

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Filing of New Tariff)
Sheets for Socket Telecom, LLC to Provide) Case No. TT-2005-0089
a Market Trial for Local Exchange Service.)

REQUEST TO RECONSIDER AND SET ASIDE ORDER SUSPENDING TARIFF

Comes now Socket Telecom, LLC (“Socket Telecom”) pursuant to 4 CSR 240-2.160 and for its Request to Reconsider and Set Aside Order Suspending Tariff states to the Commission:

1. On September 8, 2004 Socket Telecom filed a proposed tariff that would allow it to engage in market trials to test its ability to provide local exchange services for a limited period of time in various geographic areas. The proposed tariff makes it clear that the market trials are not offers to provide service to the general public, but rather will be limited to a total of 50 participants. On September 20, 2004, Socket Telecom filed a substitute sheet at the request of Staff to limit each trial to a maximum of 12 weeks. The proposed tariff bore an effective date of October 8, 2004.

2. After the close of business on October 6, 2004, CenturyTel of Missouri, LLC (“CenturyTel”) filed a Motion to Suspend and a Request for Intervention. In support of its motion to suspend, CenturyTel contended that the proposed tariff does not have a specific ending date for the trial, which CenturyTel claimed is contrary to the “custom and practice” for previously approved market trials approved by the Commission. CenturyTel further objected to the proposed tariff because the services provided during a market trial would be offered to trial participants at no cost, asserting that the proposed tariff thereby violates Section 392.220.3 RSMo. Finally, CenturyTel contended that the fact that the services would be offered to trial participants at no

charge, “would not allow Socket to test the accuracy of its billing and other back office support systems, which is arguably one of the most crucial elements for the provision of telecommunications services as far as consumers are concerned” (Motion, pg. 2).

3. CenturyTel’s filing created Case No. TT-2005-0089, In the Matter of the Filing of New Tariff Sheets for Socket Telecom, LLC to Provide a Market Trial for Free Local Exchange Service.¹

4. CenturyTel is the incumbent local exchange carrier in several markets where Socket Telecom currently competes or intends to compete in the future. As the incumbent monopoly, CenturyTel has every incentive to take any available course of action to delay or impede Socket Telecom’s market entry. Socket Telecom believes that such interference is the sole motive behind CenturyTel’s actions in this matter.

5. On October 7, 2004, the Commission voted to suspend Socket Telecom’s proposed tariff until November 10, 2004. Also on October 7, 2004, the Commission issued an additional order scheduling oral arguments for October 20, 2004. Socket Telecom seeks reconsideration of the Commission’s Order Suspending Tariff and Granting Intervention.

6. The type of trial envisioned by the proposed tariff would involve either a new service in an exchange currently served by Socket Telecom or a service in an exchange Socket Telecom is just beginning to serve. One of the first steps would be to find

¹ Socket Telecom believes the original caption for this case does not provide an accurate description of the proposed tariff sheets. The proposed tariff sheets are designed to provide for a market trial that will allow Socket Telecom to test its ability to provide local exchange services. Only during the market trial will services be provided to trial participants at no charge. Once the trial ends and Socket Telecom makes an offer available to the general public, Socket Telecom will begin charging tariffed rates for its services. Socket Telecom has no plans to provide free service to the general public.

business or residential customers that would be willing to try out the service². This will allow Socket Telecom to test its ability to provision service, evaluate vendors' abilities to meet Socket Telecom's expectations, as well as evaluate Socket Telecom's own back-office and billing systems.

7. Such an extensive testing process is necessary in part because Socket Telecom will lease unbundled network elements from incumbent local exchange carriers, including CenturyTel. Socket Telecom will use these leased facilities in conjunction with its own facilities to provide telecommunications services to end-users. Before Socket Telecom offers service to the general public at competitive rates, Socket Telecom needs to know that it can seamlessly provision, provide, maintain, and bill for services rendered. Socket Telecom also needs to understand what services customers may desire and be willing to purchase.

8. During the trial period, it is envisioned that the trial participants may maintain their current telecommunications services with their current providers and also receive trial telecommunications services from Socket. In this instance, the customer will not be affected if Socket Telecom encounters difficulties in provisioning or providing the service. The fact that the customer may have duplicate services also creates an additional reason that it is necessary for Socket Telecom to provide the service for free during the trial period. Socket Telecom arrived at the number of 50 trial participants because it is envisioned that multiple trials maybe underway simultaneously in multiple

² At the Commission's October 7, 2004 Agenda meeting, it was suggested that Socket Telecom could use its employees as part of a market trial. Where Socket Telecom does have employees, Socket Telecom will use those employees as part of a market trial. However, Socket Telecom does not have employees located in every exchange it desires to serve, so this is not a realistic option in all exchanges.

exchanges. Thus, in one exchange, there may only be one or two participants but in total there may only be a maximum of fifty trial participants in the state.

