketing and customer services [] divided by the total operating

¹⁰⁷ The wholesale discount for CenturyTel-Spectra is lower because of a particularly large amount of Depreciation Telecom Plant in Service. CenturyTel-Spectra's amount of Depreciation Plant in Service Expense is five times greater than CenturyTel – Missouri. This stands out only because every other CenturyTel-Spectra expense was lower than the corresponding expense for CenturyTel-Missouri.

¹⁰⁸ My data was taken from the income statements found in the 2004 Annual Report of CenturyTel of Missouri, LLC, and the 2004 Annual Report of Spectra Communications Group, LLC d/b/a CenturyTel.

1 expenses.”¹⁰⁹ The actual number is different because it is dependent upon the amount of
2 assumed direct expenses.

3 **Q. Are you advocating the Arbitrator adopt these discounts?**

4 A. No. I am still advocating that where current rates exist, the Arbitrator should not
5 set new rates in this case. This position is the same with the wholesale discount.
6 However, if the Arbitrator is inclined to set new rates, he should do so using the same
7 methodology previously approved by the Commission as CenturyTel has failed to prove
8 that any deviation is warranted.

9 **Q. Why did you wait to file this resale analysis until rebuttal?**

10 A. Until direct testimony was filed, I did not have the details of CenturyTel’s
11 analysis so I did not know what test year CenturyTel was using or the reasoning behind
12 its assumptions of what costs are avoidable. I prepared this study to illustrate the amount
13 of the “rate increase” that we would see if a CenturyTel-specific study were adopted
14 based upon Mr. Buchan’s assumptions of avoidable costs.

15 **Q. Does Mr. Buchan’s testimony address the additional Non-Recurring Charges that**
16 **CenturyTel is proposing to add for resold services?**

17 A. No. Mr. Buchan addresses the issue of whether the wholesale discount applies to
18 non-recurring retail charges. Mr. Buchan also includes a very brief description of
19 CenturyTel’s recurring loop studies. He does not put forward studies or even any
20 testimony on the additional non-recurring charges that CenturyTel proposes to apply to
21 resold services. Consequently, CenturyTel’s new unsupported proposed rates should be
22 rejected.
23

¹⁰⁹ Buchan Direct at 30.

ARTICLE VII – UNES

Issue 13B: With respect to orders to convert other services, e.g., special access to UNE and vice versa, if CenturyTel has not developed an automated ordering process, should electronic service order charges nonetheless apply?

Q. Can you explain Socket's position on this issue?

A. This question comes down to whether Socket is required to pay CenturyTel's proposed rates that are purported to recover CenturyTel's actual costs, which reflect its current use of manual systems and process or whether Socket will pay rates that are based upon forward-looking costs that include efficient processes and procedures as required by the FCC's rules. This would include electronic ordering processes. It is important to remember that the conversion for which CenturyTel is proposing to charge is nothing but a change in the records in its billing systems. No circuit is being disconnected or installed. This rate reflects the change in CenturyTel's records that shifts the rate at which Socket is being billed from a special access rate to a UNE rate, or vice versa. That is all that is changing when a conversion takes place.

The rate that CenturyTel seeks to impose for this change in notations in its billing records is an Engineering Charge of \$179.37. Presumably, this rate was developed and is intended to recover the costs of designing a circuit. However, the circuit is already in place and operating. There is no engineering that needs to be done. Thus, Ms. Hankins is proposing a rate that in no way whatsoever reflects the work being performed. At worst, Socket should be required to pay only the \$65.68 ordering charge that reflects CenturyTel's current manual ordering process. As the rate should reflect forward looking

1 costs using efficient processes, Socket is proposing the \$3.92 ordering charge set by the
2 Commission in TO-97-63. For the reasons stated above and in my Direct Testimony, the
3 Arbitrator should adopt Socket's proposed rate.

4
5 **Issue 22: If CenturyTel asserts that it cannot provision a UNE, should it provide a**
6 **full explanation of why it cannot do so and, if the reason is lack of**
7 **facilities, should it be required to submit a construction plan for**
8 **expanding its facilities?**
9

10 **Q. Can you summarize Mr. Busbee's opposition to your proposed language?**

11 A. Basically, Mr. Busbee opposes Socket's proposed language on the grounds that it
12 would require CenturyTel to provide a "detailed" explanation of the reason for a lack of
13 facilities as opposed to a "reasonably detailed" explanation as CenturyTel proposes. He
14 also opposes the requirement to provide construction plans, if any exist, for facility
15 expansion and the requirement to identify the capacity that CenturyTel is holding for its
16 own future use. Mr. Busbee also opposes our language that would require CenturyTel to
17 file information on its construction plans with the Commission.

18 **Q. Do you have a response?**

19 A. Yes. First, the dispute between "reasonably detailed" and "detailed" seems
20 foolish. To me, adding the word "reasonably" only allows room for hedging and allows
21 CenturyTel to determine what it wants to provide to us when it rejects an order on the
22 grounds that it lacks facilities. Perhaps our past experience with order rejection colors
23 my perspective, but if we are going to be able to satisfy our customers' demands and
24 deliver services on time we need an answer that is more explanatory, that provides more
25 concrete information regarding the absence of facilities and the prospects for facility

1 additions than what we have received thus far. Mr. Busbee's testimony argues that
2 inserting the word "reasonably" is essential or Socket will demand access to records and
3 otherwise seek information in excruciating detail. What Socket is looking for is an
4 explanation, a detailed explanation of why facilities are not available to fill our order.

5 To me, the real issue here is whether CenturyTel has to identify the amount of
6 capacity it is holding for its own use and to indicate when it will add additional capacity.
7 CenturyTel argues that Socket has to bear all of CenturyTel's costs for constructing
8 additional facilities, but it is grossly unfair to impose this burden on Socket if CenturyTel
9 is holding or otherwise has access to capacity for its own needs and its own customers
10 that unfairly discriminates against Socket. As I stated in my Direct Testimony, Socket
11 has a right to know how much capacity CenturyTel is holding or retaining access to for
12 its own use. While CenturyTel certainly has the right to hold some capacity for its own
13 use so it can serve its customers, there is also the potential for abuse if CenturyTel
14 withholds an unreasonable amount. Once Socket knows what CenturyTel is reserving to
15 itself, if Socket believes that amount is unreasonable, Socket can address this through
16 dispute resolution.

17 **Q. What about CenturyTel's objections to providing information to the Commission**
18 **Staff?**

19
20 A. Socket has proposed that CenturyTel provide information on its reservation of
21 facilities for its own use and its construction plans on a "for your information" basis.
22 Socket is not asking the Commission to undertake a full review of the information or to
23 take any action based on the filing by itself. But, Socket does consider it important,
24 given the problems that Socket has experienced with order rejects due to claims of "no

1 facilities” that the Commission be aware of when such claims are made and what
2 CenturyTel is doing, frankly, with managing its network.

3
4 **Issue 29: Should this Article include a provision that addresses the right and**
5 **obligations of both Socket and CenturyTel with respect to self-**
6 **certification?**

7
8 **This issue has been resolved.**

9 **Issue 35: Should this Article include a provision that imposes a cap of 10 on the**
10 **number of unbundled DS1 dedicated transport circuits that Socket may**
11 **obtain on each route where DS1 dedicated transport is available under**
12 **the FCC rules?**
13

14 **Q. What is your reaction to Mr. Busbee’s Direct Testimony on this Issue?**

15 A. Mr. Busbee opposes Socket’s language that would apply the cap of 10 DS1s only
16 to routes where DS3 Dedicated Transport has been declassified. His stated reasons are
17 threefold. First, he claims that it is inconsistent with the express language of the rule.
18 Second, he asserts that Socket’s proposal would allow Socket to circumvent the FCC’s
19 cap of 12 DS3 Dedicated Transport circuits. Third, he argues that Socket’s proposed
20 implementation of the cap on DS1 transport circuits would effectively thwart the FCC’s
21 rationale for imposing the transport cap in the first place, which is essentially that 10 DS1
22 transport circuits are equal in cost to 1 DS3 circuit.

23 With respect to Mr. Busbee’s first reason, as I stated in my Direct Testimony,
24 Socket believes the FCC’s rule must be read, interpreted and applied in a manner that is
25 consistent with that portion of the text of the *TRRO* that addresses the issue. That text
26 explicitly applied the cap to the routes where DS3 Transport was declassified or no
27 longer available as a UNE.

