

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

CenturyTel of Missouri, LLC, et al)	
)	
Complainants,)	Case No. IC-2008-0068
)	
vs.)	
)	
Socket Telecom, LLC)	
)	
Respondent.)	

**SOCKET TELECOM’S LEGAL MEMORANDUM IN SUPPORT OF ITS RESPONSE
TO CENTURYTEL’S MOTION FOR SUMMARY DETERMINATION AND SOCKET
TELECOM’S CROSS MOTION FOR SUMMARY DETERMINATION**

COMES NOW Socket Telecom, LLC (“Socket”) pursuant to 4 CSR 240-2.117 and submits its Legal Memorandum in Support of its Response to CenturyTel’s¹ Motion for Summary Determination² and Socket’s Cross Motion for Summary Determination.

As demonstrated in Socket’s Response and Cross Motion, related supporting affidavits and documents, and this Memorandum, the Commission should not only deny CenturyTel’s Motion for Summary Determination, but should also, based on the facts and law presented, grant summary determination in favor of Socket and summarily rule that:

(a) the Interconnection Agreements at issue apply reciprocal compensation charges to the parties' exchange of Local Traffic (including Section 251(b)(5) Traffic and local ISP Traffic), and that Socket is entitled to receive reciprocal compensation payments from CenturyTel for terminating Local Traffic, Section 251(b)(5) Traffic and local ISP Traffic originated by CenturyTel's customers; and

¹ “CenturyTel” refers to both CenturyTel of Missouri, LLC and Spectra Communications Group, LLC.

² CenturyTel and Spectra’s Joint Motion for Summary Determination on Interpretation of Compensation Arrangements Applicable to Local Traffic.

(b) CenturyTel's payments on Invoice No. 129 dated December 7, 2006 and Invoice No. 131, dated January 11, 2007, were not in error, and Socket is entitled to such payments under the Agreement.

Introduction

This case is exceedingly simple. The Interconnection Agreements establish reciprocal compensation charges that apply when one party transports and terminates Local Traffic (as defined in the Agreement) originated by customers of the other party. This case is not about prior proposals of the parties that were not incorporated into the approved Agreement. It is not an opportunity to change the approved Agreement. The case simply concerns the provisions of the Telecommunications Act, which require companies to pay each other reciprocal compensation absent an express waiver of the right to such compensation, and the express content of the approved Agreement that calls for the payment of reciprocal compensation. In prior proceedings, and by its initial decision to pay Socket's invoices, CenturyTel has admitted that reciprocal compensation applies to Local Traffic under the Agreement, and it cannot credibly assert otherwise now.

For convenience, Socket has structured this Memorandum under the same headings as CenturyTel's Legal Memorandum.

Argument and Authorities

A. Summary Judgment Is Appropriate When the Construction of an Unambiguous Contract Is at Issue.

Socket does not disagree with CenturyTel's general recitation of authorities supporting the resolution of this case in a summary manner (CenturyTel Legal Memorandum, section II.A.) and so will not duplicate those materials.

B. The Provisions of the Agreements Require Payment of Compensation for Local Traffic and Do Not Waive the Parties' Rights to Such Compensation Under Federal Law.

The Interconnection Agreement provides that the parties will pay each other reciprocal compensation for the mutual exchange of "Local Traffic" as that term is defined by the agreement. Copies of the pertinent provisions of the Interconnection Agreement are supplied with Socket's Response and Cross Motion.

Under the agreement, "Local Traffic includes all Section 251(b)(5) Traffic that is originated by Socket's end users and terminated to CenturyTel's end users (or vice versa) that: (i) originates and terminates to such end-users in the same CenturyTel exchange area; or (ii) originates and terminates to such end-users within different exchange areas that share a common local calling area, as defined in CenturyTel's tariff, *e.g.*, Extended Area Service (EAS), mandatory and optional Metropolitan Calling Area, or other like types of expanded local calling scopes." See Agreement, Article II, Sec. 1.78. With respect to "Section 251(b)(5) Traffic," the Agreement provides that "calls originated by Socket's end users and terminated to CenturyTel's end users (or vice versa) will be classified as 'Section 251(b)(5) Traffic' under this Agreement if the call: (i) originates and terminates to such end-users in the same CenturyTel exchange area; or (ii) originates and terminates to such end-users within different exchange areas that share a common local calling area, as defined in CenturyTel's tariff, *e.g.*, Extended Area Service (EAS), mandatory and optional Metropolitan Calling Area, or other like types of expanded local calling scopes." See Agreement, Article II, Sec. 1.108. (Counterclaims, para. 8, Answers, Affidavit of Matt Kohly para. 22).