9. It is ironic that CenturyTel is objecting to Socket Telecom conducting such testing. CenturyTel's performance and reliability in the provisioning of unbundled network elements and number porting leaves much to be desired. CenturyTel appears to process and/or complete orders, if at all, entirely at random. CenturyTel routinely rejects orders for no legitimate reason and changes ordering and provisioning processes with no advance notice to Socket Telecom. In other instances, CenturyTel will inform Socket Telecom that an order to port a number is being rejected but it nonetheless fulfills the order resulting in customer outages. Occasionally, CenturyTel even takes the position that it will not process orders because there supposedly is no interconnection agreement in place. (See Case No. CO-2005-0066). CenturyTel is completely unresponsive to attempts to resolve these types of disputes, even when Socket Telecom tries to invoke dispute resolution procedures under the interconnection agreement between the parties. At this point, when Socket Telecom requests unbundled network elements from CenturyTel, it is impossible for Socket Telecom to realistically know what to expect.

10. The entire purpose of these trials is for Socket Telecom to evaluate and, if necessary, improve its ability to provide local exchange service without failing to meet paying customers' expectations and thereby damaging Socket Telecom's reputation and ability to compete.

11. It is well known that CenturyTel has experienced a number of billing issues in the recent past. These billing issues have adversely affected customers and led to complaints. For example, see Case No. TC-2002-349, *Frances Langerud, Complainant*,

v. CenturyTel, Respondent where billing errors ultimately affected 83,670 customers, took almost two years to resolve and required CenturyTel to refund over \$350,000³. As a new entrant, Socket Telecom simply cannot afford and has no desire to make customers angry through incorrect billing. It is precisely these issues that Socket Telecom wishes to avoid through adequate testing and CenturyTel, of all companies operating in Missouri, should understand.

12. In response to CenturyTel's contention that the proposed tariff is not consistent with the custom and practice for previously approved market trials approved by the Commission, CenturyTel's research is incomplete and erroneous. Socket Telecom's proposed tariff is modeled after a tariff filing made by SBC Missouri, Inc. that was approved by this Commission with an effective date of April 2, 2003. A copy of that tariff is attached as Exhibit 1. SBC Missouri, Inc.'s approved tariff sheet authorizes SBC Missouri, Inc. to provide free products or services to trial participants. SBC Missouri, Inc.'s approved tariff does not have a specific start and end date for each trial. Instead, the tariff provides that each individual trial or test will not exceed eight weeks. Socket Telecom's proposed tariff is entirely consistent with the framework of the approved tariff and is, therefore, consistent with the "custom and practice" of previously approved market trial tariffs.

13. CenturyTel's second basis for opposition to Socket's proposed tariff relies upon Section 392.220.3, which generally prohibits a telecommunications carrier from providing free or reduced service or free pass or frank for the provision of telecommunications service except for stated exceptions. Socket Telecom's market trial

³ Case No. TC-2002-349, *Frances Langerud, Complainant, v. CenturyTel, Respondent*, Report and Order, pg. 1, <http://www.psc.state.mo.us/orders/12022349.htm>

is not an offer to provide service to the general public, as the tariff explicitly states. As the proposed tariff is not an offer of telecommunications services available to the general public, the referenced statute does not apply. Likewise, SBC Missouri, Inc.'s previously described tariff also was not prohibited by this statute. In its Motion, CenturyTel cited to a trial tariff offered by Time Warner, Inc. That trial tariff is nearly identical to one filed by AT&T Communications of the Southwest, Inc. authorizing a market trial. Both tariffs were approved by the Commission. Both tariffs contemplate the service providers charging rates that are competitively priced to similar services offered by the incumbent local exchange carrier. However, both tariffs explicitly authorize both AT&T and Time Warner to waive various charges during the course of the trial, which essentially authorizes them to provide a particular service for free.

14. Even for offers that are available to the general public, given the provisions of Section 392.200 this statute (392.220.3) must be interpreted as not prohibiting promotional offerings, including promotions that provide services for free. Otherwise, under CenturyTel's proposed interpretation of this statute, any service provided for free would be strictly prohibited. Under this proposed interpretation, CenturyTel's own pricing practices are unlawful. For example, CenturyTel of Missouri, LLC's General and Local Exchange Tariff contains promotions that provide for free Caller ID, free installation of customer calling features, free installation of additional lines, free Voice Mail, free installation of additional or new Centrex lines. A copy of CenturyTel's tariff sheets that provides these free services is attached as Exhibit 2.

15. The fact that previously approved tariffs allow companies to conduct testing and trials that include providing services at no charge to trial participants indicates that

Section 392.230.3 has not been interpreted to prohibit these types of trials. Similarly, the statute has not been interpreted to prohibit other reduced or free service offerings made available to the general public on non-discriminatory basis. If the Commission ultimately determines that this statutory provision makes Socket Telecom's proposed tariff unlawful, such a finding can of course be cured by requiring Socket Telecom to charge some fee, even if it is 1¢ for each service rendered unless, of course, the trial participant were a physician, surgeon, minister, attorney at law or the family of an attorney at law or otherwise engaged in an occupation listed in Section 392.230.3. However, such an outcome is absurd and does not serve the public interest. This shows there is no substance behind CenturyTel's objections and CenturyTel is simply trying to delay competition by abusing the regulatory process. The clear intent of the statute is to prohibit discrimination in the form of charging some customers for a service, while at the same time giving it away for free to others. The proposed market trial tariff does not violate the statute.