1 With respect to Mr. Busbee's second reason for opposing Socket's language,
2 Socket never intended to sidestep the cap of 12 DS3s on any particular route and has
3 modified its contract accordingly to expressly address CenturyTel's concern, as follows:

4 **Section 7.10.1 CenturyTel will provide DS1 Dedicated Transport**
5 **unbundled under Section 251 on all routes between CenturyTel wire**
6 **centers that are classified as Tier 2 and Tier 3 on one or both ends of**
7 **the route. (The classification criteria for CenturyTel wire centers is**
8 **set forth in Section 5.3.3 of this Article.)** Socket may obtain a maximum
9 of 10 DS1 Dedicated Transport circuits on each route for which
10 CenturyTel is required to provide only DS1 Dedicated Transport under
11 Section 251. (The maximum of 10 DS1 Dedicated Transport circuits will
12 not apply on any route where a CenturyTel wire center classified as Tier 3
13 is on one or both ends.) **Under no circumstances, will Socket obtain**
14 **more than 346 DS1 Dedicated Circuits on any particular route.**
15

16 That additional language should address CenturyTel's concerns in this area, but I must
17 say that I find it humorous that almost every other CenturyTel witness complains about
18 the small size of Socket while Mr. Busbee is worried that Socket will obtain 346 DS1
19 Dedicated Transport UNEs. At least one person in CenturyTel is optimistic that we will
20 grow.

21 With respect to Mr. Busbee's last reason for opposing Socket's language, there
22 are other considerations that must be recognized besides the economics of recurring
23 charges when choosing to maintain 10 DS1s or moving to a DS3 facility. It is important
24 to note that converting from DS1 to DS3 transport requires physical disconnection and
25 reconnection of circuits. That type of network grooming activity presents the potential
26 for inadvertent disruption of service to customers. That potential is one reason why a
27 CLEC might want to continue with a situation where it has more than 10 DS1 transport
28 circuits rather than converting over to a single DS3 facility. Additionally, there are

1 significant non-recurring charges associated with disconnecting DS1 transport circuits
2 and establishing DS3 circuits. There is no reason to impose those costs on CLECs in
3 situations where DS3 transport remains available as a UNE if the CLEC does not
4 otherwise make the business decision to migrate the DS1 circuits to a DS3 facility.

5 Most importantly, Mr. Busbee fails to point to any regulatory purpose for
6 imposing the cap where DS3 transport remains available as a UNE; especially with
7 Socket's modified contract language that imposes a maximum number of DS1 routes
8 based upon the maximum of 12 DS3s. To do so would potentially waste network
9 resources.

10 Enforcing the cap as CenturyTel proposes would require a CLEC needing an
11 eleventh Dedicated DS1 Transport Circuit to obtain a Dedicated DS3 Transport Circuit.
12 That would force the CLEC to have 27 Dedicated DS1s of Transport Capacity that
13 remain unused – wasted – until the CLEC moved the 10 existing DS1s of Dedicated
14 Transport over to the DS3. Even when that is done, there will still be 17 Dedicated DS1
15 Transport Circuits unused. Given CenturyTel's claim of limited interoffice transport
16 capacity, that certainly seems wasteful. It would be even more perverse if CenturyTel
17 claimed that it could not provide the DS3 that it was forcing the CLEC to lease because
18 of a lack of capacity.

19
20 **ARTICLE XIII - OSS**
21

22
23 **Q. Will you summarize CenturyTel's response to Socket's proposed Article XIII -**
24 **OSS?**
25

1 A. It seems as if CenturyTel is very much opposed to Socket's request that it put in
2 place an operations support systems that provides parity treatment to Socket and other
3 CLECs in a manner consistent with the FCC rules. The reasons generally given by
4 CenturyTel's witnesses for urging the Arbitrator to deny Socket's request are:

- 5 1) Socket's size does not justify the development of an OSS system;
- 6 2) CenturyTel's current system satisfies Socket's needs and Socket has not
7 demonstrated a need for an electronic OSS;
- 8 3) CenturyTel already provides OSS functionality at parity with the
9 functionality it provides its own end-users;
- 10 4) There must be an industry consensus on an OSS system before
11 CenturyTel should be required to develop such a system;
- 12 5) Developing an OSS system is cost prohibitive, especially given Socket's
13 size; and
- 14 6) CenturyTel is not AT&T.

15
16 These reasons are generally set forth in the Direct Testimony of Maxine Moreau, Carla
17 Wilkes, Pam Hankins, Ted Hankins and Guy Miller.

18 **Q. What is your response to CenturyTel's position?**

19
20 A. My initial response is that these reasons are simply irrelevant. None of them
21 excuses CenturyTel from fulfilling the obligations imposed on ILECs by the FCC and
22 previously agreed to by CenturyTel.

23 **Q. Stepping back for a minute (or 10 years), can you explain the importance of access**
24 **to an electronic OSS that provides the functionality that CenturyTel itself receives?**

25
26 A. Yes. The electronic OSS is the means that Socket will use to obtain access to
27 UNEs and to resold services for the purpose of providing services to Socket's customers
28 and to compete with CenturyTel in the marketplace. Incumbent LEC's are required to
29 provide UNEs at just, reasonable and nondiscriminatory terms and conditions. The FCC
30 defined this obligation as follows,

1 The duty to provide unbundled network elements on ‘terms, and
2 conditions that are just, reasonable, and nondiscriminatory’ means, at a
3 minimum, that whatever those terms and conditions are, they must be
4 offered equally to all requesting carriers, and where applicable, they must
5 be equal to the terms and conditions under which the incumbent LEC
6 provisions such elements to itself.¹¹⁰

7
8 In order to meet the requirement to provide access to UNEs on just, reasonable, and
9 nondiscriminatory terms and conditions, the FCC found,

10 that incumbent LECs must provide carriers purchasing access to
11 unbundled network elements with the pre-ordering, ordering, provisioning,
12 maintenance and repair, and billing functions of the incumbent LECs’
13 operations support systems. Moreover, the incumbent must provide
14 access to these functions under the same terms and conditions that they
15 provide these services to themselves or their customers.¹¹¹

16
17 It is critical to recognize that the importance of operations support systems is to give
18 carriers such as Socket a means to access or obtain every other unbundled network
19 element, such as loops or combinations of UNEs including EELs, on just, reasonable, and
20 nondiscriminatory terms and conditions. Thus, these systems and the data contained in
21 these systems are essential to support competitive entry.

22 In addition to recognizing that operations support systems are critical for gaining
23 access to UNEs, the FCC in its *Local Competition Order* further determined that an
24 ILEC’s OSS was a UNE in and of itself and required ILECs to unbundle their operations
25 support systems as part of their unbundling obligations.¹¹² The FCC states this clearly in
26 paragraphs 516-518 of that Order.

¹¹⁰ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, ¶ 315 (1996) (“*Local Competition Order*”).

¹¹¹ *Id.* at ¶ 316 (footnotes omitted). In the omitted footnote, fn 684, the FCC clarified that provisioning included installation.

¹¹² *Local Competition Order* at ¶ 516.

1 We conclude that operations support systems and the information they
2 contain fall squarely within the definition of 'network element' and must
3 be unbundled upon request under section 251(c)(3), as discussed below.
4 Congress included in the definition of 'network element' the terms
5 'databases' and 'information sufficient for billing and collection or used in
6 the transmission, routing, *or other provision* of a telecommunications
7 service.' We believe that the inclusion of these terms in the definition of
8 'network element' is a recognition that the massive operations support
9 systems employed by incumbent LECs, and the information such systems
10 maintain and update to administer telecommunications networks and
11 services, represent a significant potential barrier to entry. It is these
12 systems that determine, in large part, the speed and efficiency with which
13 incumbent LECs can market, order, provision, and maintain
14 telecommunications services and facilities. Thus, we agree with Ameritech
15 that '[o]perational interfaces are essential to promote viable competitive
16 entry.'

17
18 Nondiscriminatory access to operations support systems functions can be
19 viewed in at least three ways. First, operations support systems themselves
20 can be characterized as 'databases' or 'facilit[ies] . . . used in the provision
21 of a telecommunications service,' and the functions performed by such
22 systems can be characterized as 'features, functions, and capabilities that
23 are provided by means of such facilit[ies].' Second, the information
24 contained in, and processed by operations support systems can be
25 classified as 'information sufficient for billing and collection or used in
26 the transmission, routing, or other provision of a telecommunications
27 service.' Third, nondiscriminatory access to the functions of operations
28 support systems, which would include access to the information they
29 contain, could be viewed as a 'term or condition' of unbundling other
30 network elements under section 251(c)(3), or resale under
31 section 251(c)(4). Thus, we conclude that, under any of these
32 interpretations, operations support systems functions are subject to the
33 nondiscriminatory access duty imposed by section 251(c)(3), and the duty
34 imposed by section 251(c)(4) to provide resale services under just,
35 reasonable, and nondiscriminatory terms and conditions.