Under the Agreement "Local Traffic" includes local "ISP Traffic" as defined by the agreement. The Agreement defines "ISP Traffic" as "traffic to and from an ISP." In turn, the Agreement defines an ISP (Internet Service Provider) as "an Enhanced Service Provider that may also utilize LEC services to provide its customers with access to the Internet." See Agreement, Article II, Sec. 1.57. The Agreement defines "Enhanced Service Provider (ESP)" as "a provider of enhanced services as those services are defined in 47 CFR 64.702." See Agreement, Article II, Sec. 1.37. (Counterclaims, para. 8, Answers, Affidavit of Matt Kohly para. 23; see also CenturyTel Motion, para. 7).

Under the heading "Intercarrier Compensation for Transport and Termination of Traffic Subject to this Interconnection Agreement"³ (Article V, Section 9.0 et seq), the Agreement provides that:

(a) "Transport includes dedicated and common transport and any necessary Tandem Switching of Local Traffic from the POI [Point of Interconnection]⁴ between the two carriers to the terminating carrier's End-Office Switch⁵ that directly serves the called end-user." (Article V, Section 9.7).

(b) "Each Party shall be responsible for facilities and transport of Local Traffic between a Party's Central Office⁶ and the POI." (Article V, Section 9.7.1).

(c) "Termination includes the Tandem Switching of Local Traffic at the terminating carrier's End Office Switch. Termination rates are set forth in Article VIIA." (Article V, Section 9.7.2).

³ Socket acknowledges that Article III, Section 25 indicates that headings are inserted for "convenience and identification only and shall not be considered in the interpretation of this Agreement", and accordingly provides the pertinent heading for "convenience and identification."

⁴ Defined at Article II, Section 1.98 of the Agreement.

⁵ Defined at Article II, Section 1.36 of the Agreement.

⁶ Defined at Article II, Section 1.15 of the Agreement.

(d) The rates for Termination include the rate for Local Switching, which is \$0.033912 per minute, plus the rate for Tandem Switching, which is \$0.0016835, where that rate applies under Applicable Law. The rates for Transport include Tandem Transport Termination per MOU, which is \$0.00000663, and Tandem Transport facility Mileage (MOU/Mile), which is \$0.0000017 per mile.⁷ (Article VIIA).

(e) “On request parties will supply Percentage Local Usage for amount of Local Interconnection Traffic⁸ minutes to be billed, but if adequate message recording technology is available then the terminating party may use such information to determine Local Interconnection Traffic usage compensation to be paid.” (Article III, Sec. 10.2).

(f) Annual audits can be conducted regarding billing for Local Traffic. (Article III, sec. 10.4).

(Counterclaims, para. 9, Answers, Affidavit of Matt Kohly para. 24, Affidavit of Bill Magness para. 7).

In addition to the foregoing provisions that expressly provide for payment of reciprocal compensation for the transport and termination of Local Traffic, the Agreement also contains several exceptions, as follows:

(a) MCA Traffic will be exchanged on a bill-and-keep⁹ basis consistent with prior Commission decisions (Article V, Sec. 9.2, 9.2.1, 9.2.2);

⁷ To date, Socket has only billed the rate for End Office Switching but has expressly reserved the right to bill for additional rate elements as applicable. Any billing for back amounts would be subject to the limitations found in the ICA (Article III, Section 9.4). (Affidavit of Matt Kohly n. 5).

⁸ The Agreement defines “Local Interconnection Traffic” as “(i) Section 251(b)(5) Traffic, (ii) ISP-Bound Traffic, and (iii) non-PIC’d IntraLATA Toll Traffic.” See Agreement Article II, Section 1.72. (Counterclaims, para. 8, Answers, Affidavit of Matt Kohly n. 6). See also Article II, Section 1.89 for definition of “Non-PIC’d IntraLATA Toll Traffic.”