16. Finally, CenturyTel contends that by not charging for the services provided as part of a trial, Socket Telecom cannot adequately test its billing or other back-office systems. Such a statement is absurd. Even if the service is provisioned at no charge to the trial participant, Socket Telecom can still go through the process of generating a bill in order to evaluate whether the bill is accurate and the billing systems work properly.

WHEREFORE, for the reasons stated herein, Socket Telecom requests that the Commission reconsider its Order Suspending Tariff and allow the tariff to take effect immediately without further proceedings.

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

/s/ Carl J. Lumley

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was mailed this 11th day of October, 2004, by placing same in the U.S. Mail postage paid to:

General Counsel
Missouri Public Service Commission
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/s/ Carl J. Lumley

No Supplement to this
tariff will be issued
except for the purpose
of canceling this tariff.

RULES AND REGULATIONS APPLYING TO ALL CUSTOMERS' CONTRACTS

17.13 PROMOTIONAL RATES (cont'd)

17.13.5 Operational Readiness Testing

The Telephone Company reserves the right to periodically provide certain services without charge for the limited purpose of operational readiness testing of the billing system and associated systems (such as service ordering, customer records, etc). The Telephone Company may at times request Business or Residential customers to subscribe to certain products or services prior to the product introduction for the purpose of determining billing systems readiness. During this testing period, the product or service will be provided to the customer at no charge.

Each billing system tests will be limited to no more than five customers. Customer involvement in these tests will not exceed eight weeks. At or before the end of the eight week testing period, the Telephone Company will either make a tariff filing to add the product or service to its tariff or discontinue the test.

EXHIBIT 1

Issued: March 3, 2003

Effective: April 2, 2003

By CINDY BRINKLEY, President-SBC Missouri
Southwestern Bell Telephone, L.P., d/b/a SBC Missouri
St. Louis, Missouri

GENERAL AND LOCAL EXCHANGE TARIFF

SERVICE CHARGES

D. Special Promotions

1. The Company may, upon Commission approval, from time to time engage in special promotional service offerings designed to attract new customers or to promote existing services. The Company will provide written notice to the Commission at least 10 days prior to the commencement of a promotional program, specifying the terms of the promotion, the specific service period offered and the beginning and ending dates of the promotional period.
 - a. Caller ID: Customers who subscribe to Caller ID during the period July 15, 2004 through September 30, 2004 will receive a waiver of the first months recurring charge. (N)
 - b. Residential and single-line business customers who install any custom calling feature, including Caller ID, during the promotional period July 15, 2004 through September 30, 2004 will have the nonrecurring charges waived for installation of the service. (N)
 - c. Residential and single-line business customers who install an additional line at the same premises between July 1, 2004 and September 30, 2004, will receive a waiver of the non-recurring service charges. (N)
 - d. For the period January 5, 2004 through March 31, 2004, the company will offer a promotion in which customers who subscribe to Voice Mail and an additional line will receive the first months Voice Mail free and receive the first months Voice Mail Complementary Services Package free.
 - e. Business or Centrex customers, who subscribe to additional or new Centrex lines during the promotional period from January 15, 2004 through March 15, 2004, will receive a waiver of the non-recurring service charges.
 - f. Residential and single-line business customers who install any custom calling feature, including Caller ID, during the promotional period April 15, 2004 through June 15, 2004 will have the nonrecurring charges waived for installation of the service.

EXHIBIT 2

Issued: June 18, 2004

Effective: July 1, 2004

Chantel Mosby
Manager, Tariffs and Compliance
Monroe, LA

GENERAL AND LOCAL EXCHANGE TARIFF

SERVICE CHARGES

D. Special Promotions (Cont'd)

g. 90 Day Guarantee/Caller ID:

(N)

Customers who subscribe to Caller ID during the period April 15, 2004 through June 15, 2004 will be offered:

1. a 90 day satisfaction guarantee where if they are dissatisfied with the service and disconnect within the first 90 days, they will be given credit for the entire time they have had the service, up to 90 days, or:

2. a credit for the first months recurring charge

h. For the period April 1, 2004 through June 30, 2004, the Company will waive the nonrecurring charges applicable to the installation of additional lines at the same premise.

i. During the period April 15, 2004 through June 15, 2004, the Company will waive the first month recurring charges for new customers who subscribe to Call Forwarding Busy or Call Forward Busy/No Answer. The Company will also waive the first months recurring charges for new subscribers to the Voice Mail Complementary Services Package.

(N)

Issued: March 1, 2004

Effective: March 11, 2004

Jeffrey Glover
Vice President External Relations
Monroe, Louisiana