36
37 Much of the information maintained by these systems is critical to the
38 ability of other carriers to compete with incumbent LECs using unbundled
39 network elements or resold services. Without access to review, *inter alia*,
40 available telephone numbers, service interval information, and
41 maintenance histories, competing carriers would operate at a significant
42 disadvantage with respect to the incumbent. Other information, such as
43 the facilities and services assigned to a particular customer, is necessary to
44 a competing carrier's ability to provision and offer competing services to

1 incumbent LEC customers. *Finally, if competing carriers are unable to*
2 *perform the functions of pre-ordering, ordering, provisioning,*
3 *maintenance and repair, and billing for network elements and resale*
4 *services in substantially the same time and manner that an incumbent can*
5 *for itself, competing carriers will be severely disadvantaged, if not*
6 *precluded altogether, from fairly competing.* Thus providing
7 nondiscriminatory access to these support systems functions, which would
8 include access to the information such systems contain, is vital to creating
9 opportunities for meaningful competition.¹¹³

10
11 For these reasons, the FCC declared OSS systems and the data within these
12 systems to be a UNE and mandated that

13 an incumbent LEC must provide nondiscriminatory access to their
14 operations support systems functions for pre-ordering, ordering,
15 provisioning, maintenance and repair, and billing available to the LEC
16 itself. Such nondiscriminatory access necessarily includes access to the
17 functionality of any internal gateway systems the incumbent employs in
18 performing the above functions for its own customers.¹¹⁴

19
20 **Q. Has the FCC recognized the importance of OSS subsequent to the issuance of its**
21 ***Local Competition Order*?**

22
23 **A.** Yes, it has. For example, in reviewing Bell Atlantic's Section 271 Application for
24 authority to provide in-region long distance services, the FCC reiterated its conclusions
25 regarding the critical importance of operations support systems and the necessity for
26 ILECs to provide non-discriminatory access to OSS, stating as follows:

27 Incumbent LECs use a variety of systems, databases, and personnel
28 (collectively referred to as OSS) to provide service to their customers. The
29 Commission consistently has found that nondiscriminatory access to OSS
30 is a prerequisite to the development of meaningful local competition. For
31 example, new entrants must have access to the functions performed by the
32 incumbent's OSS in order to formulate and place orders for network
33 elements or resale services, to install service to their customers, to
34 maintain and repair network facilities, and to bill customers. The
35 Commission has determined that without nondiscriminatory access to the

¹¹³ *Id.* at ¶¶ 516-518 (footnotes omitted) (emphasis supplied).

¹¹⁴ *Id.* at ¶ 523.

1 BOC's OSS, a competing carrier 'will be severely disadvantaged, if not
2 precluded altogether, from fairly competing' in the local exchange
3 market.¹¹⁵
4

5 There is no question that the FCC has found that access to operations support systems is
6 the key to competitive entry.

7 **Q. You have quoted several paragraphs from the FCC's *Local Competition Order*. Will**
8 **you summarize what this means in this case?**
9

10 A. Yes. It is very straight-forward. CenturyTel is required to provide
11 nondiscriminatory access to its operations support systems functions for pre-ordering,
12 ordering, provisioning, maintenance and repair, and billing upon request. CenturyTel has
13 not done that.

14 In order to obtain non-discriminatory access to these critical functions, Socket
15 does not have to meet some test of minimum size or service order volume. The
16 unbundling requirement and the non-discrimination requirement for OSS are absolute.
17 An ILEC's obligation with respect to OSS is no different than its obligations to provide
18 access to other UNEs such as loops. A CLEC is not required to prove to the ILEC on a
19 case-by-case basis that it is large enough to warrant access to a UNE loop or that it
20 should accept something other than a UNE loop because it really does not need the UNE
21 loop. That would defeat the entire purpose of setting national unbundling rules.

22 **Q. Did the FCC find that nondiscriminatory to OSS is available only to CLECs of a**
23 **certain size?**
24

¹¹⁵ CC Docket No. 99-295, *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, rel. Dec. 22, 1999 at ¶ 38.

1 A. No, it did not. What one sees in the FCC's Order instead are specific references
2 to promoting competitive entry by small entrants. Indeed, that is one of the reasons the
3 FCC elected to adopt national interconnection and unbundling rules,¹¹⁶ national pricing
4 standards,¹¹⁷ nondiscrimination rules,¹¹⁸ and even one of the reasons for requiring
5 incumbent LECs to provide access to unbundled network elements with the pre-ordering,
6 ordering, provisioning, installation, maintenance and repair, and billing functions of the
7 incumbent LECs' operations support systems. To require Socket or any CLEC to reach a
8 certain size before gaining nondiscriminatory access to OSS is entirely inconsistent with
9 the provisions of FCC's rules and decisions implementing the Act.

10 Likewise, Socket is not required to demonstrate to this Commission that
11 CenturyTel's current system has caused customer dissatisfaction, fails Socket's needs or
12 impairs Socket's ability to compete, although it is true that CenturyTel does not provide
13 Socket with the same access or functionality that CenturyTel itself has and on which
14 CenturyTel relies in serving its own customers.¹¹⁹ Ms. Moreau misstates the "parity
15 standard" that applies when she says that "[f]or functions that do not have a meaningful

¹¹⁶ *Local Competition Order* at ¶¶ 61-62, 242. 30, and 315.

¹¹⁷ *Id.* at ¶ 114.

¹¹⁸ *Id.* at ¶¶ 306 and 315.

¹¹⁹ I addressed this in my earlier discussion of parity. In short, none of CenturyTel's witnesses claims its current systems places Socket at parity with CenturyTel's access to and use of its own systems in terms of pre-order functionality. Ms. Hankins' claim that the ordering system available to Socket is at parity with CenturyTel's own ordering system is flawed, because she fails to account for the additional time required for the "regulatory review process" that Socket's orders undergo or the additional two days that CenturyTel allots it to re-type all of Sockets orders. Similarly, Ms. Hankins' assertions that Socket has parity with CenturyTel's maintenance functionality fails because Socket is entitled to the same functionality as CenturyTel itself, not what CenturyTel's retail customers receive. For parity to exist, Socket needs access to the same information at the same time that it is available to CenturyTel employees so that Socket and CenturyTel can deal with and respond to the needs of their company's customers. This is also discussed in the Testimony of Kurt Bruemmer.

1 ‘retail analogue,’ such as the provision of access to OSS for ordering or provisioning of
2 UNEs, and the like, I understand that we must offer an efficient CLEC a meaningful
3 opportunity to compete. When I say ‘parity,’ that is what I mean.”¹²⁰ I do not agree that
4 there are no retail analogues to ordering and provisioning UNEs and I certainly do not
5 know what she means by “and the like.” In particular, whether Socket would serve a
6 customer by using UNEs or resold services it is necessary for us to obtain access to CSRs
7 and that access needs to be nondiscriminatory so that we have access to the same
8 information as readily as CenturyTel employees. We do not have that today and we will
9 not have it under CenturyTel’s manual processes.

10 The FCC has already determined that CLECs are impaired without equal access to
11 CenturyTel’s operations support systems. CenturyTel is simply not given discretion to
12 determine whether or when Socket is entitled to access to UNEs, including non-
13 discriminatory access to operations support systems. Simply put, it is time for
14 CenturyTel to step up to the plate and fulfill its obligations.

15 **Q. Does the fact that CenturyTel is not AT&T change this?**

16 A. No. This obligation is imposed on all incumbent LECs and is not specific to
17 RBOCs. The FCC considered the economic impact of its rules on small ILECs. In doing
18 so, it recognized that, first, the obligation is nondiscriminatory access, which recognizes
19 that different incumbent LECs possess different existing systems.¹²¹ Second, the FCC
20 recognized that section 251(f) of the 1996 Act provides relief for certain small LECs

¹²⁰ Moreau Direct at 7.

¹²¹ *Local Competition Order* at ¶ 526.

1 from the FCC's regulations implementing section 251.¹²² To date, CenturyTel has not
2 sought such relief and this is not the proper forum to do so. Basically, the FCC rejected
3 CenturyTel's rationale for not unbundling its operations support systems almost 10 years
4 ago. It is simply time for CenturyTel to move on and fulfill the obligations.