⁹ The Agreement defines “Bill-and-Keep Agreement” as “a compensation arrangement whereby the Parties do not render bills to each other or charge each other for the switching, transport, and termination of traffic as specified in this Agreement.” See Agreement, Article II, Sec. 1.12. See also Agreement, Article V, Sec. 9.4.2, which states that

(b) VNXX Traffic shall not be deemed Local Traffic and shall be exchanged on a bill-and-keep basis (Article V, Sec. 9.2.3)¹⁰; and

(c) Other traffic may not be aggregated with bill-and-keep traffic (Article V, Sec. 9.8).

(Counterclaims, para. 9, Answers, Affidavit of Matt Kohly para. 25, Affidavit of Bill Magness para. 7).

Thus, not only does the Agreement expressly require the parties to pay each other reciprocal compensation for the transport and termination of Local Traffic originated by the customers of the other party, but it also establishes exceptions to that rule for MCA traffic and VNXX traffic, directs the parties to exchange those specific types of Local Traffic on a bill-and-keep basis, and prohibits parties from avoiding reciprocal compensation obligations by mixing traffic subject to compensation with the specific types of traffic that are to be subject to bill-and-keep. Of course, it is the rule that necessitates the exceptions. Absent a general requirement of reciprocal compensation, specific bill-and-keep exceptions would not be needed.

Furthermore, absent the requirement of reciprocal compensation, it would not have been necessary to include the rates for transporting and terminating Local Traffic.¹¹ (Article VIIA). Likewise, provisions regarding measuring Local Traffic for billing (Article III, Sec. 10.2) and

"Bill-and-Keep" refers to an arrangement in which neither of two interconnection Parties charges the other for terminating traffic that originates on the other Party's network." (Counterclaims, para. 8, Answers, Affidavit of Matt Kohly n. 7).

¹⁰ The Agreement defines Virtual NXX Traffic (VNXX Traffic) as follows - "As used in this Agreement, Virtual NXX Traffic or VNXX Traffic is defined as calls in which a Party's customer is assigned a telephone number with an NXX Code (as set forth in the LERG) assigned to a Rate Center that is different from the Rate Center associated with the customer's actual physical premises location." See Agreement, Article II, Sec. 1.131. (Counterclaims, para. 8, Answers, Affidavit of Matt Kohly n. 8).

¹¹ There is no other purpose for the Local Switching rate, as CenturyTel is not required to provide local switching as an unbundled element. (Affidavit of Bill Magness para. 28).

auditing Local Traffic reciprocal compensation bills (Article III, sec. 10.4) would not be necessary absent the general requirement of reciprocal compensation.

Socket is mystified by CenturyTel's assertion that Socket "cannot identify a single provision in the ICA applying reciprocal compensation to the exchange of Local Traffic." (CenturyTel Legal Memorandum, p. 5). Socket identified the foregoing specific provisions of the Agreement in its Counterclaims at the start of this proceeding. Presumably, what CenturyTel meant to say is, "other than the express provisions of the Agreement applying reciprocal compensation to the exchange of Local Traffic, Socket cannot identify a single other provision in the ICA applying reciprocal compensation to the exchange of Local Traffic."¹²

As shown, the Agreements approved by the Commission in Case No. TO-2006-0299 incorporate provisions that implement Section 251(b)(5) of the federal Telecommunications Act of 1996 (the "Act"). Section 251(b)(5) provides that every local exchange company ("LEC") has "[t]he duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."

The Act further details the requirements for reciprocal compensation in Section 252(d)(2)(A), where Congress instructs State commissions that the "terms and conditions for reciprocal compensation" shall not be considered "just and reasonable" unless:

[S]uch terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier.

Under the federal Act, when one telecommunications provider transports and terminates a call initiated by the customer of another provider, the provider incurring the transport and termination

¹² I.e. Other than that Mrs. Lincoln, how did you like the play?

costs is entitled to receive compensation for those costs from the provider whose customer initiated the call.

The Act also makes clear that the requirement that carriers are entitled to receive compensation for transport and termination costs does not bar arrangements in which carriers waive mutual recovery of transport and termination costs. Section 252(d)(2)(B) provides that the provision of Section 252(d)(2)(A) quoted above:

shall not be construed ... to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements).