5 **Q. Socket and CenturyTel are also arbitrating issues surrounding performance**
6 **measurements. Does the resolution of those performance measure issues, one way**
7 **or the other, relieve CenturyTel of its obligation to provide non-discriminatory**
8 **access to its OSS systems?**
9

10 A. Not in any way. Socket's proposed measurements recognize the fact that Socket
11 and CenturyTel are currently operating in a manual mode and that Socket does not have
12 electronic access to CenturyTel's OSS systems. Even if CenturyTel's performance meets
13 all of Socket's proposed Performance Measurements, CenturyTel is still not providing
14 service at parity nor properly meeting its unbundling obligations. For example, Socket's
15 proposed Performance Measurement regarding the time for receipt of the Customer
16 Service Record (Preorder/Ordering, PM 1) recognizes that CenturyTel is providing CSRs
17 via a manual process in which Socket submits a request for CSR information and
18 CenturyTel employees look up the information in the company records and then respond
19 to Socket. This manual process has taken a minimum of a day and often takes longer.
20 Once an electronic OSS system is developed, Socket will have real-time access to that
21 information, just as CenturyTel's own representatives have today. Obviously, the PM
22 will need to be changed once the electronic OSS is developed. Socket's proposed
23 language in Article XV, Performance Measures recognizes that the measurements will
24 change over time as processes get more efficient or new pre-order functionality is

¹²² *Id.*

1 developed. This is also recognized in Socket's proposed language in Article XIII-OSS,
2 Section 4.5.1 and Section 4.0, where the provisioning interval changes once the real-time
3 system is developed.

4 **Q. How do you respond to Ms. Moreau's and Ms. Wilkes' testimony that claims that**
5 **developing an electronic OSS would raise CPNI concerns because it would allow**
6 **Socket to have uncontrolled access to CenturyTel's real time electronic interfaces**
7 **and even goes on to suggest that Socket would go on "fishing trips" seeking CPNI**
8 **information?**
9

10 A. First, Socket is not asking for nor expecting uncontrolled or unfettered access to
11 CenturyTel customers' CPNI information. Socket and CenturyTel would continue to
12 operate under the Letter of Authorization ("LOA") process that is already agreed upon
13 between the Parties. Under that process, Socket obtains the LOA but is not required to
14 provide that individual LOA to CenturyTel as a condition of obtaining the customer
15 service record. Nothing in that process would change. Socket would continue to obtain
16 proper authorization prior to accessing CPNI information.

17 Second, Socket's own proposed contract language in Section 3.5 states that
18 Socket will have to obtain proper authorization and it even gives CenturyTel audit rights
19 if CenturyTel believes that Socket is misusing the interface in Section 3.6.

20 **Q. Ms. Moreau also cites the FCC's concerns with CPNI and the potential for new**
21 **rules to be issued as reasons to deny Socket electronic OSS. Is this valid?**
22

23 No. The impetus for the FCC's concern is that unauthorized individuals posing as
24 customers were gaining access to customer call records and in some instances carrier
25 employees were selling customer information. I saw nothing in the news articles that
26 CLECs' inquiries for or electronic access to CSR were the cause of the problems the FCC
27 wants to address. Thus, the new rules are likely to be irrelevant. But, to the extent new

1 rules are relevant, those changes can be addressed through the agreed upon change in law
2 processes.

3 **Q. Has either SBC or Sprint ever accused Socket of going on “fishing trips” seeking**
4 **CPNI information using the electronic interfaces it provides to Socket?**

5
6 A. No.

7 **Q. Has CenturyTel ever accused Socket of going on “fishing trips” seeking CPNI**
8 **information using the manual system that it uses to provides CSR to Socket?**

9
10 A. No.

11 **Q. Does Socket use manual or electronic access to CPNI information to go on “fishing**
12 **trips” for CPNI information?**

13
14 A. No. All of Socket’s ordering personnel are trained to know that they are required
15 to have proper authorization before accessing this information.

16 **Q. Did Ms. Moreau explain how CenturyTel’s manual process “is designed to identify**
17 **the possibility of ‘fishing’” requests for CSRs?**

18
19 A. No. Since both a manual process and an electronic process would operate under a
20 blanket LOA, I fail to see how one would be different from the other in this regard.

21 **Q. Do you believe there is any basis for Ms. Moreau’s and Ms. Wilkes’ stated concerns**
22 **in this area?**

23
24 A. No. I think this is nothing but another attempt to create an excuse for not meeting
25 unbundling obligations and merger commitments.

26 **Q. Mr. Miller raised concerns about the need to have industry consistency in**
27 **developing access to operations support systems and suggests that OSS should be**
28 **industry-based rather than upon a specific carrier’s unique demands. Do you have**
29 **a response?**

30
31 A. Yes. Socket is not asking for a unique OSS that is specific to Socket, so
32 Mr. Miller’s statements are unfounded. Socket is willing to adapt its own operating

1 procedures to meet the specifics of the OSS interface available. Socket did this with
2 Sprint and SBC and did not request any special treatment.

3 Also, it needs to be recognized that any OSS system CenturyTel develops for
4 CLECs in Missouri should also be available for CLECs in other states. As the FCC noted
5 in its *Local Competition Order*,

6 the interfaces developed by incumbents to accommodate
7 nondiscriminatory access will likely provide such access for services and
8 elements beyond a particular state's boundaries, and thus we believe that
9 requirements for such access by a small number of states representing a
10 cross-section of the country will quickly lead to incumbents providing
11 access in all regions.¹²³
12

13 As to Mr. Miller's statements that any OSS development be industry-based, there
14 are currently industry groups addressing OSS issues. For example, there is an Alliance
15 for Telecommunication Industry Standards (ATIS) committee, named the Telecom
16 Management and Operations Committee (TMOC), which according to its mission
17 statement, "develops operations, administration, maintenance and provisioning standards,
18 and other documentation related to Operations Support System (OSS) and Network
19 Element (NE) functions and interfaces for communications networks - with an emphasis
20 on standards development related to U.S.A. communication networks in coordination
21 with the development of international standards."¹²⁴ That Committee presently has 124
22 documents related to developing and maintaining OSS and Network Elements function
23 and interfaces. There is certainly plenty of industry information that would assist
24 CenturyTel in its development. I would add that CenturyTel is presently an ATIS

¹²³ *Local Competition Order* at ¶ 524.

¹²⁴ <http://www.atis.org/0130/index.asp>.

1 member. On Socket's end, Socket is certainly willing to participate in testing and in user
2 groups to develop such a system.

3 In other words, Socket does not want an OSS built for it. CenturyTel has access
4 to industry standards and industry information and it can and should use those standards
5 and that information as the basis for developing an OSS.

6 **Q. Do you have any response to the cost-study put forward by Ms. Wilkes?**

7 A. Yes. I have not been able to review the study because it was presented so late.
8 However, it is important for the Arbitrator to recognize that the study is only an estimate
9 of costs and is not a presentation or explanation of costs that were actually incurred.

10 **Q. Do you have any response to the cost recovery mechanism apparently being**
11 **proposed by CenturyTel?**

12
13 A. Yes. Mr. Hankins' proposed cost recovery mechanism strikes me as
14 unreasonable under the circumstances of this case. It is by no means clear that
15 CenturyTel should be permitted to recover from CLECs its costs of putting an electronic
16 OSS in place given its merger commitments when it obtained its properties in Missouri.
17 Nowhere in any Direct Testimony did a CenturyTel witness address this.

18 As I stated in my Direct Testimony related to CenturyTel's merger commitments,
19 CenturyTel recognized that,

20 to the extent Verizon offers electronic interface support system functions,
21 CenturyTel will have to accomplish this interface via a call-in or paper
22 transmission by the CLEC to a customer service representative.
23 CenturyTel is working toward a web-based solution that should allow for
24 automation to the interconnecting companies. We anticipate this
25 functionality to be available within nine months of the expected close date
26 of the transaction.¹²⁵

¹²⁵ Case TM-2002-232, Direct Testimony of Kenneth M. Matzdorff at 16 (Feb. 21, 2002).

1
2 Mr. Matzdorff also stated that the transfer from Verizon to CenturyTel, “will have
3 no adverse impact on the arrangements between Verizon and the CLECs.”¹²⁶ Socket was
4 one of those CLECs. By “arrangements,” he was referring to interconnection
5 agreements. As I interpret this, CenturyTel previously committed to developing and
6 implementing electronic interface support system functions, which would include pre-
7 ordering, ordering, provisioning, installation, maintenance and repair, and billing
8 functions. Pursuant to FCC rules, these functions must be provided under the same terms
9 and conditions that CenturyTel provides these services to itself. In reviewing the record
10 in Case TM-2002-232, I did not find any reservation that would permit CenturyTel to
11 assess CLECs such as Socket for the costs of meeting its merger commitments. To do so
12 would be inconsistent with the claim that there would be no adverse impact on the
13 CLECs, and there is no doubt that an adverse impact results when the certificated carrier
14 (Verizon) had in place an automated OSS system and neither that system nor a substitute
15 system existed once the merger closed.

16 Either not requiring CenturyTel to develop an electronic operations support
17 systems or requiring CenturyTel to develop the operations support system but requiring
18 CLECs to pay for it when presumably CLECs paid for Verizon to develop its OSS
19 system is inconsistent with the general notion that a transfer of assets or a merger should
20 not be detrimental to the public interest.¹²⁷ In approving this transaction, the Commission
21 made a determination that the transaction would not be detrimental to the public

¹²⁶ *Id.* at 15.

¹²⁷ Case No. TM-2002-232, Report and Order, <http://www.psc.mo.gov/orders/202/05212232.htm>, footnote 13 citing 4 CSR 240-2.060(5)(D).

1 interest.¹²⁸ Giving a class of customers (CLECs) a less efficient operations support
2 system runs afoul of the stated objective of protecting the public interest and ensuring
3 that the transaction has no detrimental impact. Requiring that class of customers
4 (CLECs) to pay significant amounts of money to CenturyTel to correct a broken promise,
5 a dishonored commitment to the people of Missouri, is not appropriate.

6 **Q. What if the Arbitrator determines that some cost recovery from CLECs is**
7 **appropriate?**

8
9 A. If the Arbitrator determines that CenturyTel should be permitted to recover its
10 costs for unbundling its operations support systems and providing CLECs with access to
11 electronic OSS, CenturyTel should first be required to demonstrate that it actually
12 incurred those costs. No cost recovery should be based upon an estimate.

13 More importantly, CenturyTel should be required to develop the system and
14 demonstrate that it is functional before recovering any costs. Certainly, even if the
15 Arbitrator were to assume that Mr. Hankins' rates are appropriate, they cannot be allowed
16 to go into effect while Socket remains forced to suffer the inefficiencies and delays
17 inherent in a manual process.

18 CenturyTel has also demonstrated a propensity to delay and seek extensions in
19 proceedings before the Commission. It would be horribly inappropriate to force Socket
20 to begin paying for an electronic system that does not exist and have CenturyTel fail to
21 deliver the system on time or with the expected functionality. For these reasons, any
22 specific amount or method of cost recovery should not be decided in this proceeding.

¹²⁸ Case No. TM-2002-232, Report and Order, <http://www.psc.mo.gov/orders/2002/05212232.htm>.

1 **Q. Do you have any concerns with the rate structure and subsequent rates being**
2 **proposed by Mr. Hankins?**
3

4 A. Yes. I do not believe the rate structure is necessarily appropriate as Mr. Hankins
5 simply applied CenturyTel's estimated costs to the non-recurring charges. That may not
6 be the most efficient means of recovering the costs for an electronic OSS. For example,
7 it might be more efficient to have a monthly subscription rate for CLECs electing to use
8 the electronic OSS. Alternatively, a rate structure that has varying rates based upon what
9 functionality a particular CLEC may seek may be a more efficient means to recover the
10 OSS. It appears that Mr. Hankins did not consider these alternatives.

11 **Q. What is your response to CenturyTel's proposed non-recurring rates that**
12 **Mr. Hankins puts forward to account for the cost of developing an electronic**
13 **operations support system?**
14

15 A. With respect to CenturyTel's proposed rates, these raise the most concerns.
16 Mr. Hankins' analysis is fatally flawed from the start. He testifies that he started with the
17 SBC non-recurring charges and then grossed those up to include CenturyTel's estimated
18 cost of developing and implementing an OSS for Missouri. Based upon his testimony, it
19 appears that he made no adjustments to account for any efficiencies that CenturyTel
20 would gain for itself as a result of using an electronic system.

21 Furthermore, Mr. Hankins increased every non-recurring rate element, but only
22 counted the revenue from UNEs previously provided in a particular rate zone by
23 CenturyTel towards the cost recovery. Again this is inappropriate, as he does not account
24 for additional UNEs and resold services that CenturyTel will likely provide in the future,
25 including those that CenturyTel will provide in additional rate zones. His method also
26 does not account for the fact that, heretofore, CenturyTel has refused to provide UNE

1 combinations thereby restricting CLEC demand for UNEs overall and restricting those to
2 limited markets.

3 I also disagree with Mr. Hankins' forecasted quantity of demand of UNEs that
4 CenturyTel will provide over the next 10 years. Mr. Hankins simply made a one-time
5 adjustment to increase total UNE demand by approximately 17% for DS1 loops. Other
6 UNEs also appear to have a one-time adjustment as well with varying percentage
7 increases. After that, he apparently assumed that there will be no increase in the quantity
8 of demand for any UNEs and no demand for resold services. As I explained earlier, I
9 expect that Socket will grow faster than Mr. Hankins' forecast recognizes. I also believe
10 that total CLEC entry into CenturyTel's territory will increase. Mr. Hankins does not
11 account for any of this.

12 **Q. Can you explain the basis for your statement?**

13 A. Yes. This increase is recognized in CenturyTel's own annual report to
14 shareholders, which warns that there will be increased competition, from both resellers
15 and facilities-based providers.¹²⁹ This will be particularly true due in part to
16 CenturyTel's "geographically clustered markets" in suburban areas and presence in mid-

¹²⁹ CenturyTel, Inc. 2005 10-K Report submitted to the Securities and Exchange Commission at 7. ("While competition through use of our network is still limited in most of our markets, we expect to receive additional interconnection requests in the future from a variety of resellers and facilities-based service providers. In addition to these changes in federal regulation, all of the 22 states in which we provide telephone services have taken legislative or regulatory steps to further introduce competition into the LEC business. As a result of these regulatory developments, ILECs increasingly face competition from competitive local exchange carriers ['CLECs'], particularly in high population areas. CLECs provide competing services through reselling the ILECs' local services, through use of the ILECs' unbundled network elements or through their own facilities. The number of companies which have requested authorization to provide local exchange service in our service areas has increased in recent years, especially in our Verizon markets acquired in 2002 and 2000. We anticipate that similar action may be taken by other competitors in the future, especially if all forms of federal support available to ILECs continue to remain available to these competitors.")

1 sized cities.¹³⁰ As CLECs that have previously focused on providing services within the
2 RBOCs' territories and primarily in metropolitan areas fill in their service territories, they
3 will seek to expand into other geographic markets; this is particularly true where you
4 have urban sprawl and small ILECs serve the outlying areas. St. Louis is a perfect
5 example. Many businesses have either moved to CenturyTel's exchanges or added
6 locations in CenturyTel's exchanges bordering SBC's exchanges. To the extent CLECs
7 currently serve those businesses in SBC's exchanges, they will need to expand their
8 service territory to remain the provider of choice.

9 I also believe that if CenturyTel begins to live up to its unbundling and
10 interconnection obligations, including unbundling its operations support systems, more
11 CLECs will enter the market as that will lower the existing barrier to entry. For example,
12 it took CenturyTel over five months to provision Socket's first order for a UNE loop. As
13 processes and procedures get defined, delays such as that should not occur and new
14 entrants are more likely to enter.

15 **Q. Earlier you referred to the fact that Verizon had an OSS system. Was CenturyTel's**
16 **predecessor required to provide electronic access to operations support systems?**

17 **A.** Yes. During the arbitration proceeding between pre-merger AT&T and GTE
18 (now Verizon) Case No. TO-97-63, the parties agreed that GTE would provide access to
19 its operation support system via electronic interfaces and that that implementation would
20 occur in three phases, culminating in fully electronic interfaces.¹³¹ In the Arbitration
21

¹³⁰ <http://www.centurytel.com/about/companyProfile/index.cfm>.

¹³¹ Case No. TO-97-63, *In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an*

1 Order, the Commission found that, “GTE should provide OSS access via electronic
2 interface using the schedule proposed by [the pre-merger] AT&T.”¹³²

3 **Q. Did the Commission address cost recovery?**

4 A. Yes. The Commission found that

5 costs should be recovered on a competitively neutral basis from all LSPs
6 and GTE. GTE shall track the costs it incurs in implementing the
7 electronic interface and prepare proposed rates for this service to be
8 submitted to the Commission once the interface is operative. The
9 proposal must include the underlying assumptions, rationale, and
10 supporting workpapers and any other documentation on which the
11 proposal is based. GTE shall also provide cost data to AT&T and AT&T
12 may submit the proposed rates as well.¹³³

13
14 This ruling became part of the AT&T – GTE Interconnection Agreement almost verbatim
15 in Section 29.1.7.