The Act authorizes State commissions to approve “bill-and-keep” arrangements in interconnection agreements, but at the same time makes clear that absent such contractual arrangements, carriers remain entitled to charge one another for the costs associated with transporting and terminating one another’s traffic.

As shown, the Agreements provide that Local Traffic is subject to reciprocal compensation. Both Socket and CenturyTel have a statutory right to charge one another compensation for terminating one another’s calls. When that traffic is of a type not governed by the Agreements (*e.g.*, access traffic or wireless traffic), the Agreements make clear that the terms do not affect compensation for those types of traffic.¹³ For example, the Agreement does not affect the intercarrier compensation Socket would have to pay CenturyTel under its access tariffs when those tariffs apply.

For the types of traffic subject to the Agreements, a plain reading of the Agreements demonstrates that certain specific types of traffic are subject to bill-and-keep (*e.g.*, VNXX and MCA), while other traffic is subject to payment of the traffic termination rate set in the

¹³ See Article V, Section 9.8: “Nothing in this Section shall be interpreted to ... change compensation as set forth in this Agreement for traffic or services other than traffic or services for which compensation is addressed in this Article V, including but not limited to Internetwork Facilities, access traffic or wireless traffic.”

Agreement (*e.g.*, Local Traffic transport and termination, including local ISP Traffic). For traffic subject to bill-and-keep, reciprocal compensation is waived. For traffic not subject to bill-and-keep, the rates in the Agreements apply and the parties are entitled to reciprocal compensation.

CenturyTel's refusal to continue paying Socket for transport and termination of Local Traffic ignores the express language in Article V of the Agreements that establish the rates for reciprocal compensation ("Transport of Local Traffic" at Section 9.7 and "Termination" at Section 9.7.2) for the transport and termination of Local Traffic. In addition, even in the absence of such express language, CenturyTel's position would turn the Act on its head: CenturyTel asks the Commission to presume that Socket must transport and terminate its traffic for free. As explained above, the Act expressly establishes a statutory right to reciprocal compensation that can only be waived if a bill-and-keep arrangement is affirmatively included in an interconnection agreement.¹⁴

Socket agrees with CenturyTel that the Commission should look to the ordinary meaning of the unambiguous terms of the Agreements. (CenturyTel Legal Memorandum, p. 6). Those unambiguous terms require the parties to pay each other for the transport and termination of Local Traffic as required by the Act and cannot be legitimately interpreted in any other way.

C. All of the Provisions Socket Relies Upon Provide for Payment of Compensation for Local Traffic.

CenturyTel seeks to erase the provisions of the Agreements that set forth the terms, conditions, and rates for billing reciprocal compensation for the transport and termination of Local Traffic (and presumably also the provisions for Local Traffic billing procedures and Local

¹⁴ Socket addresses CenturyTel's assertions about the parties purportedly selecting a bill-and-keep arrangement and purportedly excluding reciprocal compensation provisions (CenturyTel Legal Memorandum, p. 5-6), in part C of this Legal Memorandum.

Traffic billing audits), asserting that these are “inert” and “legacy” provisions of the Agreements. In doing so, CenturyTel actually admits that Socket has accurately presented the meaning of these provisions.¹⁵ (Legal Memorandum, p. 7, “Section 9.7 reflects terms that would have been significant if ... the parties invoked reciprocal compensation ...”).

CenturyTel asserts that “as a matter of law” the Commission cannot consider these purportedly “inert” and “legacy” provisions of the Agreements. It cites no authority establishing this “matter of law” and that should come as no surprise. To the contrary, it is well-established law that all provisions of a contract are presumed to have meaning. See, e.g., Phillips v. American Nat. Assurance Co., 58 SW2d 814, 816 (Mo. App. 1933)(noting that such rule is “in harmony with every well-established rule of interpretation”). Further, the Agreements themselves state that the wording of the document “constitutes the entire agreement of the Parties.” (Article III, Section 19.0).¹⁶ CenturyTel’s “legal” argument is the new poster child for frivolity.

CenturyTel also concedes in its argument that it had insisted on the Agreements including the provisions regarding reciprocal compensation because it wanted to be able to impose reciprocal compensation on Socket if traffic was out of balance (i.e. CenturyTel terminated more Local Traffic for Socket). And CenturyTel admits that the Commission rejected this “out-of-balance” proposal. (CenturyTel Legal Memorandum, p. 7).