16 **Q. Does Socket’s proposed language for this interconnection agreement include a**
17 **similar provision?**

18
19 A. Yes. Section 12.1, which is taken from the SBC-Socket ICA, states

20 This Agreement does not include flat rate charges for OSS system access
21 and connectivity. CenturyTel is not waiving its right to recover its OSS
22 costs during the term of this Agreement and nothing herein shall preclude
23 CenturyTel from proposing new rates and charges for OSS cost recovery
24 during the term of this Agreement. Provided, however, CenturyTel may
25 not impose such new rates or charges unless the Parties amend this
26 Agreement pursuant to the General Terms and Conditions. New rates or
27 charges as provided herein, if any, shall be on a going forward basis only
28 and applied in a competitively neutral manner.

29
30 If it would be more amenable to CenturyTel, Socket would agree to substitute the
31 language from our current agreement in place of this language.

Interconnection Agreement Between AT&T Communications of the Southwest, Inc. and GTE Midwest, Inc.

¹³² *Id.*, Arbitration Order, December 10, 1996 at 46.

¹³³ *Id.*

1 **Q. Several of CenturyTel's witnesses complain that the period of time proposed by**
2 **Socket for having the OSS complete is far too short. Do you have a response?**

3
4 A. Yes. As I indicated in my Direct Testimony, the nine-month time period was
5 based upon the Direct Testimony of Kenneth Matzdorff.¹³⁴ As I see it, this is something
6 that should have already been completed several years ago. Allowing an additional nine
7 months to put an OSS in place following the decision in this case should be considered
8 extremely reasonable in light of the fact that the FCC required all incumbent LECs not
9 subject to an exemption or suspension under Section 251(f) of the Act to unbundle their
10 operations support systems as expeditiously as possible but in any event no later than
11 January 1, 1997.¹³⁵ I recognize that the initial content, workings and access to OSS
12 systems were the subject of intense debate between the largest ILECs and CLECs in the
13 first arbitrated interconnection agreements. And, I recall that many state commissions
14 conducted personal reviews of those systems to confirm that they were working as
15 promised. But, nearly 10 years have passed since those first systems were developed and
16 much has been learned by the industry. There are CLECs that provide wholesale services
17 to other carriers that have developed electronic ordering systems. This is not a situation
18 in which CenturyTel must begin from scratch.

19
20

¹³⁴ TM-2002-232, *In the Matter of the Joint Application of GTE Midwest, Inc. d/b/a Verizon Midwest and CenturyTel of Missouri, LLC for 1) Authority to Transfer and Acquire Part of Verizon Midwest's Franchise, Facilities, and System Located in the State of Missouri, 2) For Issuance of Certificate of Authority to CenturyTel of Missouri, LLC 3) To Designate CenturyTel of Missouri, LLC as Subject to Regulation as a Price Cap Company; and 4) To Designate CenturyTel of Missouri, LLC as a Telecommunications Carrier Eligible to Receive Federal Universal Service Support*, Matzdorff Direct at 15-16.

¹³⁵ *Local Competition Order at ¶ 525.*

ARTICLE XV – PERFORMANCE MEASURES

Q. Please describe the status of the parties’ disputes regarding Socket’s proposed performance measures and a remedy plan.

A. CenturyTel, in its direct testimony, for the first time provided Socket a response to the performance measures and the remedy plan that we proposed to include in our interconnection agreement. Although I requested that our interconnection agreement contain performance measures and a remedy plan during negotiations last fall, CenturyTel was unresponsive. After we filed our Petition for Arbitration, there was one substantive discussion where I presented Socket’s reasons behind each measure in its proposal. CenturyTel did not give me any “mark-up” of Socket’s proposal or give me an alternative proposal of its own prior to filing its testimony.

Socket had proposed a set of simple measures, rudimentary really, because we were assuming that Socket (1) would have to do all the tracking of CenturyTel’s performance, (2) would have access to only very limited data based on what it observed first hand and (3) would have to develop the reports from which the Parties would determine when payments under the remedy plan were due and when a Gap Closure Plan would have to be created. CenturyTel has now put forth its own proposal, which is much more detailed but not really better at achieving the objective Socket is striving for here and CenturyTel’s proposal has shortcomings of its own.

What is clear to me is that, except for some threshold decisions that the Arbitrator must make, the best course of action would be to direct the Parties to enter into a collaborative process to work out the details of performance measures and a remedy plan.

1 **Q. What threshold decisions must the Arbitrator make?**

2 A. There are several, but the obvious one is whether there will be performance
3 measures and a remedy plan in the Parties interconnection agreement. CenturyTel's
4 position is that the Commission lacks authority to require inclusion of either a set of
5 measures or a remedy plan. Socket's position is that the Commission does have that
6 authority. Because this is a legal argument, Socket will address it in its briefs and I will
7 not discuss it in my testimony. From a practical point of view, I would point out that the
8 Commission previously required CenturyTel's predecessor to include performance
9 measures in an arbitration and those measures appear in the agreement the Parties are
10 currently operating under.¹³⁶

11 **Q. Assuming for the moment that the Arbitrator rules that performance measures and**
12 **a remedy plan will be included in the ICA, why do you think a collaborative process**
13 **to work out the details of the measures and the plan should be ordered?**
14

15 A. As I said, CenturyTel has now provided its perspective on the rudimentary
16 measures and remedy plan that Socket proposed. Socket's proposal was based on the
17 measures and the plan that is in our current agreement as well as from some of the PSC's
18 own Quality of Service rules found in 4 CSR 240-32. Socket made that proposal because
19 it was the most straightforward and best available alternative at the time. Socket was sure
20 that, although the performance measures in the SBC ICA are fully fleshed out and have
21 been in use for some time, CenturyTel would object to adopting them here on the basis
22 that they are complicated, unfamiliar and developed for a large ILEC. Where I did use

¹³⁶ Case No. TO-97-63, *AT&T Communications of the Southwest, Inc.'s Petition for Arbitration to Establish an Interconnection Agreement with GTE Midwest Incorporated*, Arbitration Order, June 10, 1996 at 33.

1 measurements from the SBC ICA, Socket took steps to simplify them. Socket's proposal
2 to use the measures in the existing agreement with CenturyTel looked like a simple
3 solution. CenturyTel in its testimony is advocating a number of changes and an added
4 layer of detail that were not in Socket's original proposal, but would profoundly impact
5 it. Some changes and additions are objectionable, some are vague and will simply create
6 another round of disputes, and some are simply unsupported and arbitrary.

7 For example, CenturyTel has changed PMs to require mutual negotiations to
8 determine when the activity being measured occurred. While Socket would like a
9 collaborative process to determine the measurement itself, the ongoing task of
10 measuring cannot require mutual agreement each step of the way. (See PM #1.2) .

11 Also, CenturyTel has drastically reduced the dollar amounts of the payments set
12 out in Article XV that would apply if it fails to meet performance objectives, contending
13 that the amounts in Socket's proposal (the same amounts now in the Parties ICA) bear no
14 economic relationship to the harm Socket suffers. The purpose of remedy plans is not to
15 compensate CLECs for actual harm, but to incent ILECs to perform. At the same time,
16 these plans benefit the ILECs because they are liquidated damages provisions that allow
17 the Parties to avoid costly litigation over damages and breach of contract claims. Aside
18 from the fact that paying less is always preferable, no reason is given for selecting the
19 amounts CenturyTel is proposing would apply for failure to meet the Gap Closing Plan
20 objectives. Because a Gap Closing Plan only comes into existence when performance
21 measures show a "chronic" problem, it is vital that CenturyTel have strong incentives to
22 develop and live up to such Plans. The payment amounts proposed by CenturyTel are not

1 sufficient. As for CenturyTel's criticisms regarding the formula used to calculate remedy
2 payments on the individual measures, they merit consideration, but it is vital to explore
3 the practical operation of the changes CenturyTel proposes to be sure the amounts are
4 sufficient to assure good performance.

5 In addition, some of CenturyTel's concerns regarding Socket's proposal have
6 merit, but the way CenturyTel would resolve its concerns is objectionable. For example,
7 Ms. Moreau repeatedly criticizes Socket's proposal because she sees it as penalizing
8 CenturyTel for even small deviations from the performance objectives. In other words,
9 CenturyTel does not want to have to make a payment for failing a performance measure
10 when that failure was the result of just one miss, and that one miss out of a small number
11 of reported transactions constitutes a percentage that triggers payments. Her observation
12 that having only a small number of transactions occur each month can create this type of
13 result is a legitimate concern, but the solution CenturyTel offers is no solution at all.
14 CenturyTel proposes that the remedy plan not go into effect at all until Socket has
15 submitted 150 orders per month for three months.¹³⁷ That volume from a single carrier is
16 unlikely to occur during the life of the agreement; thus, no remedy plan would ever
17 actually be in effect. Even if the volume of orders does occur, there may still be small
18 samples for some types of UNEs or resold service being ordered.

¹³⁷ Section 4.5.2 of Article XV sets out CenturyTel's proposal as follows: "For Performance Measurements, once Socket's order volume reaches a level of one hundred fifty (150) orders for three (3) consecutive months, a ninety (90) grace period shall commence, and thereafter, the performance incentives shall fully apply."

1 Ms. Moreau also criticizes Socket for proposing measures and a remedy plan that
2 set benchmarks that do not reflect historical experience or CenturyTel's delivery of
3 services to its own customers. This criticism is unfair. Socket had no access to any
4 "historical experience" other than its own experience in dealing with CenturyTel. Socket
5 had no information on CenturyTel's delivery of services to its retail customers or its
6 affiliates, nor any information as to what level of performance reasonably can be
7 achieved by CenturyTel. CenturyTel asserts that Socket's measures are unreasonable,
8 but that assertion has not been "tested" through discussion and data review by the Parties
9 working cooperatively.

10 It appears, then, that the Arbitrator is faced with two quite different proposals and
11 a significant number of disputes regarding the details of how the measures will be defined
12 and applied and how a remedy plan will work, disputes that would be better resolved
13 through negotiation and compromise than through arbitration in a case of this size. Most
14 importantly, experience has proven that collaboration on the details of performance
15 measures and remedy plans produces results that ILECs and CLECs are able to agree
16 upon.

17 **Q. How would a collaborative process address the issues that exist here?**

18 A. First, it would allow the parties' internal experts to thoroughly discuss how
19 CenturyTel's processes work so that the parties could resolve the basic matters of what
20 aspects of CenturyTel's performance can and should be tracked, and exactly how the
21 performance will be measured. For example, suppose the activity being measured is
22 "timely service order provisioning." To measure this, the parties need to determine

1 exactly when the clock starts (e.g., would it be at the time of order submission, order
2 confirmation, or due date confirmation); when does it stop (e.g., would it be at acceptance
3 testing or notice of order completion); what occurrences should be excluded (e.g.,
4 CenturyTel's technicians unable to access end user customer premises or Socket's failure
5 to have in place necessary CPE); and what is being measured (e.g., is it the percent of
6 orders not provisioned by the due date or is it the number of days on average that
7 provisioning occurs past the due date).

8 Second, through discussion of these and other details, and through determining
9 what data can be readily obtained, the parties have the ability to tailor performance
10 measures to what is possible and important to track. The purpose of performance
11 measures and a remedy plan in the industry is to provide an incentive for the ILECs to
12 provide high quality services on a timely basis for CLECs *so that CLECs' customers*
13 *receive the benefit* of that. Socket chose the measures contained in its proposal because
14 they are in the existing ICA and because they are key measures of the delivery of
15 wholesale services on which Socket relies. But, the parties through collaboration could
16 determine that a measure be added or a measure be dropped.

17 Third, the problems that result when working with a small number of observations
18 (in this example service orders) are matters that statisticians regularly face and have
19 developed methods to address. Because performance measures and remedy plans have
20 been in existence for several years elsewhere, the Parties could look to these or consult
21 statisticians to assist us in finding a middle ground, a means of dealing with small
22 numbers of observations while yet having a remedy plan that provided real incentives to

1 CenturyTel to meet the performance objectives that the measures embody. Another
2 alternative might be quarterly calculations; essentially allowing sample numbers to
3 accrue.

4 **Q. Has the collaborative process worked in the past?**

5 A. Yes. In the SBC Arbitration proceeding, testimony was filed by Mr. Randy
6 Dysart for SBC and Mr. T. J. Sauder for the CLEC Coalition attesting to the success of
7 the collaborative process conducted in Texas in the arbitration of successor agreements to
8 the T2A. There, the parties were able to resolve all their disputes regarding not only the
9 specific aspects of SBC's performance to be measured but also the intricacies of how
10 performance would be tracked plus a remedy plan. That process was so successful in
11 reaching a result that the ILEC and CLECs found fair and workable that CLECs such as
12 Socket that did not participate in the Texas collaborative agreed to apply the results to the
13 ICA in Missouri. Furthermore, it is my understanding that the original performance
14 measures and remedy plan that were part of the M2A were derived primarily through
15 collaborative efforts among the parties and Staff input and recommendations.

16 **Q. What do you think a collaborative could accomplish here?**

17 A. I think a collaborative could result in performance measures and a remedy plan
18 that is workable and that both parties would find acceptable. Even if Socket and
19 CenturyTel cannot resolve each and every detail, we can greatly narrow the gap that
20 currently exists between what Socket proposes and what CenturyTel proposes and can
21 bring back for Staff mediation or dispute resolution both a smaller number of disputes
22 and fully developed alternatives that benefit from company-to-company dialogue. In

1 particular, the Parties can review CenturyTel's current level of service that it provides its
2 own customers, look at the "historical experience" that Ms. Moreau says is lacking in
3 Socket's proposal and determine benchmarks for performance are achievable.

4 **Q. You said that there are threshold decisions the arbitrator needs to make here. What**
5 **are they?**

6
7 A. The first dispute, as I said earlier, is the issue of whether the Commission has
8 authority to require that performance measures and a remedy plan be included in the
9 parties' interconnection agreement. Ms. Moreau states in her testimony that CenturyTel
10 does not agree that it is required to have either a set of performance measures or a remedy
11 plan in interconnection agreements. Related to the legal dispute is CenturyTel's
12 contention that even if the Commission has authority to order inclusion of performance
13 measures and a remedy plan, they are unnecessary to provide assurance CenturyTel is
14 performing its obligations or an incentive for CenturyTel to do so. Clearly, these
15 disputes go to the very heart of the matter and cannot be resolved through negotiation.

16 **Q. Are there other threshold disputes?**

17 A. Yes. One dispute is basic to the content of any performance measures and
18 remedy plan that would be included in the Parties' agreement, and that is the definition of
19 what constitutes "parity" in the context of performance measures. CenturyTel agrees that
20 it is obligated under the Act to provide Socket with nondiscriminatory performance as
21 compared to that which CenturyTel provides to itself or to any of its customers. But,
22 with respect to some of the activities for which Socket is proposing performance be
23 measured, CenturyTel is not using the correct comparison to determine whether its
24 performance is in "parity." Specifically, Ms. Moreau asserts that with respect to PM 7

1 regarding notice of orders in jeopardy it treats Socket the same as its retail customers.¹³⁸
2 Socket does not consider comparison to the retail customer to be the proper comparison
3 for determining parity for this performance measure, however. Socket should know an
4 order is in jeopardy at approximately the same time as CenturyTel knows; the proper
5 comparison is carrier to carrier, not carrier to end user.

6 I discussed the concept of “parity” at some length earlier in my testimony and will
7 not repeat it here. The Parties have agreed upon a definition of Parity in Article III,
8 Section 53. It needs to be clear that the Parties will use that definition when determining
9 the details of how the Performance Measurements will operate, such as what data will be
10 collected for comparison. It is because clarity is important that Socket objects to
11 CenturyTel’s language in Section 4.5 of Article XV. That language looks innocuous
12 when you first read it:

13 CenturyTel is committed to service parity. Both parties recognize that a
14 sufficient volume of orders must be processed before a Performance
15 Measurement can exhibit with a degree of confidence that parity does or
16 does not exist.
17

18 But, what it leaves open to debate and dispute (aside from what constitutes “parity” here)
19 is what would be a “*sufficient* volume of orders” and whether that volume requirement
20 applies not just to Socket’s orders but to the volume of orders CenturyTel receives from
21 its own customers for a particular service. Moreover the concept of “confidence” has a
22 specific meaning in statistical analysis but is not defined here and the Parties have not
23 discussed what “degree of confidence” they want to apply here.

¹³⁸ Moreau Direct at 43.