What CenturyTel fails to mention is that after the Commission rejected the “out-of-balance” provisions CenturyTel had proposed and the parties were working to develop the final

¹⁵ Socket addresses CenturyTel’s other admissions in part E of this Memorandum.

¹⁶ The only words “not to be considered in the interpretation of this Agreement” are the convenient identifying headings. (Article III, Section 25.0). There is no provision instructing that there are “inert” and “legacy” provisions included in the contract that are to be ignored. Of course, if Socket sought the power of the eraser that CenturyTel seeks in order to deem all provisions of the Agreements that require it to pay money to CenturyTel to be “inert” and “legacy”, CenturyTel’s screams of protest would be deafening.

conforming agreement, CenturyTel refused to incorporate a provision proposed by Socket that would have subjected all Local Traffic to a bill-and-keep regime. Further, CenturyTel fails to mention that it refused to delete the reciprocal compensation provisions from the Agreements.¹⁷ (Affidavit of Matt Kohly para. 4-20, Affidavit of Bill Magness para. 14-32).

It is plain what CenturyTel was up to when the final Agreements were being prepared and submitted to the Commission for approval. It wanted to be able to impose reciprocal compensation on Socket and did not want a bill-and-keep agreement, because: (1) it was concerned traffic would be out-of-balance and it wanted Socket to pay; and (2) it did not want other carriers – particularly wireless carriers – to be able to adopt a bill-and-keep agreement under 47 USC 252(i) and avoid paying CenturyTel for terminating their traffic. (Affidavit of Matt Kohly para. 16, 19, Affidavit of Bill Magness para. 28-31). Apparently, CenturyTel did not evaluate the prospective pinch of the shoe being on the other foot when Socket exercised its rights to bill reciprocal compensation. Nonetheless, CenturyTel cannot escape the terms and conditions of the Agreements.

Finally, CenturyTel latches on for dear life to Article V, Section 9.8, which prohibits aggregating ineligible traffic with bill-and-keep traffic. But CenturyTel again misses the mark. As stated above, Socket recognizes that the Commission did establish bill-and-keep for specific types of Local Traffic, namely MCA and VNXX traffic. Socket does not contend that there are not any bill-and-keep provisions in the Agreements. And Section 9.8 sensibly prohibits the parties from abusing the bill-and keep exceptions to the reciprocal compensation general rule by

¹⁷ In its “Statement of Compliance and Non-compliance of Conforming Interconnection Agreement” (page 1), filed just prior to Commission approval of the Agreements, CenturyTel acknowledged that the Agreements “reach agreement and state terms on a number of issues arbitrated and determined against one or the other of the parties.” (Affidavit of Matt Kohly para. 16, 19, Affidavit of Bill Magness para. 28-31). CenturyTel’s insistent preservation of reciprocal compensation provisions was one example, as it was CenturyTel’s solution to the Commission’s rejection of its “out of balance” proposal.

combining non-local traffic with the exceptional bill-and-keep traffic. Section 9.8 does not in any way erase or override the other provisions of Article V which expressly require the parties to pay each other for the transport and termination of Local Traffic other than MCA and VNXX traffic.

Again, Socket agrees with CenturyTel that the Commission should look to the ordinary meaning of the unambiguous terms of the Agreements. (CenturyTel Legal Memorandum, p. 6). Those unambiguous terms require the parties to pay each other for the transport and termination of Local Traffic as required by the Act and cannot be legitimately interpreted in any other way.

D. Socket is Not Estopped from Enforcing its Rights to Reciprocal Compensation under the Act and the Agreements.

In its Motion and Legal Memorandum, CenturyTel addresses the parties' respective prior proposals in the arbitration proceeding that produced the Interconnection Agreement. Specifically, at paragraph 8 of its statement of Material Undisputed Facts, CenturyTel quotes from Socket's Post-Hearing Brief. CenturyTel's quotation is accurate, but as explained below the information is irrelevant. At paragraph 9 of its statement of Material Undisputed Facts, CenturyTel quotes from Socket's Comments on the Arbitrator's Final Report. Again, CenturyTel's quotation is accurate, albeit misleading due to the extent it isolated the information from its context,¹⁸ but in any event again as explained below the information is irrelevant.

CenturyTel seeks to divert the Commission's attention from the contents of the Agreement with its selective discussion of positions taken before the parties completed the process of preparing and submitting the final Agreement and obtaining the Commission's

¹⁸ Contrary to CenturyTel's contention, the language it quotes at page 9 of its Legal Memorandum only concerned VNXX traffic which admittedly is subject to bill-and-keep. (Affidavit of Bill Magness para. 24).

approval. As demonstrated in the accompanying affidavits of Socket's lead negotiator, Matt Kohly, and of the attorney that represented Socket in the negotiation and arbitration process, Bill Magness, notwithstanding the various positions taken by Socket on the issue of reciprocal compensation from the onset of negotiations through submittal of the final agreement for Commission approval, CenturyTel steadfastly refused to include contract language calling for a bill-and-keep arrangement for Local Traffic. Instead CenturyTel insisted on submittal of the document as it reads today, including the provisions identified above that call for the parties to bill each other reciprocal compensation for the transport and termination of Local Traffic.¹⁹ Socket's prior proposals regarding bill-and-keep arrangements were uniformly rejected by CenturyTel and do not reflect upon the meaning of the language the parties agreed to include in the Agreement in any way. (Affidavit of Matt Kohly para. 4-20, Affidavit of Bill Magness para. 14-32).

CenturyTel's discussion of authorities regarding estoppel has nothing to do with this case. Socket is not seeking to re-litigate prior positions. Socket seeks to enforce the express terms and conditions of the approved Agreements, which at CenturyTel's steadfast insistence did not incorporate Socket's bill-and-keep proposals and did not include a general bill-and-keep regime. Moreover, the Commission did not order the parties to include generally applicable bill-and-keep provisions in the Agreements.²⁰ Socket has not taken any inconsistent position with its assertions in this case that the Agreements as finally prepared, submitted and approved require

¹⁹ As indicated above, CenturyTel apparently decided that because the Commission had rejected its proposal to be allowed to impose reciprocal compensation on Socket if bill-and-keep traffic was "out-of-balance" (i.e. CenturyTel was terminating more traffic from Socket), it did not want bill-and-keep at all.

²⁰ The Commission's approval of language for Section 9.2.3, which is the only ruling cited by CenturyTel at page 9 of its Legal Memorandum, only addressed VNXX traffic, which the parties do not dispute is subject to bill-and-keep. In any event, even if the Commission had gone further, CenturyTel admits (see *supra* note 17) that the parties in some instances agreed to a different result than that ordered by the Commission, and it is the language of the approved Agreements that must inevitably prevail.

the parties to pay each other reciprocal compensation. Accordingly, no principle of estoppel bars Socket from the relief it seeks from the Commission in this case.

E. CenturyTel has Admitted that It Owes Reciprocal Compensation to Socket Under the Approved Agreements.

CenturyTel has admitted on the record to the Commission that the Agreement provides for reciprocal compensation to be paid for the transport and termination of Local Traffic. During the hearing before the Commission in Case No. TC-2007-0341, which involves the interpretation of other provisions of the Agreement, counsel for CenturyTel (Stewart) and Socket (Lumley) answered Commissioner Clayton's questions regarding the reciprocal compensation treatment of various types of traffic. Commissioner Clayton asked how a purely local (as in, non-VNXX) call would be treated under the ICA, and CenturyTel's counsel, Mr. Stewart, responded as follows:

- Q. COMMISSIONER CLAYTON: So physically the call -- if the Socket customer stays within the exchange, does the call have to go to the point of interconnection? So it goes to Branson and then back?
- A. MR. STEWART: It goes to Branson and back.
- A. MR. LUMLEY: CenturyTel calls a Socket customer or vice-versa, right, that's where the traffic is exchanged today.
- Q. COMMISSIONER CLAYTON: And that's recip comp. It's not bill and keep.
- A. MR. LUMLEY: In that circumstance.
- A. MR. STEWART: Yeah, I'd agree with that.

See, Case No. TC-2007-0341, Hearing Transcript at 45-46 (July 11, 2007).