1 Socket does not object to pursuing performance measures that meet statistical
2 tests for “degree of confidence,” but the Parties have not discussed performance measures
3 at that level of detail. It does not seem productive to include language such as that
4 proposed by CenturyTel in Section 4.5 that is unspecific and only opens the door to
5 dispute. This is a perfect example of a matter the Parties can and should resolve through
6 a collaborative process.¹³⁹

7 **Q. What is the third dispute the arbitrator must resolve?**

8 A. The third dispute that the arbitrator needs to resolve is whether Socket’s
9 performance is at issue. Ms. Moreau contends in her testimony that CenturyTel cannot
10 be held to any performance standard for pre-ordering, ordering and provisioning of UNEs
11 and services unless Socket submits accurate forecasts of its order volumes and future
12 facility needs. She proposes two performance measures that would apply only to Socket.
13 Moreover, the remedy plan is triggered for some measures only if Socket submits
14 completely accurate orders at least 95% of the time.

15 **Q. What is your response to CenturyTel’s insistence that performance measures be**
16 **applied to Socket?**

17 A. I believe that this is more of a “tactical proposal” than anything else, because it is
18 so readily apparent in this industry that (1) no competitor in the marketplace, including
19 Socket, can ever create an accurate forecast of order volumes or its facility needs and
20

¹³⁹ The same problem exists with CenturyTel’s proposed language in Section 4.5.1 that states that the Parties will agree “to a ‘transition period’ where process data will be accumulated and discussed. This information will assist the designated coordinators in their development and implementation of processes.” The duration of the period and how it will be collected and reviewed need to be fleshed out through discussion of the Parties’ capabilities to collect data and when they can begin to do so. Agreement on these basics is needed before this concept could have any real meaning. Collaborative discussions could resolve this.

1 that (2) Socket's order volume is not so great in size that its growth alone will cause
2 CenturyTel to have to hire additional personnel. It is amazing that CenturyTel
3 complains in so much of its witnesses' testimony that Socket's order volume is too small
4 to justify meeting unbundling obligations while Ms. Moreau states concerns about being
5 overwhelmed by Socket quantity of orders.

6 **Q. Why do you say accurate forecasts obviously are not possible and oppose providing**
7 **them?**

8
9 A. My statement that they are not accurate reflects the fact that some CLECs and
10 RBOCs have been working together to share non-binding forecasts of interconnection
11 facility needs, and to my knowledge all that is expected is a good faith effort to forecast
12 needs to avoid problems such as tandem exhaust. The volume of service orders any
13 CLEC submits is not dependent upon its marketing efforts alone, but is dependent on
14 customer response to marketing and customer decisions, such as business relocations and
15 expansions, over which we have no control and know nothing about until service is
16 requested from Socket. There is no way to predict the number of customers Socket will
17 acquire (or lose) in any month, nor can we predict what services these customers will
18 want or where they will want them. Facility needs similarly are driven by the size of the
19 customers who select a telecommunications carrier's service, the nature of their needs,
20 and their location. Asking Socket to submit forecasts while attempting to hold it to some
21 standard of accuracy makes no sense.

22 It is also important to note that *CenturyTel is Socket's competitor*. Forecasts of
23 order volumes and facility needs could give CenturyTel insight into Socket's marketing
24 and expansion plans, or Socket's efforts to woo particular customers. It is not reasonable

1 to expect a CLEC to reveal this type of information indirectly when it would never
2 provide it directly to its major competitor who serves the lion's share of customers in its
3 territory.

4 **Q. To your knowledge, are CLECs subject to performance measures and remedy**
5 **payments under other ICAs in Missouri or any other state?**
6

7 A. No. I am not aware of any.

8 **Q. How should the Arbitrator rule on this issue?**

9 A. The Arbitrator should rule that any performance measures and remedy plan to be
10 included in the Parties' ICA will apply to CenturyTel's performance of its obligations
11 under the ICA only, not Socket's performance, and that the provision of forecasts
12 specifically will not be required. As for the accuracy of the orders Socket submits, our
13 ability to submit an accurate order is tied to the ability to obtain complete and accurate
14 CSRs, and tied to the fact that CenturyTel has rejected orders for "inaccuracy" when the
15 customer address we specified was *Market Ave.* and not *Market Avenue* which is how it
16 appears in CenturyTel's records. The better way to ensure that CenturyTel is not
17 penalized for Socket's errors is to exclude inaccurate orders from the performance
18 calculations.

19 **Q. Have Socket and CenturyTel resolved any issues regarding Article XV?**

20 A. Yes, we have reached agreement on Appendix-Provisioning Intervals to Article
21 XV and, as a result, those agreed intervals would have to be incorporated into any
22 performance measures and remedy plan, because neither Socket's proposal nor
23 CenturyTel's proposal matches the intervals we have agreed to. Our agreement on
24 intervals also renders moot many of Ms. Moreau's criticisms of Socket's measures. The

1 best way to make sure that the correct intervals are incorporated into performance
2 measures and a remedy plan created to match those intervals is to have the Parties
3 perform this task in the collaborative process I am asking the Arbitrator to order.

4 I want to add that Socket's agreement to these intervals reflects its recognition
5 that an electronic OSS does not exist, but is not a waiver of its position that an electronic
6 OSS system is required. If the Commission rules that such an OSS system must be put
7 in place, it still will be some months before it is operational. As a result, the Parties will
8 operate in accordance with the agreed-upon intervals until such time as shorter intervals
9 may become appropriate, at which time they would engage in additional negotiations.

10 **Q. Do you have any specific comments on Ms. Moreau's proposed performance**
11 **measures and remedy plan that illustrate the kind of detail that should be addressed**
12 **through collaboration?**
13

14 **A.** Yes. Three examples illustrate the detailed matters in dispute that would best be
15 resolved through collaboration. In PM 1.2 as proposed in Ms. Moreau's testimony,
16 CenturyTel imposes a requirement that each request for a Customer Service Record be
17 accompanied by a certification that Socket has obtained an order the services from the
18 customer. That is inconsistent with the language the Parties have agreed upon regarding
19 operating under a Blanket LOA and the need to see this information in the pre-order
20 phase. It appears that Ms. Moreau could be using the performance measures to reverse
21 previously agreed upon language, or it could simply be an error. Either way, discussion
22 between the Parties is warranted.

23 In PM 1.3, Ms Moreau imposes a new measurement upon Socket without any
24 discussion with Socket. She provides no justification other than outlandish concerns that

1 Socket will overwhelm CenturyTel with erroneous orders. She also defines an erroneous
2 order as being one with one or more errors upon CenturyTel's receipt. Yet, the measure
3 would be tracked and reported by Socket, which seems impossible since Socket will have
4 no ability to verify CenturyTel's calculation of the number of erroneous errors.

5 In PM 1.5, Ms. Moreau proposes exclusions that were not contemplated by
6 Socket's original PM and that should be discussed and defined. Regardless of whether
7 these exclusions have merit, their addition will make it more difficult if not impossible
8 for Socket to measure and report.

9 I could go through each of the measurements CenturyTel proposed and find
10 additional problems. Rather than do that, I would re-urge the Arbitrator have the Parties
11 address these in a collaborative process.

12 **Q. How do you envision the collaborative process would work?**

13 A. If the Arbitrator orders the Parties to work collaboratively to develop an agreed
14 upon set of performance measures and a remedy plan, I envision that the process would
15 take perhaps three months. In part, the duration depends on whether expert advice is
16 sought on statistical tests and "degree of confidence" matters. I believe it would be
17 appropriate for the Parties to provide monthly updates to the Arbitrator on our progress
18 and, if we reach an impasse, we could agree to seek either Staff mediation or dispute
19 resolution.

20 **Q. Is there anything else you wish to add in response to Ms. Moreau?**

21 A. Yes. Ms. Moreau raises the possibility that Socket would "game" the system by
22 submitting large volumes of false orders, overwhelming CenturyTel staff and deliberately

1 causing CenturyTel to miss the performance benchmarks.¹⁴⁰ This is very offensive and
2 amounts to an accusation that Socket would engage in unlawful conduct. If Socket were
3 to submit false orders it arguably would be engaging in unlawful slamming or cramming
4 practices, improperly porting telephone numbers, etc. -- actions that would surely bring
5 down the wrath of potential customers not to mention the PSC. Aside from the
6 offensiveness of the suggestion, it is utterly ludicrous from a cost standpoint because not
7 only would Socket employees have to waste their time creating those false orders, it is
8 Socket that would have to pay the non-recurring charges for those services if they went
9 through the system to provisioning.

10 **Q. Does this conclude your rebuttal testimony?**

11
12 **A.** Yes.

¹⁴⁰ Moreau Direct at 20.