Moreover, when Socket intentionally (not mistakenly as CenturyTel asserts by affirmative defense) submitted its first two invoices to CenturyTel for reciprocal compensation for its termination of CenturyTel-originated Local Traffic, CenturyTel paid them. Socket submitted its first two invoices, covering the three-month period from October 2006 to December 2006 - Invoice No. 129 dated December 7, 2006, and Invoice No. 131 dated January 11, 2007. CenturyTel admits that the invoices represented that they were “billing for ‘Reciprocal Compensation’ for ‘Local Calling’”. (CenturyTel Legal Memorandum, note 5). Invoice No. 129 was paid in the amount of \$7,232.33, and Invoice No. 131 was paid in the amount of \$3,619.08. There would be no reason for CenturyTel to pay the invoices if the ICA did not call for reciprocal compensation for Local Traffic. (Counterclaim Against CenturyTel of Missouri, para. 11, Answer, Affidavit of Matt Kohly para. 26-29, Affidavit of Bill Magness para. 10).

In prior proceedings, and by its initial decision to pay Socket’s invoices, CenturyTel has admitted that reciprocal compensation applies to Local Traffic under the Agreement, and it cannot credibly assert otherwise now.

F. Socket has Properly Billed CenturyTel for Reciprocal Compensation Under the Agreements.

All of the traffic billed under Socket's invoices constitutes "Local Traffic" as defined in the parties' Interconnection Agreement that is subject to reciprocal compensation charges for termination by Socket. Socket utilizes “adequate message recording technology” pursuant to

Article III, Section 10.2 to determine the amount of traffic for which CenturyTel must pay compensation. (Counterclaims, para. 11/12, Answers, Affidavit of Matt Kohly para. 26-39).

Socket has properly billed CenturyTel for reciprocal compensation and CenturyTel should be required to resume its payments of Socket's invoices.

Conclusion

The Agreement expressly provides for the payment of reciprocal compensation for the transport and termination of Local Traffic, other than MCA and VNXX traffic which are set out as express exceptions to that rule. The Agreement does not incorporate Socket's prior proposals on reciprocal compensation, because CenturyTel rejected those proposals. CenturyTel has admitted to the Commission that reciprocal compensation applies to Local Traffic under the Agreement – which should be no surprise because that is exactly what the Agreement says. CenturyTel initially paid Socket's invoices for reciprocal compensation, in another form of admission by conduct. Socket has continued to properly bill CenturyTel for reciprocal compensation.

Accordingly, Socket seeks a determination and order that:

(a) the Interconnection Agreements at issue apply reciprocal compensation charges to the parties' exchange of Local Traffic (including Section 251(b)(5) Traffic and local ISP Traffic), and that Socket is entitled to receive reciprocal compensation payments from CenturyTel for terminating Local Traffic, Section 251(b)(6) Traffic and local ISP Traffic originated by CenturyTel's customers; and

(b) CenturyTel's payments on Invoice No. 129 dated December 7, 2006 and Invoice No. 131, dated January 11, 2007, were not in error, and Socket is entitled to such payments under the Agreement.

WHEREFORE, Socket moves the Commission as expeditiously as possible to: 1) deny CenturyTel's Motion for Summary Determination; 2) grant Socket's Motion for Summary Determination; and 3) grant such other and further relief to Socket as the Commission deems just and proper in the premises.

Respectfully submitted,

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

Carl J. Lumley, #32869
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
(314) 725-8788
(314) 725-8789 (FAX)
clumley@lawfirmemail.com

Attorneys for Socket Telecom, LLC

Certificate of Service

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 14th day of January, 2008, by email or by placing same in the U.S. Mail, postage paid.

/s/ Carl J. Lumley

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102
gencounsel@psc.mo.gov

Lewis Mills
Office of Public Counsel
P.O. Box 2230
Jefferson City, Missouri 65102
opcservice@ded.mo.gov

William Haas
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
William.Haas@psc.mo.gov

Larry Dority
Fischer & Dority
101 Madison, Suite 400
Jefferson City, Missouri 65101
lwdority@sprintmail.com

Gavin E. Hill
Kirkpatrick & Lockhart Preston Gates Ellis LLP
1717 Main Street, Suite 2800
Dallas, Texas 75201
gavin.hill@klgates.com